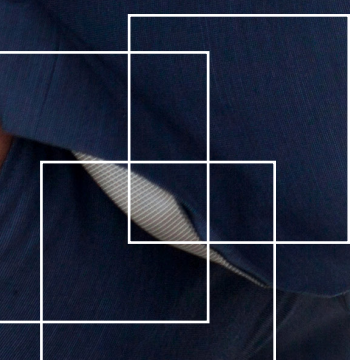




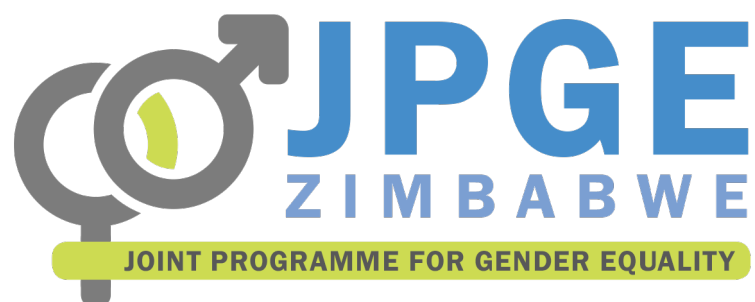
International
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A smiling man and woman in business attire are shaking hands in front of a large window. The man is on the left, wearing a dark suit and a blue shirt. The woman is on the right, wearing a dark blazer over a white shirt. They are both looking at each other and smiling. The background is a bright, out-of-focus view of a city street through a window.

GENDER EQUALITY THROUGH COLLECTIVE BARGAINING IN ZIMBABWE

A decorative geometric pattern consisting of several overlapping squares of different sizes is located in the bottom left corner.

A MANUAL



GENDER EQUALITY THROUGH COLLECTIVE BARGAINING IN ZIMBABWE

A MANUAL



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FOREWORD

Gender Equality in all spheres of life is a fundamental human right including the working environment. However, although there has been notable progress, the full realization of Gender Equality continues to be an elusive target across the world. Zimbabwe is one of the countries engaged in multi-sectoral efforts to address Gender Equality. There is acceptance by key stakeholders that women as compared to men bear the brunt of vulnerability and exploitation at the work place.

An important tool in addressing Gender Equality is collective bargaining. Collective bargaining is considered as a fundamental right at the work place and an important mechanism for eliminating all forms of inequalities and discrimination against women and for improving their working conditions. The legislative environment in Zimbabwe has seen key developments in the last few years, underpinned primarily by the adoption of a new Constitution, a Labour Act under review, national gender frameworks and Zimbabwe being signatory to the CEDAW and SADC protocols on gender.

The International Labour Organization Office for Zimbabwe and Namibia is at the forefront of efforts to help in harmonizing stakeholder efforts in achieving meaningful progress in gender equality. In close collaboration with these stakeholders, the ILO has developed this manual to help guide the employment sector in addressing issues of gender equality. The manual is the result of input from stakeholders in Zimbabwe, integration of the international labour standards, guidelines from the international guide version, and the Zimbabwe legal context. The manual was developed with a trainers guide and tools for training of trainers in 2017. Globally, the ILO has developed draft manuals on collective bargaining under AC-TRAV/TUCA and a draft 'gender and collective bargaining manual' under GED and the international manual on Gender Equality and Collective Bargaining.

Hopolang Phororo

Director

ILO CO Zimbabwe and Namibia

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INTERNATIONAL TREATIES AND CONVENTIONS

The ILO is the specialist United Nations agency that deals with rights at work. The key ILO fundamental principles and rights at work are embodied in the following 8 core Conventions: Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation Convention, 1958, (No.111); Freedom of Association and Protection of the Right to Organise, 1948, No.87; Right to Organise and Collective Bargaining Convention, 1949 (No.98); Minimum Age Convention, 1973 (No.138); Worst Forms of Child Labour Conventions, 1999 (No.182); Forced Labour Convention, 1930 (No.29) and Abolition of Forced Labour Convention, 1957 (No.105). These are part of a body of international labour standards created to provide minimum standards for women and men to have decent work. The standards set by the ILO have been complemented at the international, regional and sub-regional level by other gender equality instruments.

International Labour Standards

International labour standards (ILS) are legal instruments drawn up in consultation with the ILO's tripartite constituents governments, (employers' and workers' organizations) to set out basic principles and rights at work. The role of ILS is to prescribe, among other things, minimum working conditions and the principle of non-discrimination in its many aspects, and is usually designed for all workers irrespective of their sex, ethnicity, physical ability, or other attributes.

Conventions are legally binding international treaties that set out to promote workers' rights and are open to ratification by ILO member States. Ratification means that a country undertakes to apply the provisions of the ratified Convention in law and practice, and to submit to regular international supervision on the extent of application. Once a country ratifies a convention, it is subject to the ILO supervisory system which monitors application of the convention.

Recommendations are non-binding guidelines to orient national policy and practice which may be used as a source of inspiration or interpretation. They may supplement the provisions contained in a parallel Convention on the same issue. However, some recommendations are not aligned to any convention but are stand alone.

Declarations are resolutions of the International Labour Conference used to make a formal and authoritative statement and reaffirm the importance which the constituents attach to certain principles and values. Although declarations are not subject to ratification, they are intended to have a wide application and contain symbolic and political undertakings by the member States.

ILO Conventions and Recommendations are adopted by the annual International Labour Conference. National delegations of government, workers' and employers' representatives meet annually in Geneva to discuss, adopt and supervise standards governing the world of work.

International labour standards cover a wide range of social and labour problems, including basic human rights issues such as freedom of association, the abolition of forced labour and child labour and the elimination of discrimination in employment, among others. ILS apply equally to both men and women. However, some are of special concern to women workers. ILO standards, which have become the catalyst for new economic and legal norms affecting working women, include following areas:

1. Equality of remuneration for equal work;
2. Discrimination in employment and occupation;
3. Maternity protection;
4. Workers with family responsibilities;
5. Termination of Employment
6. Freedom of Association and Collective Bargaining

Globally there has been a concerted effort towards the elimination of inequality of treatment at work between men and women. The United Nations has enacted specialist treaties to deal with inequality. These include the Convention on the

Elimination of all forms of Discrimination against Women (CEDAW). CEDAW compels all state parties to create an atmosphere that fosters equality before the law and full enjoyment of human rights. Article 11 of CEDAW recognizes the equality of men and women in the workplace, as well as the right to work being an inalienable human right. It speaks to the need to provide equal employment opportunities, the right to equal remuneration and special protection for pregnant workers. CEDAW encourages States to legislate to protect women from unfair labour practices and to review such legislation to keep it relevant.

The key ILO Conventions supportive of gender equality have been summarized below:-

Freedom of Association and Protection of the Right to Organise Convention 1948 (No. 87)

This Convention sets forth the right for workers and employer to establish and join organisations of their own choosing without previous authorization. Workers and employers' organizations shall organise freely and not be liable to be dissolved or suspended by administrative authority and they shall have the right to establish and join federations and confederations which may in turn affiliate with international organisations of workers and employers. The Convention was ratified by the Government of Zimbabwe in 2003.

Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

This Convention sets forth the right for workers and employers to establish and join organisations of their own choosing without previous authorization. Workers and employers' organizations shall organise freely and not be liable to be dissolved or suspended by an administrative authority and they shall have the right to establish and join federations and confederations which may in turn affiliate with international organisations of workers and employers. The Convention was ratified by the Government of Zimbabwe in 1998.

Equal Remuneration Convention, 1951 (No. 100)

This Convention requires ratifying countries to ensure the application of the principle of equal remuneration for men and women workers for work of equal value. The term 'remuneration' is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly whether in cash or in kind by the employer and arising out of the workers employment. The Convention was ratified by the Government of Zimbabwe in 1989.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Convention was adopted to ensure protection of all workers against discrimination based on race, colour, sex, religion, political opinion, national extraction, social origin and any other criteria to be determined by the states that ratify it in consultation with the representatives of the employers and workers' organizations. In implementing this Convention, member countries undertake to declare and pursue national policies designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination thereof. The discrimination is also related to access to vocational training, access to employment, and to particular occupations and terms and conditions of employment. The Convention was ratified by the Government of Zimbabwe in 1999.

Collective Bargaining Convention, 1981 (No. 154)

The Convention No. 154 concerns the promotion of collective bargaining (entry into workforce). It applies to all economic activity. National law or regulation will determine the extent of application to armed or police forces and the public service. The Convention defines all negotiations which take place between an employer or one or more employers' organisations and one or more workers' organizations to determine working conditions and terms of employment regulating relationships between employers and workers; as well as regulate relations between employers or their organizations and workers' organizations. Measures adapted to national conditions shall be taken to promote collective bargaining for all employers and all groups of workers in branches of activity covered by the convention and the provisions of the convention do not preclude the operations of industrial relations systems in which collective bargaining takes place. Zimbabwe has not ratified the Convention to date.

Workers with Family Responsibilities, 1981 (No. 156)

Convention No. 156 defines workers with family responsibilities as male and female workers with responsibilities in relation to their dependent children and other members of their immediate family who clearly need their care or support. The Convention recognises that most workers have family responsibilities and that such responsibilities should be granted specific protection to guarantee them equality of treatment with those without such responsibilities. The recommendation gives considerable guidance on policies and measures which are needed to help workers with family responsibilities and to reduce work-family conflict. (E.g. childcare facilities, leaves and working hours). “It further specifies that work family reconciliation measures should be undertaken with a view to creating effective equality of opportunity and treatment for men and women workers”. Zimbabwe has not yet ratified this Convention.

Termination of Employment, 1982 (No. 158)

Convention No. 158 (and Recommendation 166) sets forth the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker’s capacity, conduct or based on the operational requirements of the undertaking, establishment or service. Reasons for dismissal which shall not be valid include those based on union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, or absence from work during maternity leave. If an individual is dismissed, he or she shall have the right to defend him or herself against any allegations. In cases of collective dismissals, governments should aim at encouraging employees to consult workers representatives and to develop alternatives to mass layoffs. The Convention also covers matters relating to severance pay, period of notice appeal procedures against dismissal and unemployment, insurance and advance warning to be given to authorities in cases of dismissal. This Convention has also not yet been ratified.

Home Work Convention, 1996 (No. 177)

The Convention offers protection to workers who do paid work within their homes. They produce goods and services for local and global value chains. The Convention provides protection for home workers, giving them equal rights with regard to workplace health and safety, social security rights, access to training, remuneration, minimum age of employment, maternity protection and other rights. It also calls for the inclusion of homeworkers in national labour statistics. This Convention has not been ratified by Zimbabwe

Maternity Protection, 2000 (No. 183)

The Convention provides for 14 weeks of maternity benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to cash benefits which ensures that they can maintain themselves and their child in proper conditions of health and with a standard of living which shall be no less than two thirds of her previous earning or a comparable amount. The Convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child and provides for protection from discrimination based on maternity. The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave or during a period following her return to work except on grounds unrelated to pregnancy, child birth and its consequences or nursing. Women returning to work must be returned to the same position or equivalent position paid at the same rate. It also provides for the right to one or more daily breaks or daily reduction of hours of work to breast feed the child. Zimbabwe is yet to ratify this Convention.

Domestic Workers Convention, 2011 (No.189)

Under Convention No. 189, domestic workers are entitled to the same basic rights as those available to other workers in their country, including weekly days off, limits to hours of work, minimum wage coverage, overtime compensation, social security and clear information on the terms and conditions of employment. The new standards oblige governments that

ratify to protect domestic workers from violence and abuse, to regulate private employment agencies that recruit and employ domestic workers, and to prevent child labour in domestic work. This Convention has not been ratified to date.

For Zimbabwe and any other country, the collective bargaining process and negotiations should ensure that gender equality is achieved through addressing issues raised by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) in collective agreements. For example, on the issue of grounds of discrimination under Convention 111, a collective agreement can set out broader grounds of discrimination to include: national extraction, social origin, socio-economic status and marital status as requested by the CEACR in 2014.

OVERVIEW OF THE ZIMBABWE CONSTITUTION AND LABOUR LAW FOR GENDER EQUALITY, RIGHTS AND COLLECTIVE BARGAINING

Gender Equality, Non-Discrimination and Collective Bargaining

Non-discrimination as defined in Article 1(1) of the ILO Convention 111 is 'any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in the employment or occupation'.

Gender equality is defined and achieved when "women and men enjoy the same rights and opportunities across all sectors of society, including economic participation and decision-making, and when the different behaviours, aspirations and needs of women and men are equally valued and favoured". Gender equality is a human right and leads to social justice.

Gender equality and non-discrimination are recognised through the Decent Work Agenda as central in the development agenda. This is evidenced by the 2030 Agenda for Sustainable Development declaration adopted by the UN General Assembly in 2015 which states that 'we envisage a world of universal respect for human rights and human dignity, the rule of law, justice, equality and non-discrimination; of respect for race, ethnicity and cultural diversity; and of equal opportunity permitting the full realization of human potential and contributing to shared prosperity'. The vision is reflected in Sustainable Development Goals, such as SDG 4 on Quality Education, SDG 5 on Gender Equality, SDG 8 on Decent Work and Economic Growth and SDG 10 on Reduced Inequalities¹. Non-discrimination and gender equality have been central concerns of the ILO since its very inception. The Declaration of Philadelphia states that:

- "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity; and
- the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy".

The significance of gender equality and non-discrimination as an Office-wide concern in the ILO was reaffirmed through the Social Justice Declaration (1998), which established that "gender equality and non-discrimination must be considered to be cross policy driver."²

Importance of gender in collective bargaining

Collective bargaining is an important way of promoting gender equality. Workplace issues of equal pay, overtime, and hours of work, leave, maternity and family responsibilities, health, the working environment and dignity at the workplace are issues to promote gender equality. According to the ILO Convention No. 154, for collective bargaining to be effective and equitable, the concerns of women must be understood and given credence (ILO-ACTRAV/TUCA, 2011).

¹ <http://www.ilo.org/global/topics/dw4sd/themes/gender-equality/lang--en/index.htm>

² <http://www.ilo.org/global/topics/dw4sd/themes/gender-equality/lang--en/index.htm>

Background Zimbabwe Legal Framework on Labour and Collective Bargaining

Zimbabwe recognizes several key labour rights. The rights are embodied in the Constitution of Zimbabwe, Acts of Parliament, common law and delegated legislation like Collective Bargaining Agreements (CBA). The Constitution is the supreme law of Zimbabwe. Chapter 4 of the Constitution of Zimbabwe contains a declaration of rights, which include; the right to life; personal liberty; human dignity; personal security; protection from slavery; privacy; demonstration; administrative justice; fair hearing; property rights; education; health care and agricultural land. The Constitution further asserts gender equality as a founding and guiding principle, which forms part of the constitutional democracy. The Constitution of Zimbabwe, 2013 is the primary source of labour law. The Declaration of Rights protects a range of key labour rights, including; dignity; freedom from slavery and forced labour; freedom of assembly and association. Significant to the topic of gender equality and collective bargaining is section 56 of the Constitution which provides for equality and non-discrimination whilst section 65 protects labour rights.

Section 56 of the Constitution provides that all persons are equal before the law and that they have the right to equal protection and benefit of the law. It further provides that men and women have the right to equal treatment and prohibits unfair discrimination. Section 65 protects key labour rights, including; the right to fair and safe labour practice; the right to form, join and participate in the activities of a trade union; the right to strike; the right to reasonable working conditions; collective bargaining and fair remuneration. Insert 1 below provides the provisions of the Constitution.

Insert 1: Extract from Constitution of Zimbabwe on Equality and Labour rights

Section 56 Equality and Non-discrimination:

- (1) All persons are equal before the law and have the right to equal protection and benefit of the law.
- (2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

Section 65. Labour rights

1. Every person has the right to fair and safe labour practices and standards and to be paid a fair and reasonable wage.
2. Except for members of the security services, every person has the right to form and join trade unions and employee or employers' organisations of their choice, and to participate in the lawful activities of those unions and organisations.
3. Except for members of the security services, every employee has the right to participate in collective job action, including the right to strike, sit in, withdraw their labour and to take other similar concerted action, but a law may restrict the exercise of this right to maintain essential services.
4. Every employee is entitled to just, equitable and satisfactory conditions of work.
5. Except for members of the security services, every employee, employer, trade union, and employee or employer's organisation has the right to--
 - a) engage in collective bargaining;
 - b) organise; and
 - c) form and join federations of such unions and organisations.
6. Women and men have a right to equal remuneration for similar work.
7. Women employees have a right to fully paid maternity leave for a period of at least three months.

It is crucial to note the certain key consequences of Zimbabwe's constitutional democracy. Firstly, the Constitution applies to both the vertical relationship between the state and the people and the horizontal relationship between natural and juristic persons. Secondly, section 46 (2) of the Constitution provides: "when interpreting an enactment, and when developing common law and customary law, every court, tribunal, forum or body must promote and be guided by the spirit and objectives of this Chapter". The significance of this provision to bargaining councils is that whenever they are drafting bargaining agreements they are obliged to promote and be guided by the spirit and objectives of the declaration of rights.

The principal legislation governing labour law in Zimbabwe is the Labour Act (Chapter 28:01). It protects fundamental rights of employees by providing a framework for freedom of association and collective bargaining; prohibition of discrimination; and fair labour standards. The Act further regulates general conditions of employment and provides a framework for labour administration.

Zimbabwe's labour legislation is underpinned by its obligations as a member state of the International Labour Organisation of which it became a member in 1980 and to date has ratified 26 Conventions (as at March 2017). Zimbabwe has ratified the eight core Conventions of the ILO related to the four principles in the ILO Declaration on Fundamental Principles and Rights at work 1998.

It is important to note that for ratified international instruments to be part of Zimbabwe's law they must be domesticated. The international laws are domesticated or incorporated into the Zimbabwe law through an Act of Parliament (section 327 (2) (b) of the Constitution, 2013). Non-domesticated ILO instruments form part of Zimbabwe's international customary law and these are a key source of Zimbabwean law unless such instruments are inconsistent with the Constitution or any other legislation.³ Furthermore, the Constitution obliges courts and tribunals, when interpreting legislation to adopt any reasonable interpretation that is consistent with customary international law and any international Convention, treaty or agreement binding on Zimbabwe. Likewise, employment councils can adopt the same approach in setting up collective bargaining agreements.

³ Madhuku, Labour Law in Zimbabwe, 2015.

MODULE 1:

COLLECTIVE BARGAINING

Collective Bargaining is the term used to describe the process of negotiation between workers and employers and their representatives concerning any issue related to terms and conditions of employment or any other matter of mutual interest to the workers and employers.⁴

Collective bargaining and freedom of association are intricately linked. Whereas collective bargaining refers to the process of negotiations; freedom of association relates to the right of workers and employers to form and join organizations of their own choosing and to regulate their activities. The 1998 ILO Declaration of Fundamental Principles and Rights at Work emphasized the centrality of collective bargaining and freedom of association in ensuring social justice at work.

The key components of freedom of association and collective bargaining as elaborated by the Governing Body of the ILO include:

- The right of workers and employers, without distinction whatsoever, to freedom of association and collective bargaining; (Article 2 of ILO Convention No. 87)
- The right of workers and employers to form and join organisations of their own choosing, subject to the rules of the organisation; (Article 3 of ILO Convention No. 87)
- Protection against state interference ;(Article 2 of ILO Convention No. 98)
- Establishment of measures to promote collective bargaining; (Article 3 of ILO Convention No. 98)
- Principle of free and voluntary negotiations; (Article 4 of ILO Convention No. 98) and
- The right to strike

Zimbabwe has recognized the centrality of freedom of association and collective bargaining. Section 65 of the Constitution of Zimbabwe, 2013 provides for the right to form, join and participate in the activities of trade unions and employers' organizations. It further protects the right to participate in collective job action including the right to strike and the right to engage in collective bargaining and to organize. The primary focus of this module is collective bargaining and gender equality.

It is essential to define what collective bargaining is. Article 2 of the Convention on the Promotion of Collective Bargaining, 1981 (No. 154) defines collective bargaining as follows:

“For this Convention, the term “collective bargaining” extends to all negotiations which take place between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more workers' organizations, on the other, for:

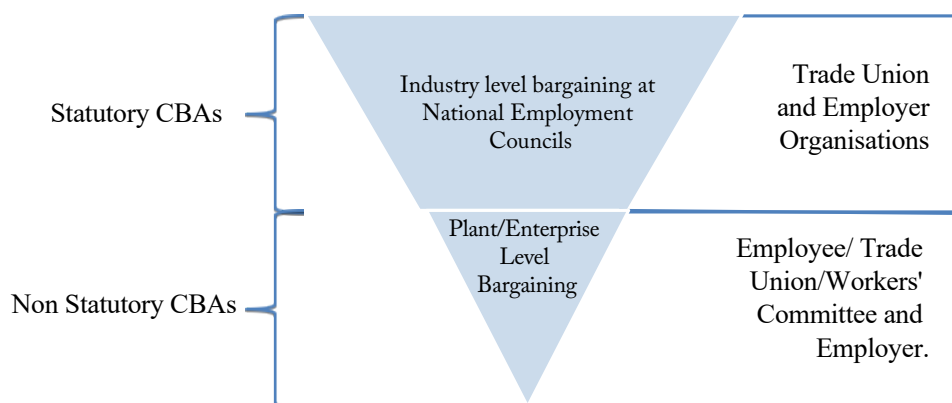
- a) determining working conditions and terms of employment; and/or
- b) regulating relations between employers and workers; and/or
- c) regulating relations between employers or their organizations and a worker's organization or workers' organizations.”

The Labour Act does not provide a definition of collective bargaining. However, Section 2 provides a definition of a collective bargaining agreement as “an agreement negotiated in accordance with the provisions of this Act which regulates the terms and conditions of employment of employees”.

The Act further provides a definition of what subjects are to be dealt with in collective bargaining in Section 74 of the Labour Act. The definition in the Labour Act is wide and allows parties to virtually negotiate anything related to terms and conditions of employment. Collective bargaining in Zimbabwe happens at two levels depicted in Figure 1; non-statutory bargaining at plant level/ enterprise level between workers or workers' committee and employer; and statutory collective bargaining at industry level between trade unions and employer organisations through National Employment Councils (NECs).

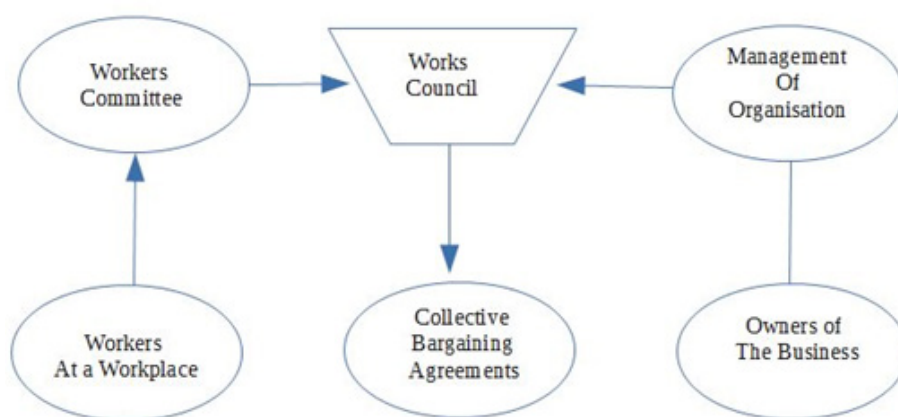
⁴ Gender Equality through Collective Bargaining manual, International Labour Organisation, 2004.

Figure 1: Collective bargaining structure



Plant level collective bargaining is regulated by Section 25 (1) of the Labour Act. Plant level collective bargaining occurs between employers, workers' committee and or employees. It is important to note that any collective agreement reached at plant level should be forwarded for approval and 50 % of the workers should approve before the agreement is implemented. The aim of this provision is to curtail collusion between employers and "sweetheart" trade unions.⁵ Figure 2 below depicts the process of collective bargaining at plant level. The Organization is included.

Figure 2: Plant Level process of collective bargaining



Collective bargaining at industry level is regulated by National Employment Councils. NECs are bilateral bodies, which consist of trade unions and employers' representatives. NECs are representative bodies of employer and employee organisations comprising of:

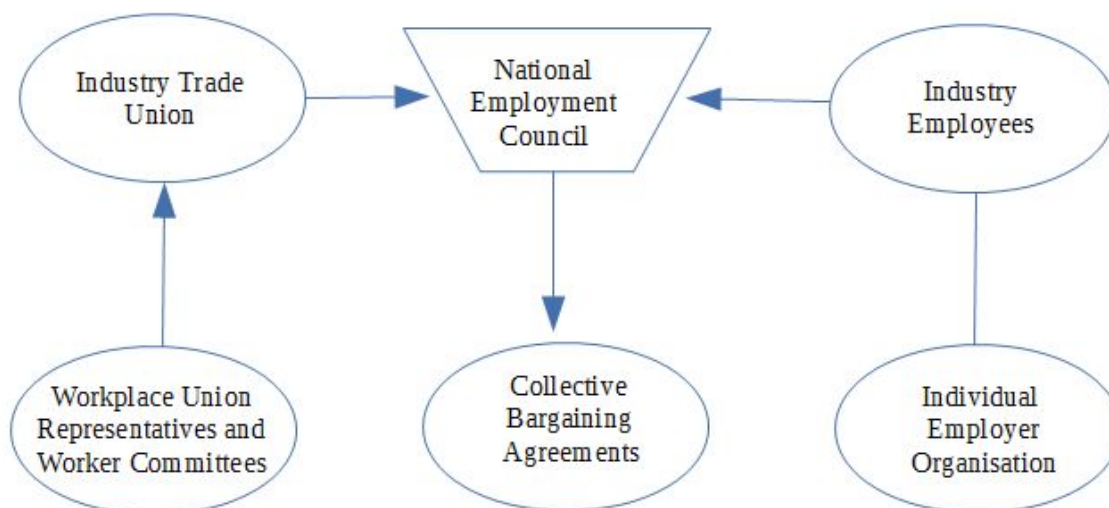
1. The Council - a national structure composed of Councillors who meet once a year at an Annual General meeting. The council is the supreme policy and decision-making organ;
2. Executive Committee - a national structure whose role is to implement council policies and receives monthly reports from NEC management;
3. Negotiating Committee - a national structure appointment by the Council to conclude or amend the Collective Bargaining Agreement on behalf of the Council. It deals with appeals from the Local Joint Committee;
4. Local Joint Committees - regional structures appointed by the Council in any area within its jurisdiction. They consist of equal number of representatives from the employers' organization and the trade union. One District Administrator in each region is responsible for conciliating disputes between employers.

⁵ Madhuku, Labour Law in Zimbabwe, supra

It is important to note that the functions of the NECs are not limited to collective bargaining but also include enforcement of labour standards and dispute settlement.

Under Zimbabwean law, under Section 82 of the Labour Act, the industry agreement made by an NEC is binding on all employers and employees in that industry, whether or not they are members of the council. It must be noted that plant level collective bargaining agreements are subordinate to the NEC agreements. Plant level agreements will only be valid if they provide more favourable terms and conditions. Figure 3 below depicts the process of collective bargaining through NECs.

Figure 3: NEC level process of collective bargaining



Collective bargaining in many countries is a key means of determining terms and conditions of employment. In Zimbabwe, collective bargaining agreements cover a wide range of terms and conditions of employment as discussed above. However, the concerns and interests of women, with perhaps the exception of maternity leave, have in the past often been overlooked in the process of collective bargaining. And since collective agreements tend to be based on past agreements, the situation has been perpetuated. Traditional bargaining agenda items have been approached without the input of women and issues of concern to women have not been addressed. Now that women are making up a greater share of the paid workforce and are an important and often untapped source of potential union membership, women, unions, women's groups and employers are acknowledging the need to include their concerns in collective bargaining.

Collective bargaining is proving to be an important means of promoting equality for women in employment, but to be truly effective, the concerns of women must be understood and given attention. This module raises some of the issues that may be appropriate for collective bargaining and provides some examples. Whilst the focus is on how these issues primarily affect women, many of them have a positive impact on men's working conditions as well. This responds to the overriding objective of the ILO's work whose focus is the improvement of working conditions for all workers.

The key issues of gender equality calling for attention in collective bargaining processes have been categorized into 5 areas which are discussed in detail in the subsequent chapters. These are:

- Working conditions, including recruitment and selection,
- Maternity and family responsibility,
- Defending rights of non-permanent and vulnerable workers,
- Dignity at the workplace, including violence at the workplace, and
- Giving women a voice.⁶

⁶ Gender Equality through Collective Bargaining manual, International Labour Organisation, 2004.

Preparing for bargaining

A series of issues should at least be considered in the context of collective bargaining, how to approach them and what level of priority they should be given, and then emphasizes that women should be part of the negotiating teams. It is of importance to include women as part of the negotiating team in collective bargaining negotiations. Considering that men are also affected, joint strategies and action reduces delays. Women's committees or equal opportunities committees should play a key role in formulating demands and examining proposed clauses for discrimination. It is also valuable to get inputs from women who are absent or are silent at meetings. In the event that women are not party to the process, it is essential that the needs and concerns of women are set out in the agenda for collective bargaining. Concerted efforts need to be made to include key issues like gender gap pay, protection against gender discrimination in the agenda for bargaining and further strengthen to include information on gender discrimination including gender gap pay at sectoral level.

After bargaining Promoting gender equality in employment does not end with the signing of the collective agreement. Following up on effecting the agreed issues is essential because the rights being advocated for may result existing on paper only. There are many ways this can be done and some are suggested below:

- Ensure that the negotiated policies, rights and benefits are communicated to all workers on a regular basis (including those with non-permanent status) – the information should be posted at strategic places at the workplace, but can also be made available in lay language through fliers, bulletins, newsletters, guides to good practice, seminars, role-play or lunch-time meetings.
- Another way could be to conduct research targeted at female workers through questionnaires. This responses would help in generating statistics on the situation of women in the work place (for example demographics, how many women in different job categories or the pay differential between men and women). Such information is important for all collective bargaining stakeholders including government, employer organisations and trade unions.
- Existing rights – determine the women's rights that existing current collective agreements, legislation, government policies and work rules.
- Determine how collective bargaining can be used to extend or secure existing rights — for example, if there is legislative coverage, the collective agreement could repeat the terms of the legislation, but provide for more effective and accessible enforcement. In several areas, legislation may provide rights, but these may not be applied or enforced in practice so duplicating or extending them through the collective agreement can be an important additional safeguard.
- Identify and prioritize needs of workers — this will usually require determining the cost of a benefit. If an employer can be shown that a benefit will not cost much or that it can bring tangible benefits in terms of reduced absenteeism and higher productivity, the employer is more likely to agree. In difficult economic times, rather than pay raises, the union might have more success with negotiating for non-pay, low-cost equality benefits, such as flexible working arrangements or paternity leave which affects a small percentage of workers while exhibiting a progressive attitude on the part of both the management and the union. Benefits to employers should be explained not merely in monetary terms, but also as it impacts on reduced staff turnover and absenteeism.
- As already mentioned earlier, regularly monitor the implementation and effectiveness of collectively bargained policies, rights and benefits – always thinking ahead on what next can be achieved during the next round of collective bargaining.
- Include equality issues in educational and training programmes.
- Publicize the work done by the union on behalf of women – as an organizing strategy, it is important for unions to publicize their new bargaining objectives and the strategies they have used or intend to use.

MODULE 2

Working Conditions

Box 1: Case of Tsikwa and Others v Minister of Justice Legal and Parliamentary Affairs and Anor HC 6072/01- wage differentiation of workers performing the same work

The Public Services Commission employed Tsikwa and others as Magisterial Assistants. Sometime in December 1997, they took oath and were appointed as Magistrates. They started performing the functions and duties of magistrates. Notwithstanding their appointments, the Public Services Commission continued to pay them the remuneration of Magistrate Assistants. The rationale behind the salary differential was that Tsikwa and others did not hold law degrees but had been trained through the Judicial College. The Court held that upon appointment as Magistrates, the workers became entitled to the remuneration that was paid to other Magistrates subject only to the application of the principle of genuine material difference between people appointed to hold that public office.

Figure 2: Provisions of the Labour Act on Equal Pay

Section 2(a) Equal remuneration means rates of remunerations that have been established without differentiation based on gender.

Section 5 (2a) No employer shall fail to pay equal remuneration to male and female employees for work of equal value.

Access to work

Conditions for equal opportunities to access employment must be created to workers of both sexes, before and during the hiring process. The ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) prescribes that there should be equal treatment of women and men in the workplace. It sets out that discrimination should not be made based on, among other things, sex and pregnancy. International instruments such as CEDAW, Articles 2, 10 and 11, have also detailed the importance of non-discrimination between men and women in life in general as well as in the workplace.

The Constitution of Zimbabwe grants the right to women workers not to be discriminated against on the grounds of sex or gender in respect of recruitment/selection. It is stated in Section 56 (3) of the Constitution that *“Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock”*

Since the right to non-discrimination is protected by the Constitution, this means that a worker who has been discriminated against based on sex or gender can approach the courts to have the discriminatory act declared null and void. The Labour Act complements the Constitution by outlawing some specific modes of discriminatory practices in recruitment to include pregnancy, HIV/AIDS status and disability.

Implications for the workplace

These practices are often not targeted in collective agreements negotiations. Collective bargaining negotiations should ensure that:

- All vacancies are properly advertised
- Only those requirements that are necessary to carry out the job are demanded. Employers may impose criteria for applicants or specify characteristics which are not closely related to the inherent requirements of the job, as a screening device.
- The burden of proof is an important issue in the context of sex discrimination and should be discussed during negotiations since discrimination is often covert. It may be important to negotiate for the reversal of the onus of proof. Once a worker can demonstrate that she/he was disadvantaged, it is for the employer to prove that it was not based on sex.

Packages and benefits

1. Equal Pay

Wages form a critical component of collective bargaining and equality in the workplace. Discriminatory pay has been linked to inequality for certain groups in the workplace. Pay inequality can be in the form of different salaries for workers performing the same work (See Box 1 for an example). Historically, work typically done by women is rewarded at a lower rate than work typically done by men.

The ILO seeks to promote gender pay equity in its Equal Remuneration Convention, 1951 (No. 100). The ILO promotes gender pay equity for workers not only performing the same or similar work under the same employer but also includes workers performing different kinds of work in different sectors which based on objective, are of equal value.

Zimbabwe has ratified and domesticated Convention No. 100 and is therefore bound to implement its provisions in its national legislation. Section 65 (b) of the Constitution of Zimbabwe, 2013, provides that “Women and men have a right to equal remuneration for similar work.” The Constitutional entrenchment provides a narrow approach to equal pay, whereby it protects workers performing like or similar work. However, the Labour Act (Chapter 28:01) gives meaning and content to the right and provides a broader approach to the concept. The Labour Act provides a definition of equal remuneration and prohibits wage discrimination for work of equal value. Figure 2 provides the relevant provisions of the Act.

Despite the constitutional and legislative provisions, pay inequality is still rampant. The ILO’s Committee of Experts on the Application of Conventions and Recommendations in its 1994 report noted that low salaries exist in jobs in which women are predominant; these include sectors such as private domestic environments, agricultural, forestry and farming industries. Furthermore, direct and indirect discrimination is still prevalent. An example of direct discrimination is where a collective bargaining agreement limits the benefits, earning or employment opportunities to which women have access to.

The following are international scenarios in which courts held there was direct discrimination:

- 1) Different treatment in terms of transport benefits for male and female retirees of a railway company.
- 2) A workplace policy that prohibits pregnant women from working overtime.
- 3) The designation by bargaining council agreements of different titles or names for the same job depending on the sex of the person carrying out the job with the result that feminine jobs are paid less than the masculine jobs.

Indirect discrimination is subtler. An example of indirect discrimination is job evaluations based on physical strength and not the inherent requirement of the job or any job criteria with the potential of systematically prejudicing women.

Implications for collective bargaining

From the onset, it must be recognized that gender pay equity is a constitutional right, although narrowly defined to equal pay for similar work. Furthermore, the Labour Act provides a wider scope of protection, prohibiting employers from discriminating workers for work of equal value. What this means is that in the event of an infringement of the rights, the worker has the right to approach the Labour Court or any competent tribunal to adjudicate on the dispute. To date, no cases have been reported to the Labour Court concerning wage discrimination. Collective bargaining plays a vital role in addressing wage imbalances between women and men in the work place. This can be done through the following:

- 1) Inclusion of the concept of equal pay for work of equal value in the collective agreements.
- 2) Ensuring that job evaluation methods used in the sector are free from gender bias and discrimination.

Ensuring that measures are in place for labour inspectors in the sector to enforce SS (2) (a) of Section 5 of the Labour Act and provisions of the collective bargaining agreement regulating equal pay.

2. Overtime

Overtime is defined as work performed by an employee more than a basic workday (typically 8 hours a day, 5 days a week) and defined by company rules, job contract or union (collective bargaining agreement). Management of overtime is legislated in Section 6 (b) of the Labour Act only as far as working during public holidays where it is mandatory to pay double the rate in addition to their normal working pay for the day is concerned. Other forms of overtime are regulated differently by the various NECs through a collective bargaining agreement. Most NECs will regulate the amount of overtime worked by an employee as guided by the safety of the worker, health implications and consider family responsibilities of the employees.

Implications for the workplace

Collective Bargaining Agreements should provide that all workers should benefit from overtime hours paid at overtime rates, including part-time workers.

3. Bonus Systems

A bonus is additional compensation given to an employee above his/her normal wage, usually in appreciation of the work done, length of service and accumulated favours, among others. It can be used as a reward for achieving specific targets set by the company, or a dedication to the company. The most common types of bonus are the productivity bonus, the performance and the Christmas bonus popularly known as the 13th cheque.

Section 12(2) (h) and (b) (3) (the doctrine of legitimate expectation) of the Labour Act provides that on engaging a new employee, an employer shall inform such an employee in writing of all the benefits due to them and “particulars of any bonus or incentive production scheme”. The provision must not be misconstrued to mean that the labour law makes it mandatory for employers to pay bonuses to their staff. Payment or non-payment of bonuses is left entirely to the discretion of the employer.

Collective bargaining agreements should ensure that bonus systems are enlarged to include all workers regardless of status (including non-permanent workers), or extended to include grades of jobs which have not traditionally attracted bonus payments. It is important, of course, to ensure that bonuses are paid without ‘discrimination, either direct or indirect.

4. Job classification

Job evaluation and classification are elements in a system of comparing different jobs to provide a basis for grading and pay structure. Job classification is a set of categories used to classify jobs in an enterprise or organization. In a job classification scheme, individual jobs are graded by reference to benchmark jobs and grade descriptions. Job evaluation is the logical determination of the relative value of individual jobs in an organization for such purposes as wage determination and promotion. The aim is to evaluate the job, not the person who is doing the job; in this sense job evaluation should not be confused with performance appraisal, which does evaluate the performance of the person doing the job.

The process involves evaluating one job in relation to others by means of a weighting system for the various elements of the jobs compared. Non-discriminatory job evaluation should lead to a payment system within which work of equal value receives equal pay regardless of the sex of the person doing the job. Where sex stereotypes are used in the process of evaluation, this can result in the undervaluation of the jobs mainly held by women. The Resolution on Gender Equality, Pay Equity and Maternity Protection, 2004 calls on employers’ and workers’ organizations to promote the introduction of gender-neutral job evaluation schemes.

Implications for the workplace

Parties to the collective bargaining negotiations should, therefore, bargain for the use of gender neutral job evaluation criteria that define and value factors in an objective manner — taking into account only those aspects required to perform the work to the expected level of accuracy and efficiency, without being influenced by feminine stereotypes or bound by

traditional criteria; and that conceptualize work as having human relations skills and emotional aspects, as well as mental and physical aspects

Where jobs are classified by categories or hierarchies, there is a need for the union to look at the distribution of women and men in different grades and uneven differentials within the grading structure. If women are at the bottom and men at the top, the union should question the neutrality of the job classification system. There should be a re-evaluation of classifications in the light of changing circumstances and technology. Consideration should also be given to special training for women to upgrade their qualifications and thus enable their access to higher graded jobs.

5. Pension Schemes

A pension scheme is an arrangement by the employer and the practice generally is for an employee to contribute to a fund that will provide the employee with a pension on retirement, invalidity or death. The Government of Zimbabwe, through an Act of Parliament set up a compulsory social security pension scheme which is provided by NSSA. It is compulsory that employees (permanent, seasonal, contract or temporary employees) contribute to the scheme, regardless of whether an employee is covered by a private pension scheme or not. However, domestic workers and informal workers are not yet included. The scheme provides some form of security during retirement, invalidity or death of the breadwinner who was a member of the scheme.

The fact that pensions are a fraction of one's salary has resulted in many women being disadvantaged because most of them are in the low income bracket. Low salaries basically mean that the pensions will also be low thereby compromising the future welfare of the female worker after retirement. There are several other aspects of women's employment which often place them at a disadvantage regarding pension schemes. These include:

- The types of work women are involved in that often do not have pension plans especially those who work in the informal sector;
- Women's work on a part-time basis which is mostly excluded from employer pension plans; and
- Women's interrupted work histories due to family responsibilities or their entering the workforce later because of their reproductive roles, which leads to inadequate pension cover retirement

Implications for the workplace

Collective Bargaining Agreements need to ensure that older women workers have financial security upon retirement, especially those working part time, domestic workers and in the informal sector. Women, who form a majority of domestic workers, are excluded from the pension scheme.

6. Benefits (housing, transport and medical benefits)

An employment benefit refers to compensation provided in whole or part to workers, by their employers, to supplement their wages or salaries. The Labour Act Section 74(3) includes items that may be negotiated during collective bargaining as conditions of employment which are of mutual interest to the parties thereto. Among the items are housing, transport facilities, in their absence, an allowance for the same could be provided. Benefits not having been negotiated by the parties and therefore not forming part of the CBA are not a right or entitlement available for appropriation by the employee.

An important issue that has arisen in Zimbabwe is whether allowances paid to workers are a right or not. In 2015 the Supreme Court in the case of NRZ versus NRZ Artisans ruled that allowances could be withdrawn by the employer as they were not a right. The Court argued that such allowances should be provided for in the Collective Bargaining Agreement (CBA) if they were to be enforceable.

Implication for the workplace

The Collective Bargaining Agreement should expressly provide for such allowances otherwise they are not obligatory.

a. Housing

In some countries, married women are denied housing allocations on the basis that such allocations are available for men only. But in many cases, women have the same, or greater, family responsibilities as their male colleagues. Housing allocations should be made available to women and men workers on an equal basis.

b. Transport Benefits

Organizing transport can be stressful for women because of their family responsibilities or because it exposes them to potentially dangerous situations. Depending on the situation, employers could be persuaded to allocate transport for men and women workers to overcome lengthy travel time, in dangerous situations or when transportation is not reliable, such as at night. Alternatively, transport allowances that enable employees to get safe means of transport can also be considered. This is particularly important for women who may be subject to harassment and violence. The provision of transport benefits is also an effective means of ensuring punctuality and regular attendance from workers, as well as an excellent means of creating a stable and motivated workforce. Thus, transport benefits can also be of direct benefit to employers and workers alike.

c. Medical Benefits

Medical insurance should be available to all workers, even those in non-permanent positions most of whom are women. Wherever possible, health care provisions may be extended to cover workers' children. Some employers refuse to pay medical benefits for gynaecological care. Unions must recognize and promote this as part of health care for all, including check-ups and tests against, for example, cancer.

Clinics sponsored by the employer may also be subject to negotiation, for example, ensuring the employee's right to a doctor of her choice. In some countries, women's welfare groups have played an important role in the promotion of health care and medical benefits for women workers. Unions could work with these groups in setting up health care centres or petitioning for legal reforms.

Hours of work: Basic hours and overtime

The term 'basic hours' refers to the time during which the persons employed are at the disposal of the employer. It does not include rest periods. Hours of work for both men and women should be calculated to avoid differentiation and possible gender discrimination. Limitation of the hours they work is a central right of all workers. It is a measure of gender equity insofar as limits on working hours allow time for domestic and care work for both women and men. The more modern standard is a 40-hour week, enshrined in the Forty-Hour Week Convention, 1935 (No. 47) and the Reduction of Hours of Work Recommendation, 1962 (No. 116).

In accordance with the Labour Act, Section 17 sub-section 3(i), the Minister of Labour, Public Service and Social Welfare may issue regulations regarding overtime, shift work, night work, "and the restriction of employment of juveniles and pregnant women in specified types and categories of employment or at specified hours, and the rights and privileges of mothers with suckling infants".

In Zimbabwe, every CBA provides for a minimum of eight hours a day, subject to the nature of work, and 40 hours per week. Normal working hours for young workers and domestic workers are 6 hours and 9.5 hours per day respectively. No employee shall be required to work continuously for more than 5 hours without being given a paid rest period of not less than an aggregate of one hour. Breastfeeding mothers shall be afforded one hour each day or two thirty minute breaks for breastfeeding for a period of twelve months, and one hour thereafter for a period of six months.

Overtime may also be regulated under the CBA. Overtime rates are determined by the NEC through the CBA. The minimum overtime rates are 150% of the normal wage when workers must work beyond normal working hours. The standard working hours are 8.5hrs per day and 44 hours per week. Women as domestic workers should be paid overtime or limit their standard work week to the 44 hours rather than 47, 5 hours.

Implications for the workplace

Collective Bargaining Agreements can therefore be used to ensure that both men and women are compensated for overtime work and have equal access to voluntary overtime. Steps can also be taken to ensure that basic hours do not encroach into unpaid overtime at the request of the employer.

Part-time work: A part-time worker is an employed person whose normal hours of work are less than those of a comparable full-time worker with the same type of employment relationship or similar type of work in the same branch of activity. Part-time work is a necessity for many women due to their domestic and family responsibilities and the lack of child-care facilities at most workplaces. Accordingly, any inequality between part-time and full-time employment translates into inequality between men and women.

The Part time Convention, 1975 (No. 175) highlights measures that shall be taken to ensure that part time workers receive the same protection, pension and benefits and working conditions that are accorded comparable full-time employees.

A major weakness of the Zimbabwean labour law is that it does not provide for part-time workers. Of concern to women workers is that there are serious difficulties in part-time workers enjoying the right to paid maternity leave. These difficulties arise from the absence of an explicit provision entitling part-time workers to maternity leave. Section 18(1) of the Labour Act requires an employee to have served for at least one year before she can be granted paid maternity leave as contracts of part time workers are hourly based for actual time worked, without addressing the situation of an absence arising from pregnancy. Apart from maternity leave, part-time workers do not enjoy the same rights as full-time workers in other areas such as annual leave, pension rights and protection from unfair dismissal.

Implications for the workplace

Parties to the collective bargaining negotiation should ensure that:

- Various types of part-time work arrangements are possible;
- There is equal treatment for part-time and full-time workers, including the same basic hourly and overtime pay rates;
- Part-time employees receive the same benefits and have the same conditions as full-time employees, including the various protections enjoyed by full-time workers;
- Part-time workers have rights with respect to lay-off, severance pay and fully paid maternity leave.

7. Flexible Working Time

Flexible working hours give employees flexibility on how long, where and when they work. The emphasis is on the employee having the freedom to choose their own working hours. The arrangement allows employees to better reconcile their personal and professional lives, for example, picking up kids from school or taking them for sports practice. Women may have difficulties keeping to fixed schedules because of family responsibilities. Management could be persuaded to be flexible on working hours, for example, core working hours of six hours per day with flexible working hours on either side, if a certain number of hours are covered per week. In other cases, there is an averaging of annual hours. The union can negotiate the terms and methods of monitoring flexi-time.

There is no legislation governing flexitime in Zimbabwe. However, several examples abound. IT companies and the hospitality sectors have embraced this practice. For example, the hospitality industry is market driven and enjoys greater flexibility to work on different schedules depending on the customers they serve. CBAs can develop many creative strategies to give workers, especially women, greater control over their work lives, and bargain for a broad range of alternative work schedules:

8. Job sharing

Job sharing means that one job is done by two people. The job-sharing arrangement is an interdependent one as the two job holders share the workload, the decision making, problem solving and in some instances, the supervision of staff. The employees sharing the job will have their own contract of employment but share the pay and benefits of the full-time post on a pro rata basis.

Examples can be seen in legal, teaching, medical and clerical professions. In some situations, job sharing is increasingly a solution for certain kinds of work as it allows the combining of work and family responsibilities. It is accepted that workers need to reconcile their working and personal lives for many different reasons which may not be linked to gender. This model has not been used in Zimbabwe and its efficacy could be worth investigating for the local context.

Implications for workplace

Parties to a collective bargaining negotiation can negotiate to ensure that job sharing is available to those who want it and at all levels of employment, not just in low-grade jobs that job-sharers have the same conditions and access to pay and benefits as full-time workers.

There is no legislation governing job sharing in Zimbabwe.

- a. **Telecommuting:** is working from a site other than the central worksite, usually from home. Unions have traditionally opposed telecommuting because work at home is difficult to regulate. Another union objection is that workers who telecommute become isolated from each other and difficult to organise. However, telecommuting can offer workers great flexibility, with women much more likely than men to be engaged in telecommuting.
- b. **Compressed work week:** Compressed work schedules allow full-time workers to work all their hours in fewer than five days per week. Common examples of this are schedules allowing workers to work four 10-hour days for an extra day off per week, or eight 9-hour days and one 8-hour day for an extra day off every two weeks.
- c. **Making overtime voluntary:** For many working families, being forced to stay at work past the regularly scheduled end time can be very stressful, particularly for working mothers who do not have backup arrangements for child care. Unions can negotiate to make overtime voluntary and thereby protect employees from this loss of power over their daily schedules.
- d. **Shift swaps:** A shift swap provision in a CBA allows workers to exchange shifts or workdays voluntarily to accommodate family needs.

9. Night Work

The term night work means all work which is performed during a period of not less than seven consecutive hours, including the interval from midnight to 5 a.m., to be determined by the competent authority after consulting the most representative organizations of employers and workers or by collective agreements.

The Night Work Convention (No. 171) and Recommendation (No. 178), 1990 apply to men and women. For women workers, the Convention requires alternatives to night work before and after childbirth and during pregnancy, if it is deemed necessary to protect the health of the mother or child. It further provides that the prohibition on night work for women can be lifted where employers' organizations and unions reach a suitable agreement in this regard, by making available services such as transport, security, and child care facilities which will make it easier for women to work at night. Extra time off, special pay mentor bonuses and transport time can also be negotiated. If the national context is unfavourable to night work for women, unions should negotiate to protect women following consultation with and recommendations of women workers themselves.

The removal of restrictions on women working at night is a way of reducing discrimination against them in the workplace because it opens more employment possibilities to them, often at higher rates of pay than day-time rates. Night

work is common among those working in the health, police, and defence, security, transport as well as factory and restaurant workers. In accordance with the labour law, in Zimbabwe the Minister for Labour may issue regulations regarding shift and night work.

10. Expectant and nursing mothers

Unions should negotiate paid time off for pre- and post-natal clinical checks for women. Women should be given paid time off for nursing breaks according to the Maternity Protection (Revised) Convention, 1952 (No. 103). Where workers are entitled to nursing breaks, the union may negotiate to extend this right if necessary. Pregnant and nursing women may be allowed more flexible working schedules, such as being permitted to arrive later and leave work earlier to avoid traffic congestion, to work shorter hours and to have additional rest breaks during working time. In addition, pregnant and nursing mothers should be provided with the right to undertake lighter work.

Leave

1. Annual Leave

Annual leave is the number of hours or days employees of an organization are permitted to be away from their employment position within a year's time without consequences. The time off is paid by the company and employees can request the time for any reasons they wish to be off work.

The Labour Act provides for paid annual leave on completion of one year of service with an employer. An employee is entitled to annual leave at the rate of one twelfth (30 calendar days, 22 working days), of his qualifying service in each year of employment, unless more favourable conditions are provided for in the employment contract or collective bargaining. For an employee to go on leave he/she should first accrue the leave days, subject to a maximum accrual of 90 days.

Many women with precarious contracts (i.e. temporary, part-time, piece-workers) are not entitled to any leave, and therefore work throughout the year without rest. Seniority in organizations may determine who has first choice of dates for holidays. Since women are usually not the most senior, they are disadvantaged because of their restricted options and family responsibilities. Seniority should not be the criterion for choice of holiday dates; family responsibilities should be given at least equal status. Women may also have difficulty meeting qualifying periods giving them the right to leave due to career breaks or late entry into the work-force and this can be overcome through collective bargaining.

Implications for the workplace

The basic demand in CBA negotiations should be that these workers have the same pro-rata entitlement as their full-time colleagues. There are two established methods for the calculation of annual leave in the case of part-time work - workers may either take a reduced number of days with full pay, or a full number of days at reduced pay.

2. Compassionate Leave

This is a statutory type of leave enabling staff to take additional time away from work for specific occasions. It is granted on full pay or without loss of pay and benefits for the period the employee will be away.

In the Labour Act, compassionate leave falls under special leave Section 148 which provides for up to 12 calendar days for personal reasons that affect the immediate family (death of spouse, parent, child, legal dependent or any other justifiable compassionate grounds). These days are not accrued and accumulated in the following year if not used.

Implications for the workplace

Parties to a CBA negotiation can negotiate for compassionate leave in the event of death of a close family member. Unions might consider negotiating time off for common law families and extended family members. Provision may also be made for compassionate leave in the case of a serious accident or the hospitalization of family members under this clause.

3. Family Responsibilities

Many employees experience difficulties in managing their work and family responsibilities. These include demands arising from family responsibilities such as caring for sick children, taking children or elderly relatives for dental or medical appointments, attendance at school activities or appointments with school teachers or principals when they cannot be arranged outside work hours.

Unions should pay special attention at ensuring negotiating time off for workers to take care of their family responsibilities. This should be done without being subjected to discrimination. This is generally short-term leave and is usually for a certain number of days per year. The union can address these issues through collective bargaining, particularly, by negotiating clauses on maternity leave, paternity leave, and parental leave family leave.

The Labour Act provides for 12 days “special leave” which caters for all circumstances to do with family responsibilities.

Maternity leave

This is leave from work to which a woman is entitled to for a continuous period before and after giving birth. Convention No. 183 (2000) on Maternity Protection and the World Health Organization recommendations seeks to promote the equality of all women in the workforce, the health and safety of the mother and child, and to consider the circumstances of women workers and the need to provide protection during pregnancy. It prescribes maternity leave to be a minimum of 14 weeks for all employed women and a minimum period of six months for breast feeding to ensure the continued good health of the child. These requirements should form the basic target for collective bargaining.

In Zimbabwe, Section 65(7) of the Constitution reads “Women employees have a right to fully paid maternity leave for a period of at least three months”. The Labour Act provides for the full scope and limits of the right to maternity leave under Section 18 of the Labour Act. It provides maternity leave upon production of a medical certificate. Female employees are granted maternity leave for a period of 98 days on full pay. A female employee may proceed on maternity leave not earlier than 45 days and not later than the 21st day prior to the expected date of delivery. Paid maternity leave is granted only once during the period of 24 months calculated from the day any previous maternity leave granted. The law also limits the number of times to three when maternity leave can be granted to a worker while working for the same employer. Maternity leave is granted with full pay to a woman worker who must have served an enterprise for at least 12 months before she is eligible for maternity leave.

During the period of maternity leave, the female employee is entitled to all her normal leave benefits “including her right to seniority or advancement and the accumulation of pension rights”. The maternity leave cannot be regarded as an interruption for purposes of any continuous service required for promotion or seniority.

Implications for the workplace:

CBA negotiating parties should ensure that annual leave is not included as part of maternity leave. A woman could further opt to take days from her annual leave immediately after her maternity leave. Women on contracts that are not continuous e.g. contracts with short term breaks, fixed term or part time workers are not denied the right to maternity leave.

Negotiations should also advocate for a social security insurance system that shares the burden of maternity benefits with the employer. In Zimbabwe, the cost of maternity leave is borne exclusively by the employer. Article 6 (8) of the ILO Convention No. 183 states that an employer should not be individually liable for “the direct cost of any such monetary benefit to a woman employed by him or her without that employer’s specific agreement”. However, Article 6(8) provides expectations to this recommendation where

- such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or

- it is subsequently agreed at the national level by the government and the representative organizations of employers and workers

The rationale behind this Convention is the need to eliminate the obvious disincentive to the employment of women that comes when the employer must bear all the costs. This system approach affects women in so far as some employers will take this cost element into account and prefer to employ men rather than women. In that event, it limits women's access to employment.

Paternity leave

Paternity leave is a short period of leave taken by a father around the time of the birth of his child. *Paternity leave* can be negotiated to ensure that the father has time to care for the family and to meet the needs of the mother and new baby. It is also an important provision to promote the sharing of child-care responsibilities

Paternity leave does not yet feature in any international standards including ILO conventions. However, but it is becoming increasingly common in national law and in enterprise practice, and particularly in collective bargaining agreements. No specific paternity leave entitlement is found in the Labour Act. However special leave entitlements as identified under section 148(f) "justifiable compassionate ground" entitling the father of a child to "special leave" may be used. Employees may require up to 12 calendar days special leave for personal reasons that affect their immediate family (death of spouse, parent, child, legal dependent or any other justifiable compassionate grounds)

Collective bargaining negotiations should also cover the case of *adoption* and provide adequate time for the adoptive parents and the child to get used to each other

Parental leave

Parental leave is leave granted to either parent to care for a child. It generally follows a period of maternity leave, to which only the mother is entitled. Either parent should have the possibility of obtaining leave of absence for childcare purposes:

- within a period immediately following maternity leave;
- in case of illness of a dependent child;
- for other reasons connected with the upbringing of a child.

There are no provisions in the LRA on parental leave. To promote gender equality, parties to a CBA negotiation should lobby for cash benefits to be paid during the leave period and encouraging fathers to take-up parental leave, for example by reserving a portion of the leave that can be taken only by fathers ("use it or lose it" provisions).

4. Medical and Sick Leave

Sick leave is time taken from work that workers can use to stay at home to address their health and safety needs without losing pay. It is granted to an employee who is not able to be at work because of illness, injuries or medical treatment. It is only granted by a duly registered medical practitioner. An employee may enjoy up to 90 days of sick leave in a year on full pay, before an employer may consider medical termination.

According to the Labour Act Section 14, an employee is entitled to sick leave for up to 180 days if he has a certificate from the qualifying doctor. Employer may provide paid sick leave during any one-year period of service as follows:

- 100% of wages during the first 90 days of sick leave
- 50% of wages for further 90 days

During sick leave an employer may avail accrued vacation leave instead of sick leave in half or without pay. Due to women's special health needs resulting from menstruation, many unions have negotiated for days off each month. This paid leave

may be one or two days per month and negotiated by the union as leave days outside of annual leave or normal sick leave which normally must be substantiated by a doctor's certificate.

Implications for the workplace

Collective bargaining parties should negotiate for optimum conditions for medical and sick leave, including special provisions relating to work-related illness and accident. Sick leave must also not entail any reduction in job security for any worker. Employers, in consultation with workers and their representatives, should take measures to reasonably accommodate workers with HIV related illnesses, including flexible sick leave. A doctor visiting the workplace and only seeing female workers and their children can be seen as discriminatory

Box 2: Case of *THANDEKILE ZULU v ZB FINANCIAL HOLDINGS LTD* (CASE NO. SC 190/15, REF JUDGMENT NO. LC/H/176/13, REF: LC/H/521/12)

Appellant fell ill, apparently arising from pregnancy complications. Between January 2009 and August 2009 Appellant had four miscarriages and went on paid sick leave. In August 2009 after expiry of the statutory sick leave, Appellant claimed that she sought and was granted unpaid leave until delivery due to her fragile condition. In December 2009, Respondent terminated Appellant's contract of employment ostensibly in terms of s 14 (4) of the Labour Act [Chapter 28:01] because she had exhausted the statutory sick leave days. Appellant challenged the dismissal as unfair and in contravention of s 14 (4) of the Act. The claim was dismissed by an Arbitrator and Appellant's appeal was dismissed by the court a quo. This case illustrates the sheer challenges that lowly placed women face to balance their societal role of procreation and enjoyment of the fundamental right to work. Over time, women's unique but crucial child-bearing capacity has been used to marginalize them from formal work, in a manner that guarantees perpetual inferiority to men. Equally important is the ILO Termination of Employment at the Initiative of the Employer Convention, 1982 (C158) whose Article 5 states that any termination based on inter alia, the employee's sex or pregnancy is deemed an inherently or automatically invalid reason for termination of an employment contract. Although Zimbabwe has not ratified the convention its principles have become recognized as customary international law.

Two similar cases from South Africa also illustrate this point. The first one is *Marie-Louise de Beer v S.A. Export Connection CC T/AS Global Paws*⁷. Ms De Beer was employed as travel consultant when she fell pregnant and gave birth to twins who suffered from colic. As a result, she requested for an extra month off in order to look after them but the employer refused and proceeded to terminate her employment. The Labour Court of South Africa ruled that her dismissal was unfair as she was genuinely unable to return to work as a result of her babies suffering from colic.

The second case is of the *South African Medical Association v University of Limpopo*⁸. The South African Medical Society was acting on behalf of its two members, Dr Meyer-van den Heever and Dr Khan. The University of Limpopo had initially offered the two doctors' contracts of employment in terms of which they were entitled to 120 days paid maternity leave. However, at some point, the university changed the policy by stating that unpaid maternity leave of 120 days was to be granted to "non-permanent employees." The two doctors were pregnant at the time and protested this amendment. The Johannesburg Labour Court ruled that this amendment was unfair, and directed that the university grants the two employees maternity leave of three months on full salary.

5. Paid education leave and training leave

Paid educational leave is granted to workers for educational purposes for a specified period during working hours, with adequate financial entitlements. Such leave should be granted to all workers on an equal basis without discrimination on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin. In Zimbabwe, there is no obligation at law for the employer to provide paid educational and training leave. This is a matter to be arrangement between the employer and employee. However, the Constitution, in Section 24(2) (c), imposes an obligation on the State to endeavour to secure "vocational guidance and the development of vocational and training programmes, including those for persons with disabilities".

⁷ (2007) ZALC 104.

⁸ [2012] ZALCJHB 43.

Implications for the workplace

Although this obligation is not directly enforceable at law, it allows parties to negotiate for such entitlements in collective bargaining. Unions should negotiate for leave for educational purposes, for training at any level, including general, vocational, social, civic education and trade union education. Care must be taken to ensure that women have access to such leave, including those working part time. By equipping groups that are discriminated against with the skills needed to improve their employability, productivity and income, vocational training can play an important role in promoting equality of opportunities for all workers to obtain decent work. Training should be used to redress bias in employment hierarchies.

6. Other personal leave

Short periods of leave over and above the annual leave allowance may also be negotiated to cover events such as marriage of the worker or a member of their immediate family, moving to a new house or for important personal appointments such as meetings with a child's school authorities.

Implications for the workplace

Collective Bargaining Agreements should ensure that working conditions create an environment in which a worker's health is protected, and that a healthy balance is maintained while protecting the viability of business.

MODULE 3

MATERNITY AND FAMILY BENEFITS

Understanding the importance of maternity issues in the workplace

It is the desire of many people to have children and yet many must contend with the risks that pregnancy presents in terms of job security. This risk can have severe repercussions for the workers and their families. Expecting mothers require sufficient time to be able to prepare for the birth of their children, time to take care of their new born during the demanding first months of the child's life. They also require assurance and protection concerning the security of their jobs as they go through the maternity process. These issues are central to the achievement of equality in terms of access to employment and treatment in the work place and as such, they are an integral part of the collective bargaining process.

The most up to date international convention on maternity and family benefits is the Maternity Protection Convention, 2000 (No. 183) which recognizes that maternity protection at the work place is a legal and social recognition of the contribution that women make by having babies while at the same time working for pay. It was established to protect the health of the pregnant and working mother, and of her baby. It enables them to combine both their reproductive and productive roles. Women's reproductive role is directly related to pregnancy, confinement and to breast feeding, while their productive role relates to work for pay in either formal and informal economies. The Convention provides for at least 14 weeks of maternity benefit to women. It also provides that women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living, which shall be no less than two-thirds of her previous earnings or a comparable amount.

The Convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. It also prohibits employers from terminating the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences. Women returning to work must be returned to the same position or an equivalent position paid at the same rate or even in a higher position. The Convention further provides a woman with the right to one or more daily breaks or daily reductions of hours of work to breastfeed her child.

The Constitution of Zimbabwe Section 66(7) expressly states that women employees have a right to fully paid maternity leave for a period of at least three months. This is in keeping with the 14 weeks maternity leave provided for in the ILO Maternity Protection Convention referred to above. In keeping with the Constitution, the Labour Act Section 18(1) grants maternity leave of 98 days on full pay for an employee who has served for least one year. The Act also sets the earliest and latest time that an employee is expected to take leave. The Labour Act also provides for a maximum of three maternity periods for an employee in the service of one employer. In terms of job security, the protection of normal benefits, the Labour Act states that the worker is entitled to all her benefits including seniority advancement and these must continue as if her service has not been disrupted.

However, it has been argued that Section 18 of the Labour Act is at variance with the Constitution. The section provides that a woman needs at least one-year service with her current employer to qualify for paid leave. An employee who has served for less than a year is entitled to leave but not to cash benefits. Furthermore, paid maternity leave may only be granted to a maximum of three times by the same employer and only once during a 24-month period. This section is therefore in contradiction with the Constitution which provides for unqualified conditions for maternity leave.

Box 3: Case on Constitutional Challenge to the Maternity Leave provisions of the Labour Act (Challenge later withdrawn by applicant)

The General Secretary of the Civil Service Employees Association Ms Imelda Mhuriro approached the Constitutional Court arguing that the sections of the Labour Act were discriminatory and in violation of the Constitution. She said Section 65(7) of the Constitution of Zimbabwe guaranteed unlimited right to maternity leave to all female employees, but Section 18(1) and (3) of the Labour Act and Section 39(1), (3) and (4) of the Public Service Regulations, Statutory Instrument 1 of 2000 set conditions for the enjoyment of the right, thereby discriminating against newly employed women. To that end, Ms Mhuriro, on behalf of the civil servants and other employees at large, argued that the laws were unconstitutional and that they should be struck off. Ms Mhuriro later withdrew the application citing withdraw her case was inspired by the fact that she was privy to the on-going and advanced tripartite negotiations for major composite amendments to the Labour Act and other labour laws being done by Government, employers and labour, which will result in a Labour Amendment Bill being tabled before Parliament soon so that it can be seized with the matter.

Implications for the workplace

The collective bargaining process should focus on the following four key issues in relation to maternity leave:

- Applications, interviews, job selection and job promotion;
- An employee's pregnancy while in the workplace;
- An employee's maternity leave or pregnancy-related absence; and
- An employee's return to work post-pregnancy.

Applications, interviews, job selection, and job promotion

- Decisions on awarding jobs or promotions should not be discriminatory. This includes the job advertisement, the application and interview process, any ranking or testing which is used to assess candidates, and the decision-making process itself.
- Job advertisements should not exclude applicants who are pregnant, who are of assumed childbearing age or who have children.
- Interviewers should not ask about plans to have children, use of birth control, or pregnancy. They can ask if the candidate can work the required hours.
- Employment should not be denied simply because a woman is pregnant, or plans to have children. In rare cases, however, this may be a relevant factor for an employer to consider (e.g. where a pregnant employee would be unavailable to complete immediate short term contracts, urgent, or time-sensitive work).
- Promotions available to all employees should not be denied to pregnant employees, or to employees who might be trying to become pregnant.

During an employee's pregnancy

- When possible, a pregnant employee should attempt to schedule appointments outside of work hours, but when this is not possible, leave to attend pregnancy-related appointments should not be unreasonably withheld. This may be leave with or without pay, depending on the benefits and flexibility of the workplace.

- Sick leave should not be denied to pregnant employees when they are ill during employment. Sick leave must be granted in the same manner as to all other employees.
- Maternity leave should not be forced upon pregnant employees. They should be allowed to take maternity leave when they are ready to take it.
- Harassment of employees because they are pregnant is prohibited. Harassment could include touching a pregnant woman's abdomen, joking, teasing or commenting on her appearance or weight.
- Employment contracts or term employment should not be ended early because of pregnancy or the intention to take maternity leave.
- Less challenging tasks should not be given because of pregnancy unless specifically requested.
- Training and promotional opportunities should not be denied because of pregnancy or intention to take maternity leave.
- During restructuring or downsizing events, the jobs of pregnant employees should not be targeted for elimination; they should be assessed in the same manner as other positions in the organization.

During an employee's maternity leave or pregnancy-related absence

- While on maternity leave, pregnant employees are entitled to the same employment benefits that they received during employment. Contributions towards employment benefits such as pension, health insurance, life insurance, disability, dental, medical etc. should be paid during maternity leave if the employee was receiving these benefits during employment. Employees responsible for a portion of the cost of benefits during employment, continue to be responsible for that portion while on maternity leave.
- Employees on maternity leave should be made aware of job opportunities that become available so that, if they wish, they can compete for them.
- Seniority and years of service continue to accrue during maternity leave, as this is not considered a break in the employment period.
- Employees should be able to use any normally available medical, dental, and health benefits while on maternity leave.
- Employees on maternity leave should be informed of any changes to their jobs, and be given the same opportunity to participate in any work-related discussions or consultations as employees who are at the workplace.

During an employee's return to work post-pregnancy

- Employees should return to the same job or a similar job, if the original job no longer exists.
- Employees should receive any wage increases that came into effect while they were on maternity leave.
- Employees who breastfeed or express/pump breast milk should be provided with accommodation for this purpose.

Implications for the workplace

Collective Bargaining Statement on Maternity protection should ensure that:

- all women employees receive sufficient maternity leave to ensure the recovery of the mother and development of the child

- any illness related to maternity will warrant extra leave as well as in the case of multiple births such as twins, or other exceptional deliveries such as caesarean delivery.
- mothers should have the right to nursing breaks without reduction in pay if the public transport system poses problems for the mother to be with her child, special conditions are negotiated for the transport of the mother
- pre and post-natal care as well as reproductive health care is arranged by the establishment. Where the cost of setting up a clinic is too high or inappropriate, collaboration with public health services or other arrangements should be encouraged.
- a doctor could visit the workplace on certain days on a regular basis for the sole purpose of checking women workers and their children, at the request of the worker.
- flexible working hours are negotiated, especially for nursing and expectant mothers to avoid congestion and possible injury during travel time
- expectant or nursing mothers have the right to lighter and non-hazardous work, especially where chemicals are used or heavy weight lifted by workers manually
- while being reassigned to light duties, particularly for expectant mothers, great care must be taken to avoid exposing them to chemical or ultraviolet radiation which might be harmful to the foetus
- Job security especially after maternity leave should be ensured
- there is no discrimination against women on grounds of pregnancy or reasons related to pregnancy.

Box 4: Case of Chaduka NO & Anor v Mandizvidza

S -114 – 01 held as invalid a college rule that compelled suspension of pregnant female students as being contra bonos mores. In ARDA v Murwisi LC/H/90/2004 the Labour Court ruled as unfair dismissal the termination of a contract of employment of an employee on maternity leave. Part II of the Labour Act provides for a fundamental right of protection of employees from unfair discrimination, including on the grounds of gender and pregnancy. Section 12B (1) of the Act provides that every employee has the right not to be unfairly dismissed

MODULE 4

Defending rights of non-permanent and vulnerable workers

Categories of non-permanent and vulnerable workers

The ILO Declaration on Fundamental Principles and Rights at Work and its follow-up adopted by the International Labour Conference in 1998 emphasized the need to ensure equality of treatment between national and migrant workers and coordination on migration policies between the states, governments and workers organizations. This declaration was in response to the realization that many categories of workers may be non-permanent and vulnerable could be at risk due to the nature of their contracts of employment if they fell in the casual, temporary, seasonal or part-time categories. (ILO, 2004)

Other workers with special characteristics that render them more vulnerable than others are rural workers, homeworkers, domestic workers, and migrant workers, indigenous and tribal peoples. Pregnant women

- Breast feeding women

These categories are considered low in status and precarious; workers in these categories are vulnerable to abuses of their employment rights and most of them are female. They may not be unionized due to national legislation or practice, or the unions may not know how (or may not yet have attempted) to organize them effectively, or to service them once they are organized. (ILO, 2004)

The Constitution of Zimbabwe and the Labour Act unfortunately, have not specifically addressed the many issues affecting non-permanent and vulnerable workers except for child labour.

There is a growing number of workers joining the informal or unorganized sectors due to down-sizing by most companies, technological changes and recession. The trend towards globalization has pushed many workers out of formal employment as companies shift to other countries in search of 'low cost labour and more lenient legislation'. Structural adjustment policies have reduced government and parastatals establishments, and resulted in cuts in personnel and overall social programmes: in the long term this has had devastating effects on the workforce in areas of health, education and welfare, all of which impact strongly on women and their families.

Unions therefore have several reasons to try and defend the rights of these workers, some of whom were their members when they had more permanent jobs. It is also to the union's advantage to improve their conditions so that union members with secure permanent employment do not find their conditions of work under threat or eroded due to competition from non-organized workers.

Issues for bargaining

The following areas of concern should be considered during the bargaining process, and included in collective agreements where appropriate.

1. Extension of general conditions

The application of general conditions negotiated for permanent workers needs to be extended to non-permanent workers as much as possible. This might be done on a pro-rata basis, or for certain categories. Any negotiated improvements create a better working environment for all. It should be ensured that training opportunities are open to these workers so that they are able to improve their employment status and enrich their jobs.

2. Child labour

Child labour may exist in several contexts, for instance, where children are employed directly by the employer and receive payment for their work or in less apparent forms when the employer relies on task work, subcontracting or homework often supplied by women. To complete the daily quota or to collect daily bonuses, workers may bring other family members, including their spouses and children, to assist in the work.

These family members may not be paid directly, receive benefits nor be included in the national statistics as workers. This situation is most likely to occur when the family is female-headed and poverty makes the worker totally dependent on the daily pay. Small children sometimes assist, or simply accompany the mother, in a dangerous work environments such as the agricultural sector. Other forms involve children working as family workers of the self-employed, or children, often young girls, working as domestic workers.

Unions can negotiate to avoid task work or set task targets at reasonable levels to avoid the use of children. Unions should also ensure through their negotiating and monitoring capacity that young workers are not being employed in inappropriate or hazardous work. Such monitoring and negotiation can take place at the national, regional and international level. Unions can also raise the awareness of workers and the community at large through information campaigns. Unions can play an important role in programmes to eliminate the worst forms of child labour (ILO, 2004).

Implications for the work place and collective bargaining

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Such monitoring and negotiation can take place at the national, regional and international level. Unions can also raise the awareness of workers and the community at large through information campaigns. Unions can play an important role in programmes to eliminate the worst forms of child labour.

Minimum Age Convention, 1973 (No. 138)	
Minimum age for admission to employment	
General	Developing countries
15years	14years
Light work: 13 years	Light work: 12 years
Dangerous work: 18 years (16 years with consultation and adequate protection)	Dangerous work: 18 years (16 years with consultation and adequate protection)

3. Avoid non-permanent status for work that is permanent

Many women work on non-permanent status, even in cases where they are employed 12 months a year. Unions should negotiate so that such terms are not applied to workers who are hired on a continuous basis or in a job that is not temporary in nature. If the union cannot negotiate for status as permanent workers, then the union can try to negotiate for basic pay of non-permanent workers to be considerably more than that of permanent workers to compensate for the precarious status and to discourage abuse of this status.

4. Casual, temporary, seasonal and task workers

A worker may be hired in one or more of these categories, but the unifying thread is the lack of access to permanent status. Although some of these workers may work only for limited periods, a large percentage is hired on a permanent basis, but never receives bonuses, leave, benefits nor wage increases. The union must determine what the priority areas are, and make a clear attempt to cover the needs of these workers, a significant proportion of whom are women (ILO, 2004).

Implications for the work place and collective bargaining

The union must determine what the priority areas are and make a clear attempt to cover the needs of these workers, a significant proportion of whom are women.

Unions must ensure the strengthening of worker compensation laws, minimum wage laws and health and safety laws to protect the workers in a more comprehensive manner. Stakeholders should also make efforts to push for the amendment of the Labour Act to specifically provide for this group of workers as it is currently silent on them.

Protection of workers from casualization

Collective bargaining agreements play a vital role in setting better terms and conditions of employment for workers. For example, the National Employment Council for Tourism Industry through Statutory Instrument 54 of 2016 has put in place several measures aimed at protecting atypical forms of employment. The Statutory Instrument provides for the following:

- a fixed term contract of employment shall be deemed to be a contract of employment without limit upon the expiry of four years of continuous service.
- continuous service shall be deemed to be broken only by death, resignation, retirement or discharge of the employee concerned provided that: a seasonal employee who is reengaged by the same employer within two years shall be deemed not to have broken his or her continuous service;
- a fixed term contract employee who is re-engaged by the same employer within two months shall be deemed not to have broken his or her continuous service

5. Rural workers

Rural workers encompass a large group of women and men worldwide, often working for part of the year for wages and unemployed or self-employed for the rest of the year. Agricultural wage labourers are among the occupational group with the highest incidence of poverty, often over 60 per cent in many countries. The precarious nature of their labour leads to seasonal and low-level wages.

The priority should be to bring agricultural wage workers, whether casual or permanent, within the scope of a collective agreement. This should aim to include all conditions of work, from wage levels to occupational health, safety and environment, working time, training and social security.

Special attention should be given to women who occupy the lowest level and vulnerable jobs. Piece-rate or task work will also need to be monitored and addressed, since it often leads to children assisting or accompanying the family to the field. In addition, the vulnerability of female rural workers to sexual harassment must be addressed. It has been found in Africa, as well as in many other regions, that sexual harassment is “very pronounced in the plantation economy where women are rendered economically vulnerable and through desperation give special sexual favours to get work to feed their families”, with resulting health, personal and family problems.

Other services can be negotiated with the authorities to increase employment in the off-season such as through government-funded rural workers’ employment schemes or through the development of other special services to assist members of rural workers’ organizations (ILO, 2004).

Implications for the workplace and collective bargaining

- Stakeholders including trade unions should campaign for the adoption of the ILO Decent Work Agenda which has been adopted by the United Nations as the basis for a more just and stable framework for rural development. This will help in identifying and dealing with the deficits that exist in the working conditions of rural workers most of whom are women.
- Strengthen the campaign for the strengthening of operational health and safety standards especially for women who work in hazardous circumstances like farms
- Increase training for workers to better appreciate the importance of looking after their health in the work place. Other services can be negotiated with the authorities to increase employment in the off-season such as through government-funded rural workers’ employment schemes or through the development of other special services to assist members of rural workers’ organizations.

6. Homeworkers

Homeworkers are defined by the ILO Home Work Convention, 1996 (No. 177) as people working from their homes or from other premises of their choice other than the workplace, for payment, which results in a product or service specified by the employer. Homeworkers differ from entrepreneurs, or self-employed, or family business in that they are hired by companies for specific activities or services to be done from their homes. Homeworkers do not own or operate the business they work for. There are millions of women throughout the world who are homeworkers. Many of these workers are “invisible” or unknown to authorities. They are often excluded from legislation and organizing efforts, their pay and conditions are generally inferior to those of their counterparts in factories or other workplaces and the employment relationship is often precarious. Homeworkers tend to have few employment rights and very little social security protection.

Creative organizing efforts aimed at reaching these workers are needed; such as visiting them at home or organizing events specifically for them.

Implications for the work place and collective bargaining

- Push for adoption of national policies aimed at improving the situation of homeworkers
- Equality of treatment with regards to forming or joining representative organisations, maternity rights, social security protection, access to training and equal remuneration.

7. Domestic Workers

The Domestic Workers Convention, 2011 (No.189) defines domestic workers as those involved in domestic work is work performed in or for a household or households. The term means any person engaged in domestic work within an employment relationship or a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker. Domestic workers comprise a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. They work for private households, often without clear terms of employment, unregistered in any book, and excluded from the scope of labour legislation.

Implications for the workplace and collective bargaining

- Unions should call for specific legal instruments to address the issues of domestic workers as they present more unique circumstances from other workers. Treating them like other employees masks the reality of the nature of their employment. South Africa is an example of a country that has enacted separate legislation for domestic workers.
- Unions should campaign for the recognition and enforcement of the rights of domestic workers. This includes issues like adequate remuneration, decent working conditions, the respect for decent working hours, right to maternity protection and freedom of association, among others.
- Most domestic workers are not unionised hence their vulnerability. Stakeholders should therefore develop systems to ensure that they are protected by recognised structures and institutions.

Article 4(2) of the **Home Work Convention, 1996 (No. 177)** states:

Equality of treatment shall be promoted in relation to:

- (a) the homeworkers' right to establish or join organizations of their own choosing and to participate in the activities of such organizations;
- (b) protection against discrimination in employment and occupation;
- (c) protection in the field of occupational safety and health;
- (d) remuneration;
- (e) statutory social security protection;

- (f) access to training;
- (g) minimum age for admission to employment or work and;
- (h) Maternity protection.

Collective Bargaining Agreements are foreseen as one possible means of implementing such policies (ILO, 2004)

In Zimbabwe, domestic work is regulated through the Labour (Domestic Workers) Employment Regulations of 1992. The regulations regulate minimum wages, working time, leave, occupational health and safety for domestic workers. However, the minimum wages set are considered to be amongst the lowest in the economy. Furthermore, issues such as the right to privacy for live-in domestic workers, migrant domestic work and social protection are not covered by the Regulations. Collective bargaining agreements are foreseen as a possible means of addressing the regulatory gaps in the regulation of domestic work.

7. Migrant Workers

The World Bank Migration and Remittances report of 2017 estimates that officially recorded remittances to developing countries amounted to \$429 billion in 2016, a decline of 2.4 percent over \$440 billion in 2015. Global remittances, which include flows to high-income countries, contracted by 1.2 percent to \$575 billion in 2016, from \$582 billion in 2015.⁹ Migrant workers suffer exploitation because they are far from home, often not covered by relevant labour legislation and vulnerable due to their status, lack of knowledge of the local language and culture, and separation from their families. Migrant workers are often offered “the 3-D jobs: dirty, dangerous and difficult” with women migrant workers facing even greater problems. Migrant women also suffer from discrimination, particularly regarding pay and promotion, and they fail to take full advantage of their rights in this respect due to lack of information, training and motivation. Special terms of recruitment and employment often exist for these workers. At the international level, the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) states that ratifying countries shall respect the basic human rights of all migrant workers, and encourages them to pursue national policies to promote equality of opportunity and treatment. Several other international labour standards also seek to protect and enhance the rights of migrant workers.

Conventions and Recommendations concerning migrant workers

C.97	Convention concerning Migration for Employment (Revised)	1949
R.86	Recommendation concerning Migration for Employment (Revised)	1949
R.100	Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories	1955
C.143	Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers	1975
R.151	Recommendation concerning Migrant Workers	1975
C.118	Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security	1962
C.157	Convention concerning the Establishment of an International System for the Maintenance of Rights in Social Security	1982
R.167	Recommendation concerning the establishment of an International System for the Maintenance of Rights in Social Security	1983

Female migrant workers are, often employed in domestic service, one of the most vulnerable occupations. Due to the “invisibility” of immigrant female domestic workers, employers can often evade labour legislation. The women are often required to work long hours for low wages and have no voice. A common complaint of women in domestic service is sexual harassment. Migrant workers in agriculture are covered by the Plantations Convention, 1958 (No. 110) which aims to improve the situation of plantation workers by ensuring that certain provisions of other Conventions are applied to them. It specifically states that its provisions apply equally to all plantation workers, irrespective of sex.

⁹ <http://www.worldbank.org/en/news/infographic/2017/04/21/trends-in-migration-and-remittances-2017> .

MODULE 5:

Dignity at the workplace

Combating discrimination and victimization

Although there are international and national standards on freedom from sex discrimination and protecting the right of workers to organize and take part in trade union activities, people are still discriminated against and victimized on these grounds. Proving such discrimination or victimization has presented a difficult challenge to unions, since there are seldom clear statements or written proof of discriminatory motives. In many instances, overt discrimination has been replaced by more subtle forms of discrimination and victimization. It is important for unions to negotiate with a view to protecting workers who are active in trade unions, as well as workers who may be discriminated against based on sex, race, colour, religion, political opinion, national extraction or social origin, disability, family responsibilities or sexual orientation.

Box 5: Case of Verity Mutsamwira and Standard Bank of South Africa (Stanbic Bank)

Verity Mutsamwira was the only elected female Vice President of the Zimbabwe Banks Union and Chairperson. In 2011, The Workers Committee, led by Mutsamwira, recommended and organised the collective job action against their employer for a cost of living adjustment. This process was lawfully embarked on in terms of section 104 of the Labour Act and SI 273 of 2000. The bank sought to destabilise the Workers Committee by targeting the leader through transfers. This transfer was carefully planned to inflict economic and social harm to Verity based on her gender and roles as wife, mother and trade union leader. It knew that an unplanned transfer would seriously disturb the whole family and in turn apply adequate pressure for her to either quit the Workers Committee or abrogate her representative duties. The bank appealed against the Labour court ruling for reinstatement, and went on to terminate her employment on notice. The treatment against Mutsamwira flouts in the face of the freedom of association as well as discriminates her based upon her gender and involvement in union activities.

1. Trade union activities

For women to be able to promote and protect their rights and interests, they must be able, like all workers, to take part in trade union activities without suffering disciplinary measures or dismissal or otherwise being prejudiced. Trade union activists often face obstacles with respect to recruitment, advancement, promotion, training opportunities, dismissal or lay-offs, all related to their attitudes towards or participation in trade unions. While it may be difficult for unions to prove victimization or harassment, it is possible and necessary to find ways and means of protecting these workers. Unions can place conditions in collective agreements or influence national legislation to ensure that the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) are respected.

The Constitution of Zimbabwe, 2013, provides protection against anti-union discrimination. Furthermore, Sections 4 and 7 of the Labour Act provide protection against anti-union discrimination by providing for penal sanctions against employers that violate “employees’ entitlements to membership of trade unions and workers committee. Since proof of anti-union discrimination is so difficult to establish, consideration could be given to lobbying for a reversal of the onus of proof in legislation. Such a reversal can also be placed in the Collective Bargaining Agreement.

Reversal of the onus of proof

Where a worker claims to have been dismissed for trade union activities and wishes to make a complaint that the dismissal was unfair, he or she often bears the burden of proof. When the onus of proof is reversed, once the fact of dismissal is proved by the worker, it rests with the employer to prove that the dismissal was for a valid reason and unconnected with the worker’s trade union activities. The Committee of Experts on the Application of Conventions and Recommendations has addressed this point:

In cases of termination of employment, the application of the general rule applicable in contract law, whereby the burden of proof rests on the complainant, could make it practically impossible for the worker to show that the termination was unjustified, particularly since proof of the real reasons is generally in the possession of the employer. This is true if there are no clear reasons by the employer, which may well be the case when the employer is not required to provide written reasons

for the termination of employment. In an employment relationship, it is the employer who has the upper hand, particularly because he [or she] controls the sources of information.

Implications for the workplace

The fundamental principle to be respected is that the Constitution of Zimbabwe and the Labour Act guarantee the right to association and this specifically includes participating in trade unions. Discrimination of any nature is a violation of both the Constitution and the Labour Act and as such employers are duty bound to refrain from discrimination and victimization of trade union activists. However, with difficulties faced to prove anti-union discrimination, consideration could be given to lobby for a reversal of the onus of proof in legislation. Such a reversal can also be placed in the collective agreement. In addition, mechanisms could be agreed on how to allow for protection of trade unionists where discrimination may exist or has the potential of existing. This could include a speedy dispute resolution mechanism that enables the trade unionist to resolve issues of alleged discrimination without undue delays.

2. Sex Discrimination

Just as trade unionists may be discriminated against merely for being trade unionists, some women face discrimination merely because they are women or because of their marital status or family responsibilities. Like discrimination against workers based on trade union activities, women workers are also faced with areas of discrimination which are difficult to prove with respect to recruitment, advancement, promotion, training opportunities, dismissal and lay-offs. Sex discrimination can be overt, such as limiting applications for certain jobs to only men or only women (direct discrimination) or more subtle, indirect discrimination. (ILO, 2004)

The Committee of Experts on the Application of Conventions and Recommendations defines “indirect discrimination” as “apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons based on characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job.” So where a requirement or condition is gender-neutral at face-value, it is more difficult for women.¹⁰

Unions can negotiate for provisions in Collective Bargaining Agreements to protect women against discriminatory practices. The reversal of burden of proof is an important notion and should be discussed as an issue in the context of sex discrimination and included in the negotiations.

Implication for the workplace and CBAs

- Unions can negotiate for provisions in collective agreements to protect women against discriminatory practices.
- The burden of proof is an important notion and should be discussed in the context of sex discrimination during negotiations.
- In cases where sex discrimination has been proved, visible steps should be taken to ensure that sufficient redress is implemented to an extent that is reasonably satisfactory.

Employers should also be encouraged to educate senior managers on sex discrimination and how to handle it where and when it emerges.

Checklist for bargaining to avoid sex discrimination:

1. general equal opportunities clause, expressing the commitment of the union and the employer to promoting equal opportunities for women and men;

¹⁰ www.ilo.org/empent/areas/business-helpdesk/faqs.

2. opportunities for women, including those with non-permanent contracts, to apply for all positions and to benefit from training programmes;
3. no discrimination against workers with family responsibilities, with respect to promotion and advancement;
4. avoid informal systems of recruitment that often prejudice women;
5. carefully determine what training, education or experience is needed for a position, as well as whether age limits or mobility requirements are essential;
6. job application forms should include only those questions relevant to the job;
7. if the candidate is successful, then questions such as marital status and number of children can be asked if linked to benefits;
8. Neutral job descriptions — if they are gender-specific, stereotypes are enforced.
9. Women may also feel excluded;
10. Gender-inclusive language in the collective agreement — if possible, avoid saying “the worker, he shall ...”. Gender-inclusive language shows a commitment to equality;
11. equality officer or women’s committee to implement objectives and review progress;
12. training in equal opportunities issues for all those involved in recruitment and negotiations;
13. reversal of burden of proof — once a worker can show she was disadvantaged, it is for the employer to prove that it was not based on sex

3. Sexual Harassment

A serious, and often misunderstood, form of sex discrimination is sexual harassment. It can also be considered a safety and health issue. Although legal definitions vary from country to country, sexual harassment is essentially unwanted conduct of a sexual nature. In surveying national legislation on sexual harassment the Committee of Experts on the Application of Conventions and Recommendations has found that the various definitions of sexual harassment contain physical, verbal, non-verbal conduct of a sexual nature and conduct based on sex, affecting the dignity of women and men. This is unwelcome, unreasonable and offensive to the recipient and a person’s rejection of, submission to such conduct is used as a basis for decision affecting that person’s job or creating an intimidating, hostile and humiliating environment for the recipient (CEACR, 2003).

Two types of sexual harassment have been distinguished at the international and national levels:

Quid pro quo harassment (also known as “sexual blackmail” in Europe or “lay down or lay off” in Asia). Generally, it is a demand by a supervisor, usually a man, directed to a subordinate, usually a woman, for sexual favours to keep or obtain certain employment benefits or privileges;

- *Hostile environment* (also known as abusive, offensive or poisoned working environment). In this situation, the complainant does not need to show
- The loss or threat of loss of specific employment benefits. It is a subtler form of harassment and creates a stressful or intimidating environment (for example, inappropriate sexual comments, touching and the display of obscene pictures).
- Although men may be victims of sexual harassment, the victims are most often women, and they may suffer more because of societal attitudes and their often precarious employment position. Frequently targeted are young women, widowed or divorced women, women of racial minorities and disabled women. Women in low-paying, low-status jobs may also be particularly vulnerable. Many women, particularly those in low-status jobs or with precarious employment contracts, find it difficult to complain or seek support for fear of jeopardizing their jobs. Sexual harassment can result in biased job evaluations, poor personal recommendations, demotion, resignations, dismissal or transfer. It may create an intimidating atmosphere and thus sexual harassment can result in biased job evaluations, poor personal recommendations, demotion, resignations, dismissal or transfer. It may create an intimidating and thus unproductive working environment which can also result in stress-related illness.

Role of trade unions in combating sexual harassment:

- *develop a policy for their members*
- *include sexual harassment on the collective bargaining agenda*
- *educate members to change attitudes especially in male-dominated unions*
- *set up procedures for handling complaints provide training for those handling complaints*
- *set up a service for counselling of victims*
- *keep a record of complaints*
- *take consequent action against members involved in harassment*

Provisions in collective agreements should include measures to prevent sexual harassment such as:

- the issuing and publicizing of strong policies against sexual harassment;
- information and education campaigns drawing attention to the various forms of sexual harassment and the fact that it will not be tolerated.

The Collective Bargaining Agreement should also include measures to deal with sexual harassment such as:

- establishing a complaints procedure that enables and encourages women to take action against their harassers. Procedures should be discreet and sensitive to the emotions of the women. The use of female counsellors or complaints officers should be considered. It should be ensured that where the harasser is a supervisor, the complainant can submit a complaint to higher level of management;
- all complaints must be taken seriously and dealt with promptly;
- often the process begins with an informal procedure, moving on to a formal procedure if necessary. The formal procedure may be part of the regular grievance procedure, or a special sexual harassment procedure may be established;
- union representation should be permitted at all stages;
- Where harassment is proven, the harasser must be dealt with seriously and the person who was harassed should not be prejudiced in any way by separating the two workers from the same working environment (i.e. transfer the harasser, not the complainant).

In Zimbabwe, the Labour Act prohibits sexual harassment. Section 8 (g) and (h) of the Act provides that sexual harassment is an unfair labour practice. The section specifically provides that, an employer or any other person, commits an unfair labour practice, if by act or omission, he-

(g) (i) demands from any employee or prospective employee any sexual favour as a condition of recruitment for employment or the creation, classification or abolition of jobs or posts; or

(iii) promises improvement of remuneration or other conditions of employment of the employee; or

- (iv) chooses persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
- (v) provides special facilities related to or connected with employment; or
- (vi) engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace.

Collective Bargaining Agreements, in Zimbabwe, can play a vital role in addressing sexual harassment not covered under the regulatory framework. Parties to collective agreements can emulate the National Collective Agreement for Croatian Seafarers on Board Ships in International Shipping Trade (2015-2017) which entitles all seafarers to work and live in an environment free of harassment and bullying and provides on board procedures based on the International Labour Conference, 107th Session, 2018.

4. Violence at the Workplace

Violence at the workplace may occur between co-workers, workers may also be at risk of violence from others such as customers or clients. Violence between co-workers should be treated as a serious disciplinary (or even criminal) offence and perpetrators disciplined accordingly. Criminal charges should be laid where appropriate. Violence can be psychological or physical to different degrees.

- **Abuse** is all behaviour that unreasonable and involves the misuse of position or psychological strength,
- **Assault** generally includes any attempt at physical injury or attack including actual physical harm,
- **Threats** include the menace of death or the announcement of an intention to harm a person, or damage his or her property.

The ILO in its International Labour Conference 107th Session, 2018 emphasized the need to take into account the gender dimension of violence when tackling violence in the world of work as a rubric of violence and harassment which includes

- a continuum of unacceptable behaviours and practices that are likely to result in physical, psychological or sexual harm or suffering.¹¹ Furthermore, the ILO in its International Labour Conference 107th Session, 2018 emphasized the need to take into account the gender dimension of violence when tackling violence in the world of work.

Instructive guidance has been provided by the ILO Tripartite meeting of Experts in 2016 convening on violence and harassment at the work place. Broadly, the Experts reached the following conclusions:

- Recognition that an integrated approach is needed incorporating joint strategies and collaboration between employers, workers, trade unions and governments,
- the need for a particular focus to be placed on gender-based violence,
- recognition that domestic violence impacts the workplace and that employers have a responsibility to provide safe and healthy workplaces,
- the need for a new instrument(s) focused specifically on violence at work and the urgency of preventing violence through an integrated approach
- that violence should not be seen 'as part of the job', as is too often the case for transport workers,

¹¹ (ILC, 107th Session, 2018:5.

- prevention and support are key components to addressing violence and that prevention should address negative societal and workplace culture. These conclusions are not a Convention but they do set the parameters for what the first draft of the proposed international standard(s) will look like.

These conclusions emphasize the need to adopt preventive strategies, as well as policies and procedures to deal quickly and effectively with violence when it occurs. A risk assessment can be undertaken to identify where there are risks of violence. Policies and procedures for reporting, investigating and dealing with violence need to be drawn up and put into practice. Workers need to be informed of the policies and procedures and the workplace risks. Finally, provision should be made for the evaluation and monitoring of the policies and procedures. All these steps should be taken with the full involvement of the union.

(www.ilo.org/gender/Events/WCMS_519760/lang--en/index.htm)

Effects of violence at work

Violence may have several effects at the work place:

- At the individual level violence may lead to injuries and in extreme cases to death of the victims.
- Psychological effects may include fear, concentration problems, irritability, low productivity, job fear among other problems.
- For the organisation, workplace violence may lead to high turnover rates, high staff replacement costs and economic loss.

Measures to address violence in the world of work

The ILO has highlighted the need for an inclusive and integrated approach to addressing violence and harassment in the world of work. It has recommended seven key pillars to the approach which include:

- A comprehensive definition of violence and harassment;
- The right of all workers to a violence-and harassment-free world of work;
- The prohibition of world of work violence and harassment ;
- A comprehensive preventative strategy;
- Enforcement and monitoring;
- Sanctions for perpetrators and remedies and support for victims;
- Tools and policy framework for addressing violence and harassment.
- All these factors should be taken into account during the course of collective bargaining.
- All these factors should be taken into account during the course of collective bargaining.

Implications for workplace and CBAs

Preventive strategies are needed, as well as policies and procedures to deal quickly and effectively with violence when it occurs. A risk assessment can be undertaken to identify where there are risks of violence. Policies and procedures for reporting, investigating and dealing with violence need to be drawn up and put into practice. Workers need to be informed of the policies and procedures and the workplace risks. Finally, provision should be made for the evaluation and monitoring of the policies and procedures. All these steps should be taken with the full involvement of the union.

5. Creating an enabling environment

To deal with the problems of victimization noted above, there should be an open and enabling environment to allow for dialogue and discussion. Information should be made available about the rights of workers, and women workers in particular, so that all management, colleagues, workers and workers' representatives are familiar with the issues. One approach is to provide trained confidential advisers comprising at least a trade union woman representative and a woman representative from management who could as a preliminary measure advise and handle any complaint in an objective and sensitive way and then be able to continue along a negotiated procedure to ensure discretion and confidentiality.

Unions should negotiate for more widely disseminated information on the issues of discrimination, sexual harassment and violence to ensure dignity at the workplace.

Protection of workers from casualization

- Collective bargaining agreements play a vital role in setting better terms and conditions of employment for workers. For example, the National Employment Council for Tourism Industry through Statutory Instrument 54 of 2016 has put in place several measures aimed at protecting atypical forms of employment. The Statutory Instrument provides for the following:
- A fixed term contract of employment shall be deemed to be a contract of employment without limit upon the expiry of four years of continuous service,
 - Continuous service shall be deemed to be broken only by death, resignation, retirement or discharge of the employee concerned provided that a seasonal employee who is re-engaged by the same employer within two years shall be deemed not to have broken his or her continuous service;
 - a fixed term contract employee who is re-engaged by the same employer within two months shall be deemed not to have broken his or her continuous service

Collective Bargaining Agreement on Sexual Discrimination should ensure that:

- general equal opportunities clause, expressing the commitment of the union and the employer to promoting equal opportunities for women and men;
- opportunities for women, including those with non-permanent contracts, to apply for all positions and to benefit from training programmes;
- no discrimination against workers with family responsibilities, in particular with respect to promotion and advancement;
- avoid informal systems of recruitment that often prejudice women;
- carefully determine what training, education or past experience is actually needed for a position, as well as whether age limits or mobility requirements are absolutely essential;
- job application forms should include only those questions relevant to the job
- if the candidate is successful, then questions such as marital status and number of children can be asked if linked to particular benefits;
- neutral job descriptions — if they are gender-specific, stereotypes are enforced.
- gender-inclusive language in the collective agreement — if possible, avoid saying “the worker, he shall ...”. Gender-inclusive language shows a commitment to equality;
- reversal of burden of proof — once a worker can show she was disadvantaged, it is for the employer to prove that it was not on the basis of sex.

MODULE 6

Giving women a voice

Giving women a voice in the work place and in the operations of trade unions is a key building block to addressing gender inequalities in the work environment. Trade unions have been a key vehicle for championing the cause of workers over the years and it is not possible that they will lose this status in the foreseeable future. However, one of the distortions of this age long struggle has been the marginalization of the voice of women from the trade union processes and this has contributed to gender inequalities in the work place. Giving women a voice in trade unions means promoting the active participation of women in trade union affairs and having them assume meaningful leadership positions. It also entails ensuring that the trade unions are fully cognisant of gender considerations in the work they do, by ensuring that the interests and concerns of women are not side-lined. There is also a need for a critical mass of women to participate in trade unions to address the main problems such as lower income, maternity leaves, sexual harassment and others. By addressing these matters progressively, there would be improvement in the working conditions of women and by extension, of men.

The Zimbabwe National Statistical Agency 2016 report on Understanding Gender Equality: Women and Men Report notes that in Zimbabwe women have taken advantage of opportunities in education and the work place but they still face gender related challenges in expressing themselves. This situation has contributed to the limited progress in the promotion of women's voices. The report also quotes the 2015 Agriculture and Livestock Survey which notes that women generally earn less than men in all agricultural sectors. Women working on a permanent basis in large scale commercial farms in 2013 were earning about 95% of what men earned. The situation worsened in 2015 where women earned 83% of what men earned.¹²

The efforts to increase the voices of women in the work place environment and in collective bargaining should address challenges so that women can also enjoy fulfilment in their working lives. The important entry points for promoting women voices are identified as involving women in defending and improving the rights of workers, ensuring women are prepared for, and can access more and better jobs and the formation of women-led and -oriented structures like Women Committees within the trade unions.

The Zimbabwean Constitution Section 65 (2) provides for the right of workers to form and belong to a trade union of their choice. While there is no specific reference to women the section is encompassing enough to cater for their right to be part of such groupings. Section 4 of the Labour Act also provides for the right of workers to belong to trade unions. The Labour Act in Section 5 provides for protection of employees against many forms of discrimination including gender discrimination. However, the Labour Act does not provide for specific mechanisms for the promotion of women voices save for prohibiting discrimination of women. There are also no guidelines on how trade unions can integrate women voices in their structures and processes. In the absence of specific guidelines and quotas to protect the participation of women in decision making processes like collective bargaining, there has not been as much progress in the promotion of women's voices in the work place. As a result, even legislation that would protect women from abuse and discrimination is not fully implemented with the result being a perpetuation of the negative conditions under which women operate.

Implications for the workplace and CBAs

- Collective bargaining processes must ensure a fair representation of women in meaningful positions and activities,
- Gender audits should be carried out to understand the gaps that are limiting the participation of women in the CBA and other decision making structures,
- Strategies with measurable targets must be implemented to address the outcomes of the Gender audits,
- Women should be involved in the bargaining teams as active members with meaningful roles.

Key areas for consideration in giving women a voice in the workplace

2. Defending and improving rights

The concept of 'nothing for us without us' applies here and this means that women should be active participants in negotiations for the improvement of their working conditions. Special attention should be given to dealing with issues such as

¹² Understanding Gender Equality: Women and Men Report Zimstat, 2016.

discrimination and harassment. Proper and sensitive complaints procedures are needed to ensure that women who are discriminated against can make formal complaints without fear of victimization.

3. More and better jobs

Part of the process of ensuring more women access senior positions involves availing training opportunities to them which will make them eligible for such positions. Unions should also work on changing the negative attitudes of employers to the upward mobility of female workers because it is assumed that women are more likely to leave their employ due to family responsibilities. The promotion of women to senior positions will also help to develop more female friendly policies and attitudes within organisations. Positive measures will also be required to challenges discriminatory attitudes and practices in the work place.

The Objectives of the measures are:

- diversify the jobs and posts held by women in the company
- balance the distribution of men and women in a maximum number of posts
- create conditions in which women, who have previously been held back, are able to demonstrate their skills, talents and potential abilities
- promote women to higher grades
- increase the number of women working in the company by introducing a recruitment policy that favours women at the levels where they are under-represented

Giving women a voice in the union: Implications for the workplace

Improving the voice of women in the trade unions lies primarily in developing what has been described as Union Gender Democracy a concept largely use to describe the peculiar nature women's gendered trade union membership and the adequacy of union provisions for women to voice their concerns (McBride, 2001). The concept involves three main facets:

- creation of women's self-organising units and women's committees – these provide opportunities for women to participate in decision making, and they open platforms for empowerment through training and other capacity building initiatives and advocacy.
- provisions for quota representation and reservation of special seats in union governance structures
- ensuring the implementation of constitutional amendments to secure legitimacy

Collective Bargaining Agreement should give Women a Voice and ensure that :

- There are women's committees in order to give women effective representation within the union and to create awareness of their special needs at work.
- Women's committees provide a forum for women's issues and serve as a vehicle for future developments, but care must be taken to ensure that they remain in direct contact with core decision-making bodies at all levels and do not become marginalized. To be effective, the Women's committee are adequately funding.

Giving Women a voice within the structures and processes of the collective bargaining process is pivotal. Trade unions in Zimbabwe acknowledge this and both women and men need to champion the agenda for inclusivity.

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