

The Key to Greater Gender Equality

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On 7 March 2014 the International Labour Organisation convened a high-level panel of eminent equality scholars and activists from workers' and employers' organisations to mark International Women's Day and in anticipation of the ILO's centenary initiative to help "equip the Organisation to take up successfully the challenges of its mandate in the future". This is the text of the intervention by Professor Sir Bob Hepple QC, the Chair of The Equal Rights Trust. He wishes to thank Jude Browne, Mary Coussey, Nancy Fraser, Sandra Fredman and Dimitrina Petrova for their advice.

1. The most significant change in recent decades that influences the position of women at work is the transformation of state-managed capitalism into a globally marketised, privatised, deregulated system. This is accompanied by an ideological change from the post-war spirit of social solidarity, collective action, and participatory democracy into a belief in individual choice, personal autonomy and meritocracy. Women are told that they will succeed through individual advancement and by being more career-oriented.
2. This change has resulted in a new gender gap. The gap in numbers between economically active men and women has been slowly decreasing. Between 1980 and 2008, the rate of global female labour force participation increased from 50.2 to 51.7%, while male participation decreased slightly from 82.0 to 77.7%. But the gap based on inequity in the

quality of employment has grown. Women who enter the labour market are now generally highly educated but still have a difficult time finding work. When they do, they are generally segregated in poorly-paid, insecure, home-based or informal work. There remain in many countries formal and informal barriers to women entering certain sectors of the labour market, including legal restrictions on working in certain jobs. These are often based on religious or patriarchal assumptions. There is persistent social and cultural pressure on women to combine family responsibilities with paid employment or to remain at home as carers while men are the principal breadwinners. Unpaid work is not valorised. The employment opportunities and earning potential of women continues to be well-below that of men.

3. Put another way, the roots of gender inequality lie in the socio-cultural traditions of countries, and also in the structures of employment and the way we measure economic value. What is needed is a more or less radical transformation that empowers women to the same degree as men and restores a spirit of social solidarity, collective action and participatory democracy. How can this be done? The ILO's third global report on discrimination (2011) noted that an increasing number of countries have adopted anti-discrimination legislation and policies. (The organisation whose Board I chair, The Equal Rights Trust, has been working in over 30 countries



The expert panel who addressed the ILO on International Women's Day, from left: Bob Hepple, Jayati Ghosh, Catelenine Passchier and Charles Faye. Guy Rider, Director General of the ILO, is in the centre.

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to promote and advise on such measures.) However, giving the legal right to women to make individual complaints against discrimination is not enough. This is so even when the law goes beyond outlawing direct discrimination to include indirect discrimination, applying apparently neutral policies and practices in a way that puts women as a group at a particular disadvantage.

4. It has for long been recognised that “positive action” can bring about significant changes. This includes the eradication of practices that disadvantage women, like word-of-mouth recruiting, policies that seek to increase the proportion of women, for example by making the criteria for recruitment and promotion more objective and job-related, outreach programmes, and preferential treatment of women where they are

under-represented, for example on company boards. The ILO Convention on Discrimination (Employment and Occupation) (C. 111, 1958), for its time a remarkably progressive international standard, now ratified by 172 countries, makes it clear that:

“[S]pecial measures designed to meet the particular requirements of persons who for reasons such as sex, age, disablement, family or social responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.” (Art 5)

This is framed as an exception from the general negative principle of non-discrimination.

5. What is missing from these 56-year old provisions and from most national legislation

is a positive duty on employers to advance equality of opportunity. In some countries (e.g. Denmark, Germany, Britain) legal duties have been imposed on public authorities to implement gender mainstreaming. This goes beyond “special measures” to help women. As the European Commission said in 2008:

“[I]t means mobilising all general policies and measures specifically for achieving equality by actively and openly taking into account at the planning stage their effects on women and men and by assuming that a transformation of institutions and/or organisations may be necessary.”

The economic crisis has made it extremely difficult to implement such policies. In Britain, where, since 2006, there has been a general duty on public authorities to advance equality of opportunity, the duty is interpreted as mainly procedural: to have “regard” to the need to advance equal opportunities; and provided the authority follows the correct procedure, cuts in public expenditure which will have an adverse impact on women can still be implemented.

6. What I am saying is that as part of the ILO’s future reflections, the Organisation should examine how the equality conventions could better support transformative equality. The younger generation cannot afford to be, or do not wish to be, herded into traditional full-time permanent employment based on the model of a male breadwinner and unpaid dependent partner. “Familial economic units” (with either shared or single-parenting) need to be provided for, with policy options that enable them to maximise their utility (for example, properly paid parental leave and the valorisation of unpaid labour). The major knowledge gap in this respect is that we are woefully short of data about the situation inside organisations, with regards to who works for what wage or salary. In Britain, successive governments have refused to require pay audits, and the present

UK government goes no further than to advise workers to collect this information by asking colleagues what they earn!

7. This plea for an approach of transformative equality links with the question of the role of workers’ and employers’ representatives. Obviously, supporting workers’ representatives by law or otherwise (e.g. government contracts) is important. The growing feminisation of trade unions also heralds a shift in direction. But trade unions and other workers’ representatives cannot do much if the channels open to them are being squeezed by government measures. For example, in Britain, prohibitive fees have been introduced for taking complaints of discrimination to employment tribunals and the Equality and Human Rights Commission, which is supposed to help victims of discrimination, has had its budget cut from £70 million in 2010 to just over £18 million in 2014 (70%) and its powers curtailed. In other words, the promise of greater gender equality through the actions of individuals is being shown to be illusory.

8. The key to greater gender equality is through democratic participation in the making and enforcement of affirmative action schemes: to ensure a “fit” or “proportionality” between the aims of the scheme and the means used to achieve those aims, and to recognise that restorative justice is a process in which conflicting interests have to be reconciled. It has been suggested that most schemes fail because of the conflicts in a market-based economy between the right to private property and the right to equality, and also because of the inherent limits of law as an instrument of social change. The response to this must be through dialogue and participation of those whose interests are affected in the process of change, and there need to be mechanisms to ensure accountability of those who represent these interests.