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Session 4

“Policies and Reforms to Guarantee Women’s Labour Rights”
Global Discourse and Local Realities:
A case of the Republic of Trinidad and Tobago

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Introduction Women's Rights: Global Discourse and Local Reality

According to Rodger (1999) legislation specifically designed to protect females appeared in the early 1840s, when Great Britain prohibited women from working in mines and restricted their night-time work. "Within the next five decades, other European countries followed with legislation to restrict women from underground work, night-time shifts, long working days, and jobs that may cause harm to them or where their hair could get caught in moving machinery (Wikander, Kessler-Harris, and Lewis, 1995)"¹.

As time progressed, occupational bans and working-hour restrictions for women were effected. The primary objective was to safeguard the health of working women, with special reference to childbearing and their physical attributes. Minimum standards regarding maternity leave and benefits were consequently among the first instruments implemented internationally via conventions aimed at protecting women.

The International Labour Organization (ILO) has been integral in protecting and promoting the rights of women workers. Part of its mandate has been to ensure that discrimination against female employment is eradicated. One of the ILO's first Conventions was premised on maternity leave in the early 20th century which provided protection and job security to women. Other conventions such as "Convention No. 100 or the Equal Remuneration Convention 1951, guaranteed equal pay for work of equal value which opened the door to the examination of structural

¹ Yana van der Meulen Rodgers. *Protecting Women and Promoting Equality in the Labour Market: Theory and Evidence*. Policy Research Report on Gender and Development Working Papers Series No.6. World Bank. 1999. Web. May, 24. 2016. Pg.1
<http://siteresources.worldbank.org/INTGENDER/Resources/wp6.pdf>.

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gender biases in the labour market”². Since then, there has been a gradual shift in the discourse from simply protecting women to greater emphasis being placed on promoting equality and improving the living and working conditions of workers regardless of gender.

It is evident that there exist legislation and legal instruments that expressly enshrine the rights of women as labourers. So then, one may reasonable ask two questions:

- 1. Why in 2016 do we need to discuss policies and reforms to guarantee women's labour rights? ; and**
- 2. Whether as legislators, have we done enough to ensure that the position of women in the labour market is better?**

On an examination of the first question the general research points to the following:

- a) To quote the International Labour Rights Forum
“Women make up a vital part of the social and economic fabric that hold their communities together, but their work in various instances are rarely valued at the same level as men's work”.³
- b) It is accepted by international agencies that the contribution of women improves the wellbeing of the entire society. Both the World Bank and the United Nations contend that investing in women is the best way to improve a range of societal concerns and that women's full participation in society is a critical factor in economic development.

² International Labour Office (ILO). “The ABC of Women Workers' Rights and Gender Equality”. 26.Oct. 2007. Web. May 24, 2016. Pg. 11. http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_087314.pdf

³ International Labour Rights Forum (ILRF). (n.d) May 24,2016 Web. <http://www.laborrights.org/issues/women%E2%80%99s-rights>

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However despite women's involvement in the labour market from time immemorial it is undisputed that even in liberal societies and Small Island Developing States (SIDS) there is regression and stagnation in women achieving equality in every sphere including labour rights.

Admittedly we do not live in a perfect world and our societies are founded on established gender roles which are primarily starkly apposite and harmony is negotiated by male dominated power plays which oftentimes impact women negatively, so even in a seemingly modernised world patriarchal traditions flourish.

The contradictions do not end there!

Focusing on Latin America and the Caribbean, there have been significant advancements in women's economic and social status. The historical gender gaps in education, access to health services, labour force participation and political engagement have narrowed significantly.⁴ The region has made great strides in the protection of the rights of women and in diminishing economic inequality, and most countries have established laws and policies that promote equal rights which seek to end discrimination. The countries in the region have become signatories to the Beijing Declaration and the Platform for Action and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Additionally, the Economic Commission for Latin America and the Caribbean (ECLAC) has been managing the

⁴ World Bank. Women's Economic Empowerment in Latin America and the Caribbean. Policy Lessons from the World Bank Gender Action Plan. 2012. Web . May.25. 2016.Pg.14 http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2013/03/19/000356161_20130319150057/Rendered/PDF/760980WP0GAP0L00Box374362B00PUBLIC0.pdf

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Gender Equality Observatory for Latin America and the Caribbean to monitor the region's progress towards equality.⁵ But the nagging question remains

“As legislators have we effectively discharge our responsibility to protect our constituents and seek the interest of the most vulnerable in our labour markets?”

As an aside permit me to mention one interesting statistic in this discussion, which is that despite the increased female parliamentary participation *“women are still outnumbered four-to-one in legislatures around the world”*⁶.

I now turn our attention to Trinidad and Tobago which I proffer as a case study.

Labour Law and Trinidad and Tobago

The Constitution of Trinidad and Tobago recognises and guarantees its citizens certain basic human rights and freedoms, such as the right to life, liberty and security, the right to equality before the law and the right to freedom of expression. The right to own property is overarching and arguably supports a right to work.

The right to freedom of association and assembly is also a fundamental right protected by the Constitution. This right translates into the right of a person to form and join a trade union or association, although there is no constitutional right to bargain collectively or to strike, as expressed in the judgment of *Collymore and Another v. The Attorney General* reported in (1969) 15 West Indian Reports at page 229.

⁵ World Bank. Women's Economic empowerment in Latin America and the Caribbean. Policy Lessons from the World Bank Gender Action Plan. 2012. Web . May.25. 2016.Pg.18 http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2013/03/19/000356161_20130319150057/Rendered/PDF/760980WP0GAP0L00Box374362B00PUBLIC0.pdf

⁶ United Nations Development Programme (UNDP). Global Poverty Reduction . 2016. Web May 26.2016. http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_gender_and_poverty.html

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The Industrial Relations Act (IRA) does however make provision for collective bargaining between employers and workers and allows industrial action, including strike action, once taken in accordance with the IRA. The IRA therefore sets the stage for the practice of industrial relations and the protection of labour rights in Trinidad and Tobago. It is the legal framework within which parties bargain collectively, settle disputes and come before the Industrial Court for arbitration, determination and resolution and there is no distinction in its application to workers on the basis of gender

Further our Legislature has intervened in areas of the employment relationship which may not have produced a fair outcome if left to collective bargaining process with legislative solutions. Areas such as employee health and safety, minimum age of employment and workers' compensation, retrenchment and severance benefits and maternity leave are set forth in legislation which bind the State and Private employers.

The Occupational Safety and Health Act 2004, sets standards for employee health and safety at the workplace. The Retrenchment and Severance Benefits Act guarantees the payment of severance pay to retrenched employees. The Maternity Protection Act provides maternity leave and related benefits to female employees. Recognition has also been given to the need to implement legislation which sets minimum terms and conditions of employment so that employees are guaranteed a basic level of rights and protection.

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Realities of Trinidad and Tobago

Here comes the reality in the application of the IRA. In the Trinidad and Tobago all forms of labour are not protected by the IRA and that denial of protection to all forms of labour exposes women to the vagaries of unregulated labour and abuse.

In 2010, the International Labour Office (ILO) estimated that domestic workers represented four to ten percent of the total workforce in developing countries, and one to 2.5 percent of the total workforce in developed countries. “Domestic workers provide essential services that enable others to work outside the home, thus facilitating the functioning of the labour market and the economy.”⁷

While I do not have a supporting statistic for Trinidad and Tobago, I crave the liberty to adopt the statistic that applies to the developing world. However, **in 2016, Domestic Workers in Trinidad and Tobago are still struggling for protection under the IRA. Why one may ask?**

According to the National Union of Domestic Employees (NUDE), since 1982 that association has been seeking recognition and to be protected under the IRA. It is argued that:

“because the labour of 10,000 to 30,000-plus household workers is not formally acknowledged as “work,” job grievances—including unfair or unsafe working conditions, extra work which is unpaid, personal abuse (verbal or physical), or even arbitrary dismissal with no hope of benefits—cannot be adjudicated under the Industrial Relations Act. This leaves the

⁷ Janelle De Souza. Register of Domestic Workers. Trinidad and Tobago Newsday. Sep. 25. 2010. Web. May.25. 2016. <http://www.newsday.co.tt/business/0,166716.html>

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workers, most of whom are women, wide open to exploitation and discrimination by unscrupulous employers”⁸

One woman's account of her experience justifies the need for swift action by our legislators. In her testimony that female domestic employee recounts that after having worked full-time for 11 years

“she was given lots of extra duties not stipulated in her original job offer. She was never paid for these extra duties, had to work long hours, was denied sick leave, and was then summarily dismissed at the age of 59, with no retirement benefits, as her employers had not been paying up their NIS contributions on her behalf”⁹

It is unchallengeable that women especially those who comprise the lower economic strata of society, juggle multiple roles- as economic actors, heads of households, mothers, and it has been argued that when women are poor, national and global economic growth are affected. Lack of legal regulation place many women at the lower rungs of the economic ladder in repressive situations which often times leave them vulnerable to abuse and exploitation.

Such cases of exploitation can be seen as systemic. Feminist scholars have coined a potent nomenclature referred to as *the feminization of poverty*¹⁰, which speaks to a situation where the number of women in poverty is increasing at a much faster rate than that of men.¹¹ From a global scope the reality is this, “six out of ten of the world's poorest people are women”¹² and an estimated-seventy five 75 percent of the world's

⁸ Trinidad and Tobago Guardian. Raw Deal for Domestic Workers. May. 18. 2014 Web . May 25. 2016. <http://www.guardian.co.tt/news/2014-05-18/raw-deal-domestic-workers>

⁹ Trinidad and Tobago Guardian. May 18.2014.

¹⁰Monica Townson. A Report Card on Women and Poverty. The Canadian Centre for Policy Alternatives. Pg. 1
https://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/women_poverty.pdf

¹¹ Monica Townson. A Report Card on Women and Poverty. Pg. 1.

¹²United Nations Development Programme (UNDP). Gender and Poverty Reduction.
http://www.undp.org/content/undp/en/home/ourwork/povertyreduction/focus_areas/focus_gender_and_poverty.html

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women are unable to secure bank loans due to insecure and unpaid jobs.¹³ Women make up half of the world's population and yet represent 70% of the world's poor.¹⁴ Thus in 2016 in a post Millennium Development Agenda society and one which has entered the phase of The Sustainable Development Goals, we are here, still discussing policies and reforms to guarantee women's labour rights.

Women and Labour Force Participation-Trends and Facts

According to the 2009 Central Statistical Office of the Republic of Trinidad and Tobago (CSO) Pocket Digest, 48 per cent of the population of Trinidad and Tobago or 653,100 persons were female. Of these females, 254,300 comprise the female labour force or approximately 41 per cent of the total labour force. The female unemployment rate was 6.2 per cent when compared to a male unemployment rate of 4.5 per cent (CSO, 2009)¹⁵

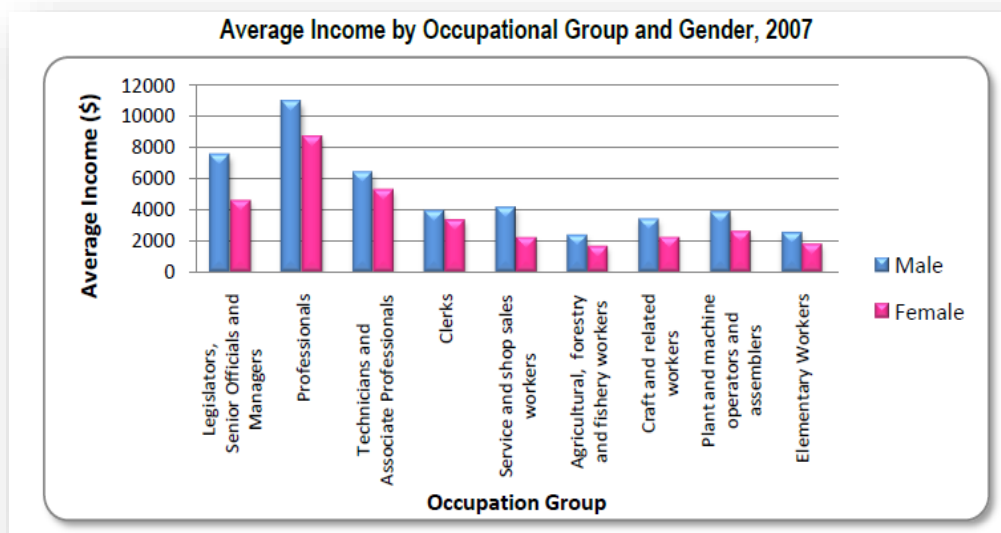
The Continuous Sample Survey of the Population (CSSP) showed that in 2007, the average income for men exceeded women across all listed occupational groupings (See Figure 1). Noticeably, the widest disparity was seen in the professional and legislator/senior managers' groupings and narrowest disparity occurred at the level of the elementary occupations. This difference in wages poses the potential for decreased participation of women in the workforce due to a lack of motivation and sentiments of unfair treatment.

¹³ UNDP. Gender and Poverty Reduction.

¹⁴ Global Citizen. Introduction to the Challenges for Achieving Gender Equality. Oct. 12. 2012. Web. May. 26. 2012. <http://www.globalcitizen.org/Content/Content.aspx?id=058f8fee-01f4-4508-a54d-464ff22a4716>

¹⁵ Karen A. Roopnarine & Dindial Ramrattan. Female Labour Force Participation: The Case of Trinidad and Tobago Central Bank of Trinidad and Tobago. Oct 26-28, 2011. Web May 26. 2015. <http://www.central-bank.org.tt/sites/default/files/Female%20Labour%20Force%20Participation%20-%20The%20Case%20of%20Trinidad%20and%20Tobago%20-%20K.%20A.%20Roopnarine%20and%20D.%20Ramrattan%20-%20June%202011.pdf>

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Source Karen A. Roopnarine & Dindial Ramrattan 2011-
Continuous Sample Survey of the Population (CSSP) 2007 pg.4.

The data begs the question regarding what accounts for the disparity and although the research did not expressly answer that question, the results can serve as a useful tool for more gender-sensitive policy formulation in Trinidad and Tobago, and even the wider Caribbean region.

Guarantees and Reforms: NUDE's Response

The National Union of Domestic Employees (NUDE) has crafted a strategy to overcome the vulnerability of its members as a consequence of not being protected by the IRA. They have formed themselves into a cooperative to achieve improved conditions of domestic workers. A worker cooperative is an enterprise that is owned and democratically controlled by its members, who are also workers/employees themselves. The potential benefits of the worker-owned cooperative structure for domestic workers include:-

- Providing access to a broader pool of jobs;
- Facilitating proper negotiation of contracts, working hours, wages and other terms and conditions;

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- Providing opportunities for obtaining new skills, training and knowledge;
- Assisting with improving access to financial services; social services; legal support; advice and counselling; and
- Offering experience in democratic self-government and management skills.

NUDE has called on legislators to take decisive action which includes:

- Recognising domestic/household work as work in Trinidad and Tobago under the IRA. That way, moves can be made towards collective bargaining, and providing legal means of redress for employment grievances.
- Introducing standard written contracts for all domestic workers. Contract templates can then be easily adjusted according to particular jobs; and
- Encouraging legislators to make attempts to have T&T formally ratify the ILO Convention 189¹⁶.

Sexual Violence and Harassment

If I fail to deal in this discussion with the common scourge of sexual violence and harassment of women in the work place I would be committing another dastardly atrocity against women.

In 1993, the United Nations General Assembly defined violence against women as “any act of gender-based violence that results in, or is likely to result in, physical,

¹⁶ ILO Convention (189) Promotion and protection of the human rights of all domestic workers (Preamble; Article 3). Respect and protection of fundamental principles and rights at work: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) elimination of all forms of forced or compulsory labour; (c) abolition of child labour; and (d) elimination of discrimination in respect of employment and occupation (Articles 3, 4, 11). Effective protection against all forms of abuse, harassment and violence (Article 5). Fair terms of employment and decent living conditions (Article 6). See links http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/publication/wcms_307218.pdf and http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

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sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”¹⁷

The indignity suffered by many women seeking employment in the labour market was graphically captured by one of our local calypsonians (who tell our story in song) in her rendition of

DIE WITH MY DIGNITY

The lyrics of which go as follows:

*You want to help mind your family
You want to help your man financially
But nowadays it really very hard
To get a job as a girl in Trinidad
You looking out to find something to do
You meet a boss man who promise to help you
But when the man lay down the conditions
Nothing else but humiliation
They want to see your whole anatomy
They want to see (what) your doctor never see
They want to do (what) your husband never to
Still you ain’t know if the scamp will hire you.*

The Courts have had to adjudicate on such issues as I recall that as early as 1996 the Trinidad and Tobago Industrial Court decided in the matter of the *BANK EMPLOYEES UNION V. REPUBLIC BANK LIMITED* that sexual harassment by an employee of the bank, was within the ‘corridor of dismissible misconduct’. His Honour Mr. Cecil Bernard in giving the opinion of the Industrial Court, “described

¹⁷ Marlene S Charles. Trinidad and Tobago Newsday. Sexual Harassment in the Workplace. Mar 17.2013. Web. May 27.2016. <http://www.newsday.co.tt/businessday/0,174506.html>

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'sexual harassment' as 'an idea which has come into public consciousness' even though the term is 'yet to define a precise "offence"'¹⁸ His Honour Bernard articulated the problem with sexual harassment in terms of a common law duty on employers to provide a safe system of working. He said this went beyond protecting employees from physical harm. He added, 'That obligation may well extend to the provision of a work environment which is free of the threat or application of sexual coercion by one employee towards another'¹⁹.

I ask if sexual harassment of this nature is a dismissible offence then why would a union leader refuse to vacate his post until the matter is resolved in court? Just a month ago the head of a leading workers' trade union who has been charged with one count of rape and four counts of serious indecency committed against a female employee, has in spite of repeated calls refused to relinquish his post as head of that trade union pending the determination of that matter.

But the answer may lie in the fact that sexual harassment is still not viewed with the revulsion which it deserves as to date there has not been any legislative intervention to specifically criminalise sexual harassment in the work place and therefore demolishing one more harness to women's labour rights. **On a regional scale one of our own celebrated sportsmen has alongside being recognised for his keen athleticism has also been condemned for his offensive conduct in his utterances to a female reporter while at work conducting an interview.**

¹⁸ Tracy Robinson. *Gender Equality and Judging in the OECS and the wider Commonwealth Caribbean*. A Report Prepared for United Nations Women and the Judicial Education Institute of the Eastern Caribbean Supreme Court. (2011) Web. May 27. 2016. pg 19.

<http://www.eccourts.org/wp-content/uploads/2013/10/Gender-Equality-and-the-Judiciary-in-the-OECS-Background-Paper-by-Tracy-Robinson.pdf>

¹⁹ Tracy Robinson .

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Sexual harassment continues and is under reported due to societal shame and the failure of men who are in positions of power refusing to simply do what is right. The case of *BIGWU v ACCSYS Limited* which was adjudicated by the Industrial Court of Trinidad and Tobago demonstrates very well the condemnation of inappropriate conduct by the male hierarchy in the work place.

In that case:

“The litigant a female receptionist said that she made complaints to her immediate supervisor at the accounting firm about several acts of sexual harassment by a male senior officer. Her supervisor promised to speak to the (senior officer) but what happened next was ‘subtle work pressures’ was placed on the female receptionist thereafter by (the offending senior officer) and continued unwanted conduct. The female receptionist was eventually called into a meeting with (the offending senior officer), her (immediate) supervisor and the principal of the firm and was dismissed for using obscene language. When she advised the principal in the firm that she had made complaints against the offending senior officer and that this might be the motivation for the complaint against her, the principal of the firm insisted that he could not allow her to make that allegation except in the presence of the (offending senior officer)”²⁰

The Industrial Court was of the view that the nature and circumstances warranted a **hearing without fear of intimidation or duress or management's power**²¹. In addition her dismissal in these circumstances was harsh and oppressive. Furthermore an “employer is required to take into account the degree of seriousness of the conduct and the relative positions of the parties in the organisation in determining the appropriate discipline”²². Thankfully it appears that the Court remains the ultimate vanguard of women's labour rights but in light of the Trinidad and Tobago experience which I have set out there seems to be a lot more to be done by legislators to ensure that women's labour rights are protected and safeguarded.

²⁰ Tracy Robinson pg 19-20

²¹ Tracy Robinson pg 19-20

²² Tracy Robinson .. pg 19-21

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Going Forward and Possible Solutions

In closing I go back to the principal questions:

1. Why in 2016 do we need to discuss policies and reforms to guarantee women's labour rights? Because women's issues are still on the backburner and require champions and advocates until we get it right; and
2. As legislators have we failed and what have we done to better the position of women to come? As legislators our work is not done, and we must do more to improve the situation for those who will come next. We must unite and lift our voices for the common cause and foster true parity and equality where it is needed and by equality, I refer to respectability and responsibility.
3. We must legislate and protect work and women's work and adopt the necessary instruments that will facilitate these objectives.
4. As women, we must form the necessary linkages to create change and pioneer the 'femocratic' movement that facilitates a discourse on issues that affect women and bring real resolution.
5. In the words of Martha Nussbaun, I will argue that international political and economic thought should be feminist attentive and take a tripartite role between policy makers, legislators and women's groups.
6. Finally, women's labour rights are not just for women but it is an issue that knows no gender.

Thank you!