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LIST OF ABBREVIATIONS

BCEA	Basic Conditions of Employment Act (1997)
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CEE	Commission on Employment Equity
CIQLSW	Committee on the Improvement of the Quality of Life and Status of Women
COSATU	Congress of South African Trade Unions
DoFA	Department of Foreign Affairs
ECC	Employment Conditions Commission
EEA	Employment Equity Act (1998)
ILO	International Labour Organisation
LRA	Labour Relations Act (1995)
NEDLAC	National Economic, Development and Labour Council
SADC	Southern African Development Community
SDA	Skills Development Act (1998)
UIF	Unemployment Insurance Fund

1 INTRODUCTION

1.1 Background

On a mixed vegetable farm in Gauteng the majority of the 140 women and 110 men workers are employed on contract. They accept temporary rather than permanent employment because the farmer says they do not need to have identity documents to work on contract. Being 'temporary' means these contract workers are not registered with the Department of Labour, do not contribute to the Unemployment Insurance Fund, and do not get paid annual leave or maternity leave, although they are free to take this leave whenever they wish.

It also means these workers were not able to vote in the 1999 elections, and are excluded from having the most basic say in the laws of the country. Given their length of employment on the farm, most of the workers were probably on the farm at the time of ID applications to register to vote in the elections. So the farmer could have encouraged them to become legal, but probably did not.

According to the farm manager, the average wage on the farm is around R69 per week. This adds up to under R300 per month, which is about a quarter of the University of Port Elizabeth's Supplemented Living Level for August 1998 for a low-income family with five members (R1 190 per month). From what workers said about their pay, the R69 appears to include payment for overtime work. Workers do get free accommodation in two-roomed houses for families or hostels for single women and men. Everyone living on the farm is given three cooked meals a day. However, the accommodation and meals do not take care of families in the former 'homelands' or other countries in southern Africa from where the workers come.

The farm is family owned and managed. The farm manager has a grading system that he and his family worked out. It divides workers into different categories, and has different levels in each category based on skill and experience. This system applies equally to permanent and temporary workers. The farm manager said that women are as likely as men to be on the same level within the general category that includes planters, pickers, waterers, packers, cooks, and crèche minders. This category of worker earns between R51 and R90 per week. The only opportunity women have to earn a bit more (between R84 and R111) is by being a captain of a team. There are only a few captains. The better paid jobs of senior captain, induna, builder, tractor and truck driver, and farm induna are done by men. Weekly rates for these jobs vary from R104 for an inexperienced tractor driver to R519 for the farm induna.

Workers say they work from Mondays to Saturdays. They say the time they knock off depends on when the work is finished, but women work on average 11½ hours and men up to 14 hours a day in the week. Saturday work is half-day. Workers on the farm were unsure what they earn for overtime. Some thought it was R1 per day when two to three hours overtime per weekday are worked. Others said it was R4 or R13 per fortnight.

If these workers earn R51 per week for a maximum 48 hour working week as set out in the Basic Conditions of Employment Act (1997), they earn R1,06 per hour during normal time. In fact, it appears they are paid less than their normal hourly rate for overtime, instead of an extra 50% as the law says!

There is no health care provided for workers, and money is deducted from wages if a worker is off sick. There is a free crèche for children on the farm.

Conditions on the farm are clearly not in line with South African labour laws. Workers did not indicate that they knew that the law says something different. But the farm manager did, because he complained that the new laws threaten to push the cost of labour up by shortening the working day. He is clearly not obeying these laws.

The Commission on Gender Equality (CGE) is a constitutional body established to protect and promote gender equality. In its vision and mission statement the Commission identified as its target constituency people living on the periphery and in particular women living in rural areas and women living on farms.

A gender audit of legislation (Gender Research Project, 1998) commissioned by the CGE, identified pay as an area where “hidden and often systemic discrimination” against women occurs. The audit explains: “The unequal value attached to women’s work means that they receive unequal pay. The law has been unable to deal with this inequality emerging from deeply entrenched views of women and men.” (Gender Research Project, 1998:1)

The CGE commissioned C A S E to examine the issue of equal work for equal pay or work of equal value, with a particular emphasis on women who work in the vegetable farming industry. The project is important as it focuses on the two areas outlined above in which women are subject to serious discrimination. The first relates to equitable pay. The second relates to pay and conditions on commercial farms. The combination of the two issues is a brave and idealistic one. Workers on vegetable farms face many other very basic problems, as the case study in the box at the beginning of the report shows. The project proposes that we should not abandon the prospect of winning for workers who suffer from a range of much more basic problems a victory that few workers in the most ‘sophisticated’ urban workplaces enjoy.

1.2 The concept of pay equity

The title of this project distinguishes between two different concepts – equal pay for equal work and equal pay for work of equal value. Equal pay for equal work means that when a man and a woman are doing exactly the same work they must be paid the same wage. It can be likened to the idea of ‘formal equality’. Equal pay for work of equal value means that when a woman and a man are doing different jobs, but these jobs have the same value, they must be paid at the same rate. In North America, this is called the comparable worth argument. Equal pay for work of equal value can be equated with ‘substantive equality’. Elsewhere it is often referred to as pay equity. The principle behind it is that even though women and men might differ in significant respects – in this case in the jobs they perform – these differences should

not be the basis for unfair treatment or reward. Equal pay for work of equal value includes equal pay for equal work, but is broader. In this report we refer to the broader concept as 'pay equity'.

1.3 Research brief

C A S E's research brief was to include the following in a pay equity study that emphasises the position of women in the vegetable farming industry:

- a broad sweep of existing literature and research, with a specific focus on the two areas of employment in agriculture and pay equity;
- an examination of South Africa's international obligations and international law on pay equity;
- an audit of South African work-related legislation looking at how legislation might promote non-discrimination and identifying legislation that discriminates against women;
- an examination of foreign jurisdictions which have equal remuneration legislation;
- case studies of the vegetable industry based in at least two provinces and including an economic analysis or the comparative values of work done by women and men;
- recommendations with regard to legislative reform to advance pay equity, if necessary; and
- recommendations around the development of an advocacy strategy in this area.

1.4 Methodology

The literature review, examination of South Africa's international obligations and audit of South African legislation was conducted largely as a desk study. However, we did interview a staff member from the Centre for Rural Legal Studies and a Senior Commissioner from the Commission for Conciliation, Mediation and Arbitration. We also spoke to staff in the Department of Labour.

The main field research consisted of three in-depth case studies of vegetable farms. Studies were conducted on three farms in two South African provinces, namely Gauteng and the Northern Province. Gauteng is South Africa's richest province, and Northern Province one of the two poorest. One farm was in a rural area and the other two were in urban areas. They were a garlic farm in the Northern Province, a mushroom farm in Gauteng and a mixed vegetable farm in Gauteng.

In selecting farms C A S E was eager to incorporate as much diversity as possible. We discovered further important differences during the course of our research.

We looked for diversity in the type of vegetable as well as whether the farm was engaged in mono-cropping or mixed crop farming.

We also looked for differences in the type of workers employed. In the Northern Province the workers were mostly women from the surrounding areas, who lived off the farm. However men had an option of sleeping over at the farm. In the mushroom farm the majority of the workers stayed on the farm. The employers tried where possible to provide accommodation for their workers. Workers who were not accommodated at the farm lived in the surrounding areas and travelled to and from

work daily. On the mixed vegetable farm all permanent and contract workers stayed on the farm.

Of the three farms that were selected for the study, the mushroom farm was the biggest in terms of the number of workers employed, followed by the mixed vegetable farm and lastly the garlic farm.

All three farms exported some of their produce. The mushroom farm supplied big retail chains such as Pick & Pay, Woolworths and Checkers. Unlike the other two farms, the mushroom farm was highly mechanised. It was privately owned, but not by a family. The mixed vegetable farm also supplied wholesalers such as Freshmark as well as retail chains such as OK and Shoprite with vegetables. It was family-owned (by a father and his sons), and family-run. The garlic farm was owned by one person whose family had owned the farm for over a century.

1.4.1 Data collection

Data collection comprised of in-depth interviews with farm managers or owners, and separate focus groups with women and men farmworkers. Focus group and in-depth interviews guidelines were designed by C A S E in conjunction with members of the CGE. All discussions and interviews were tape recorded and then transcribed so that in-depth analysis could be done. Focus group transcripts were translated into English before being analysed.

1.4.1.1 In-depth interviews

We conducted one in-depth interview with a farm owner or manager per farm. The in-depth interview was designed to access key information regarding the work done on the farm, basic conditions of work, structures and wage determinants, as well as determining any significant differences between conditions for men and women workers.

1.4.1.2 Focus groups

Focus groups are semi-structured discussions with selected groups to explore how participants feel about particular issues and topics. Focus groups were used to collect qualitative data on how workers viewed conditions on farms and key issues such remuneration, benefits, work functions etc.

A total of six focus group discussions were held on the farms. Two focus groups were conducted on each farm. One was conducted with African male workers and the other with African women workers. The focus groups lasted between one and a half and two hours. The groups were kept as homogenous as possible in terms of variables such as permanent or contract employment. Groups of participants who share similar characteristics are more likely to enjoy free and open discussion about issues.

In these discussions participants were asked a range of questions relating to how women and men workers understood their wages and other benefits that they received. We also discussed ideas as to what would be acceptable or desirable payment and working conditions, as well as what would be acceptable and desirable determinants of wages.

Focus groups were conducted by the same two moderators throughout the study. Moderators were of the same gender as participants and were conversant in the various language spoken by the participants.

The focus group participants on the mixed vegetable farm spoke different languages, such as Sepedi, IsiXhosa and Tsonga. Therefore the groups took more time as compared to groups at other farms. This was due to the fact that moderators had to translate what was being said to other members of the group. (The language differences between workers probably add to the usual problems farmworkers face in trying to empower and organise themselves, and could be a conscious strategy by the farmer to undermine worker unity.) On the other two farms, group participants were able to understand each other's languages and therefore moderators did not have to translate the discussions.

1.4.2 Selection

In selecting farms we drew on C A S E contacts as well as a general snowballing techniques to ensure adequate access to farms. It was not easy to gain access to the farms as the study dealt with what are perceived as sensitive issues. To get farmers to agree to be part of the study they were amongst other things guaranteed anonymity and confidentiality.

Selection techniques for the focus groups varied. At the garlic farm, participants were selected randomly by C A S E moderators. Female workers were all assembled in a room and moderators selected ten participants from the group. The same method of selection applied for men.

On the mushroom farm, participants were selected by the human resource manager. Of those selected, several women were not involved in direct productive work, whereas all the men were. The women included clerical, cleaning and clerical staff. The manager said that he tried to select people from different departments to paint a comprehensive picture of the situation on the farm and the type of job functions involved.

At the mixed vegetable farm, participants were randomly selected by the farmer. The farmer had a list of all workers and selected participants from the list. Most of the participants were from various areas such as Transkei and Pietersburg and therefore seemed not to be all that familiar with each other, and did not speak the same languages. Additionally, participants in both groups were reticent and reserved.

1.5 Limitations

Any methodology has its inherent limitations. We tried as much as possible to minimise the limitations. Generally, case studies and focus groups are not representative. While the results are indicative, the views and opinions of the group cannot be assumed to represent the views and opinions of, and issues confronting, a larger target group. By looking at three diverse case studies we hoped to pick up as wide a range of issues and views as possible.

A larger number of case studies in a number of different provinces would have given us a more comprehensive picture of how gender discrimination manifests itself within

the vegetable industry. Further, the focus groups did not capture the opinions of some of the more vulnerable workers such as casual workers.

A further difficulty with this type of research, which is not directly linked to a programme of government, the CGE or other organisations, is that the participants get no obvious benefit from the results. It was interesting that in almost all the focus groups participants wanted to know what moderators were going to do with the information and when they would come again for a follow-up study. As one participant said, “We are hoping that you are not going to disappear. We ask God to help you, with the hope that you will help us. You can see that we are suffering”.

1.6 Structure of the report

The report is structured around the areas of research in the terms of reference. Section two provides a broad sweep of existing literature and research, with a specific focus on the two areas of employment in agriculture and pay equity. Information on foreign jurisdictions is discussed as part of the review of international pay equity literature. Section three examines South Africa’s international obligations and international law on pay equity. Section four audits South African legislation by looking at how legislation might promote non-discrimination or discriminate against women. Section five details the findings from the three case studies. Section six outlines recommendations for the development of an advocacy strategy.

2 LITERATURE REVIEW

This section provides a broad sweep of literature and research, focusing on the two areas of employment in agriculture in South Africa and pay equity.

In looking at employment in agriculture, we draw on data for the sector as a whole, as well as information on vegetable farming specifically where this is available. We also review local research on issues relating to pay equity in agriculture.

The sub-section on pay equity reviews largely international literature on the sources of pay discrimination women face, and measures that can be taken to achieve pay equity. These measures include legislation of rights and quotas, collective bargaining, fixing minimum wages and the advocacy strategy of consumer pressure.

2.1 Employment in agriculture

2.1.1 *Agriculture in the economy*

Agriculture is an important sector of the South African economy. According to Moola (1999:11), the gross value of output of the agricultural sector amounted to more than R26 billion in 1993/4, and rose to R39 billion in 1995. Agricultural products made up a 10,9% share of South Africa's exports in 1994, with a value of almost R10 billion.

Moola refers to the planting, harvesting and sale of primary commodities together with the production of the wide range of inputs required by farms (such as seeds, fertilizer, irrigation systems, crates, transport) as the 'manufacturing-agricultural complex'. He states that the contribution of the complex is more than twice as big as the contribution of agriculture alone to GDP. Further, he claims that the contribution is larger and more stable than that of other manufacturing activities. He estimates that, next to construction, agriculture creates the largest number of job opportunities for every additional unit of capital invested. (Moola, 1999:12)

2.1.2 *Vegetable farming*

Greenberg says there has been a long-term increase in the amount of vegetables produced. There was a 37,4% increase in production between 1975 and 1985, and a further 13,5% increase between 1985 and 1994. (Greenberg, 1996: 200) Moola's figures show that vegetables (including potatoes, and excluding maize and wheat) accounted for just over 7% of the gross value of agricultural output in 1995. (Moola, 1999:11) Four vegetables account for 76,8% of the total value of vegetable production in 1994/5 (potatoes 42,5%, tomatoes 14,2, green mielies and sweetcorn 12,7%, and onions 7,4%). (Greenberg, 1996:201)

The vegetable sector does not, however, occupy much land compared to other crops and, in particular, to pastoral farming. There is also a high degree of crop mixing. Greenberg (1996) estimates that approximately 120 000 ha were under vegetables by 1995. Potatoes are the most significant, occupying 45,9% of the total hectares of land under vegetables. Approximately 90% of potato crops are mixed, and this is likely to be the same for other vegetables. The main mixes are maize, wheat, cattle and sheep, as well as other vegetables. (Greenberg, 1996) The mixing of crops has important implications for farmworkers. Sunde and Kleinbooi (1999:12) indicate that the diversification of crops can lead to a more stable demand for labour throughout

the year. In their survey of 345 women farmworkers and 112 farmers or farm managers, several employers gave this as the reason they were able to offer women on their farms more permanent employment.

Vegetable markets appear to be fairly volatile. Greenberg (1996:201) explains that prices received by producers and paid by consumers vary greatly depending on seasonal production, climate, perishability and reaction of producers to prices realised in preceding periods.

Vegetables are sold on the open market, directly to buyers at local or national fresh produce markets, or directly to supermarkets and greengrocers. According to Greenberg (1996:202), costs of marketing are high – 55% to 62% of the value of intermediate costs have to be added to overall costs to pay for marketing. There is some processing of vegetables, for example canning, frozen and dehydrated vegetables, pureed baby food, and potato crisps.

Of total vegetable production, 99% is consumed on the local market. (Greenberg, 1996:202) Very little is exported. Import tariffs are in place for most vegetables. These vary between 5% and 15%. Greenberg (1996:202) explains that imports have little impact because of the competitiveness and quality of the local product. South Africa imports less than 2 500 tons a year since 1990. Exports were around 32 000 tons in 1995, but varied between 19 000 and 35 000 per year since 1990. (Greenberg, 1996:202)

2.1.3 Employment in agriculture

There are a number of difficulties in gaining accurate figures for employment in agriculture. Greenberg (1996:2) notes that data on seasonal workers “proved very hard to come by.” He also explains that there is likely to be “significant under-estimation or under-reporting” in respect of casual and seasonal workers. (Greenberg, 1996:5) For example surveys only ask about the numbers of those currently working and might be conducted at a time when the seasonal and casual workers are not working. A further difficulty is that, even when employment questions are asked about younger people – which is not always the case – employment of children is unlikely to be reported. (Greenberg, 1996:5) Statistics SA is currently analysing the results of the survey of activities of young people, undertaken on behalf of the Department of Labour. This should yield better figures for 1998.

According to the 1992 Agricultural Survey, there were 1 068 831 farmworkers in South Africa that year. (In Greenberg, 1996: 16-17) Of the total, 825 534 workers were African (77,2%), and 208 995 coloured (19,6%). There has been a long-term decline in the number of farmworkers in South Africa, with cyclical peaks every eight to twelve years that are lower than previous peaks each time. Between 1985 and 1992, there was a 18,3% decline in the number of African farmworkers. Over the same period, the number of coloured farmworkers decreased by only 1,4%.

The 1992 Agricultural Survey indicates that the percentage of casual/seasonal workers has shown a long-term decline. It dropped below 40% of the entire farm workforce for the first time in 1990. The percentage of African casual/seasonal workers dropped from 45,7% in 1975 to 37,1% in 1992. The percentage of coloured

casual/seasonal workers dropped from 51,9% to 41,8% over the same period. (In Greenberg, 1996:16-17)

The figures above relate to the period 1996 and before. Since 1996 there has been heated debate about the extent of a further fall-off in agricultural employment. There are some who claim that thousands have lost jobs as a result of new labour and tenure legislation, while others feel that the phenomenon has been exaggerated. There are also fears that the Minister of Labour's announcement that a minimum wage would be imposed on agriculture could lead to further drops in employment.

2.1.4 *Employment on vegetable farms*

Unifruco estimates that there were around 40 000 workers on approximately 7 100 vegetable farms in 1995. Potato production, with 1 961 farmers in 1995, accounts for 27% of vegetable producers. The National Potato Co-operative estimates that there are around 30 workers per potato farm, of whom about half are seasonal. (Greenberg, 1996:199) A gender breakdown of workers is not provided.

Greenberg (1996:199) notes that there is widespread use of migrant labour, mainly from Zimbabwe and Mozambique, in the Northern Province and Mpumalanga, at least on potato farms. Of our three case studies, migrant labour from southern Africa was used on the mixed vegetable farm only, where conditions were particularly poor.

2.1.5 *Women's access to paid employment on farms*

In 1991 72,9% of all farmworkers were men. There were similar percentages for African and coloured workers. (Greenberg, 1996:16-17)

Permanent work is, by definition, more secure than casual or seasonal work. As noted above, the extent of seasonal employment opportunities has probably fallen in recent years. Kritzinger and Vorster (1998:335) take the point about relative insecurity further when they explain the insecure nature of women's employment on fruit farms. They argue that gender is usually the criterion for differentiating between permanent and temporary workers, with women having temporary employment status. Salgado (1994:39) says it has been common practice for commercial farmers to employ a male permanent worker only on condition that members of his family (his wife or female partner and often also his children) will be available to work on the farm when needed.

Kritzinger and Vorster (1998) argue that the position of rural women not living on farms is often far worse. For example, they describe the position of African women, living in rural towns in the Western Cape and often working for only three months per year as seasonal workers on farms. These women are often single mothers with no financial support from the fathers of their children. They live in extremely poor conditions without the 'benefits' that women living on farms have, like access to free housing and food rations for example. (Kritzinger and Vorster, 1998:345) In the Western Cape most women workers living off farms are African and women living on farms are likely to be coloured, so these findings cannot necessarily be generalised to the rest of the country. Barrientos et al (forthcoming:9) record that women seasonal workers living off farms said that having independent housing was "an advantage in that they were not tied to their employer", even though housing conditions in squatter camps and townships were also poor.

2.1.6 Labour process

Greenberg (1999: 200) says there has been increasing mechanisation and use of irrigation in agriculture. Harvesting, however, remains labour intensive.

Salgado (1994) draws on the work of De Klerk (1984) and Budlender (1984) in a discussion of the differing impact of mechanisation on women farmworkers. Her discussion is not conclusive, but she argues that the impact differed greatly depending on the sector, the extent to which a particular farm was mechanised and the type of labour, for example permanent or seasonal. She does, however, highlight a general shift in the composition of the seasonal labour force from off-farm seasonal workers towards using more women living on farms in the household of a male permanent worker. (Salgado, 1994:12)

Figures provided in Barrientos et al (forthcoming:5), indicate that labour costs comprise nearly 60% of gross costs for deciduous fruit growers. In two of the case studies reported here, labour accounted for approximately 50% of costs on the farms (one of which was more capital intensive, but also paid higher wages). On the third farm, where pay and other working conditions were particularly poor, labour costs comprised only just over 30% of the total.

In all of our case studies the majority of women were involved in labour-intensive jobs like picking. On two of the three farms, women doing this kind of work were remunerated on a piece-work basis. The same applied to a case study of the Lievland Wine Estate (Rossouw, 1998)

2.1.7 Division of labour

While studies report that most farms have a clear division of labour between women and men, there is little consistency across sectors and even within sectors as to exactly how jobs are divided. (Sunde and Kleinbooi, 1999, and Barrientos, forthcoming)

It is possible, however, for some generalisations to be made. For example Barrientos et al (forthcoming:5) say that women workers are seen to be more important in the value-added activities of fruit farming such as packing and pruning, as “many growers believe women have ‘nimble fingers’ and work productively”. Kritzinger and Vorster (1998:336) say that the division of labour on fruit farms means that mostly women and men do comparable work. However, physically demanding tasks are done exclusively by men. Also, better paid jobs like irrigation, tractor driving and supervision are dominated by men.

Generalisations like these are reflected in the case studies presented here. Driving was raised time and again as a better paid job, done by only a few workers, among whom women don't feature at all.

It is important to note that more research in this area has been conducted in the Western Cape than elsewhere. The research has been conducted primarily on fruit and wine farms and, because this farming is largely located in the Western Cape, the research talks more about coloured than African workers. Where it does involve African workers, they are more likely to be men as historically the area used male migrant labour from ‘homeland’ areas for agriculture.

2.1.8 Attaching value to work

While some farms have some sort of system, there is no single grading system in the agricultural sector. (In fact, there is no single grading system in industry either, although grading is almost certainly more common in industry than in agriculture.) Sunde and Kleinbooi (1999:19) state that in their sample most farms do not have clear job grading systems and most women were unsure of their precise job title. They found that only the larger farms with more formal management systems and structures seemed to have job grading systems. (Sunde and Kleinbooi, 1999:22) This was reflected in our case studies.

In the absence of grading systems, pay is the most obvious way of assessing the value attached to work. The 1994 October Household Survey shows that coloured male farmworkers received wages on average of R675 per month, whereas the average wage for a coloured women farmworkers was R481. Wages for African farmworkers were considerably lower. On average, African men received R371, whereas African women earned only R340 per month. (Greenberg, 1996:18-19)

Barrientos et al (forthcoming:9) note that, in their study, wages between farms and on a farm varied according to category of worker, forms of payment (weekly pay or piece rate), and hours worked. Hours of work varied according to time of year, and on most farms women worked fewer hours than men. The reason for women working shorter hours given by most farmers and many workers in their study was that women have responsibility for domestic work and childcare.

A FRRP survey of 196 farms illustrates the importance of looking at the whole wage when comparing pay received by women and men workers. The 1996 survey (quoted in a draft report prepared for the Department of Labour) found 186 farms with permanent women workers who earn an average of R229.38. The average for men was R317.71. This was 38,5% more than women. Men received the equivalent of R78.96 in kind and R35.97 worth of other rations such as housing and clothing. Women received only R12.29 worth of produce and R7.17 in rations. So the total for women was R248.84, and the total for men R432.64, or 73% more than for women.

In the CRLS survey, 57% of women workers said they did not received equal pay to men (whether for equal work or for work of equal value is not clear). Only 39% of employers admitted to this, although it is still a sizeable number of the 112 farmers interviewed.

In the CRLS survey, the most common reason given by farmers for the actual or likely future increase in the percentage of women workers on their farms was that it was more economically viable for them to get two workers out of one house. (Sunde and Kleinbooi, 1999:16) While the benefit to the employer was clear, the benefit to the woman was not. The majority of women farmworkers (52%) said their housing on the farm was linked to their husband's contract, so it does not form part of their independent income. (Sunde and Kleinbooi, 1999:39)

Barrientos et al (forthcoming:9) explain that the status of women workers and migrant labour as temporary or seasonal workers is often used as a justification for not providing benefits such as paid sick leave and annual leave, maternity leave, or making Unemployment Insurance Fund deductions. They even "found evidence that

some women in this category do not get paid for days missed because of rainy weather, even though permanent workers were paid for the same days.” (Barrientos et al, forthcoming:9)

Salgado (1994:5) argues that women’s direct wage income understates the work that they do within commercial agriculture, and that a method is needed to calculate the real value of women’s contribution to household income. She terms this “women’s indirect contribution to household income” and develops a model for calculating it. The calculation includes the following ratios:

- proportion of men’s cash income earned because of the cheap labour that his female partner provides;
- proportion of the value of rations paid to men given because of the presence of his female partner in the household;
- proportion of the value of housing tied to the man provided because of his female partner’s presence.

Salgado’s model provides a useful conceptual tool but at this stage cannot be utilised properly as the necessary data is not available. She explains, for example, that there is no information on the degree to which farmers hire men due to the cheap labour their female partners can provide. (Salgado, 1994:49)

2.1.9 Worker organisation

Kritzinger and Vorster (1998:341) explain some of the difficulties farmworkers face in attempting to organise: “Farm owners have traditionally been reluctant and often unwilling to provide access, especially to NGOs and trade organizers, on farm property.” The hostility of farmers to outsiders was reflected in the report by Sunde and Kleinbooi (1999:4) that approximately one third of the farmers they contacted “declined the request to be interviewed.” In our own research we experienced great difficulties in finding farms where the owners would agree to be one of the case studies. A Senior Commissioner for the Commission for Conciliation, Mediation and Arbitration, Lionel October, said that one of the most obvious difficulties facing workers on farms is the weakness of organisation. (Interview) He argued that this creates difficulties for workers in dealing with basic issues like unfair dismissals, let alone wage negotiations and pay equity issues.

Even where organisation exists, it seems that women might be less likely than men to belong. Thus Kritzinger and Vorster (1998:336) say that women are less likely to be members of committees in worker organisations. Only 11,8% of the women in the CRLS survey sample said they were members of a union, and more than one third of the women had never heard of a trade union. (Sunde and Kleinbooi, 1999:48)

Kritzinger and Vorster (1998) describe the initiatives of two organisations for women living on farms. The Cape Women’s Forum, attempts to organise across racial and class boundaries. It was founded by the marketing agency Unifruco and aims to involve farmers’ wives and women farm workers. The Women on Farms Project, is an organisation that focuses on empowering women farm workers only. The organisation arose out of the ANC Policy Conference on farm workers held in 1992. They point out that women not living on farms, and often worse off, are not serviced by either organisation.

2.2 Pay equity

Elson (1999:611) describes labour markets as “gendered institutions operating at the intersection of the productive and reproductive economies”. Our ideas about value are determined by society. In general, production is valued more than reproduction or provision of services. Working with machines is valued more than working with people.

Women are responsible for much more unpaid work in the home than men. Budlender and Sharp (1998:51-55) argue that one of the main activities of households (and the women within them) is to produce goods and services which can be thought of as making up the care economy. Elson (1999:612) says that labour markets disadvantage women by not recognising the contributions of this economy: “Labor market institutions are constructed in ways that represent only the *costs* to employers of the time that employees spend on unpaid caring for others. The *benefits* are not represented.” She uses the example of employees’ parenting duties being represented as liabilities and not assets to their employers.

When women do paid work, they tend to be in reproductive and service jobs more often than men. Women tend to do jobs that resemble the work they do in the home – seeing to the needs of other people, organising, sewing, and cleaning. Hyman (1994:102) points out that the skills needed for these jobs are under-valued in part “because they are seen as a natural to women, being extensions of their work in the home and of their traditional caring roles.”

Elson (1999:612) argues that “The formal and informal rules which structure the operation of labor markets ... reflect existing problems of gender domination and subordination, and also the tensions, contradictions and potential for change which is characteristic of any pattern of gender relations.” In looking at gender affirmative action, Budlender (1992:2) distinguishes between two levels of discrimination. Gender bias in access to employment, selection, promotion, training and education limits the access of women to privileged positions. Gender subordination relates to more fundamental issues of what value is attached to work and how work is evaluated.

This distinction is important if pay equity is not to be seen only as a middle-class women’s issue that only benefits those with a high level of education. Figart and Lapidus’ (1995:72) quantitative analysis of large sample surveys show that pay equity can reduce the percentage of women earning poverty-level wages if correctly implemented.

Based on analysis of USA censi of 1970, 1980 and 1990, Blau et al (1998:53) note that in 1970, 71% of men and 55% of women worked in jobs where individuals of the same sex accounted for more than 80% of workers. By 1990 this was true of only two fifths of men and a third of women. They argue that the trends are a result of shifts in the sex composition of occupations as well as shifts in the occupation mix of the economy as well as increasing labour participation of women. Their analysis shows that women were more are successful in entering previous male white-collar and service occupations than blue-collar. The biggest change has occurred in executive and managerial occupations. The analysis underestimates sex segregation as census categories may lump occupations together, some of which are male-

dominated and some female-dominated. Also, one can have sex segregation in particular firms even if not in an industry as a whole. Further, women are usually at lower levels of the hierarchy within occupations.

The box below sets out some of the forms that gender domination and subordination take in the labour market, particularly in relation to pay equity issues. The excerpts show the range of issues that pay equity advocacy and legislation need to address.

Women and men work in different sectors

“Men and women tend to work in different sectors of the economy. Within manufacturing women predominate in industries such as clothing and textiles, while men predominate in heavy engineering. Within the formal sector more widely defined, more women are found in the service industries – domestic work, shops, banks, hospitals, etc – while men are found in production – in the factories and mines. And while men predominate in the formal sector as a whole, women outnumber men in the informal sector. All these divisions have at least one other common characteristic – the areas where men predominate are those where average pay is higher.” (Budlender, 1992:14)

Women and men work in different jobs

“[W]ithin each sector and industry there are further gendered divisions. Men are found predominantly in the more production-oriented jobs, while women predominate in the reproductive service functions. Men work on the shopfloor while women are cleaners, tea-makers and secretaries. Men are the doctors while women are the nurses. Again these dichotomies are mirrored by pay differentials which disadvantage women.” (Budlender, 1992:14)

Lack of recognition of skills

“Firstly, women cannot choose skilled occupations because they cannot possess skills in the sense these are ideologically understood. Secondly, occupations practised by women cannot be skilled *because* they are practised by women.” (Chrisholm, 1987:36)

Barriers to movement

“Some of these barriers [that face women in employment] have been metaphorically called the ‘glass ceiling’ (meaning vertical sex segregation in organisations), ‘glass walls’ (referring to occupational segregation), and ‘sticky floors’ (no career movement beyond the initial entry job).” (Still, 1997:4)

2.2.1 Job evaluation and grading

Any attempt to achieve pay equity needs to look at how jobs are ranked and who decides what different work is worth.

Job evaluation systems are meant to measure the value or worth of jobs. The International Labour Organisation defines job evaluation as a technique aimed at “establishing pay structures that are fair and equitable in the sense of ensuring equal pay for jobs demanding what are considered to be broadly similar sacrifices and of

rewarding appropriately greater efforts and hardships involved in some jobs as compared with others." (In Budlender, 1994:3)

Budlender (1992:18) argues that job evaluation systems can be of benefit to workers. They can cut down management prerogative in deciding an individual's pay, avoid the victimisation of individuals and make the method of rating explicit. Interestingly, Budlender (1992:19) notes that UK research suggests that workplaces with more women are less likely to have job evaluation schemes.

But job evaluation systems are themselves biased. Some people argue that job evaluation is an objective and 'scientific' technique. However, the literature on the subject is "consistent in its emphasis on the subjective judgements that form part of the evaluation process." (In Budlender, 1994:4) The four factors usually considered in job evaluation are skill, effort, responsibility and working conditions. But which of these is included, how they are understood, and how they are weighted are affected both by the subjective judgements of the people who devise the system, and the subjective judgements of those who implement.

Society is one of the strongest forces that shapes subjective judgements. Baroness Wootton said that job evaluation "respects in practice the boundaries set by convention to which in theory it might offer serious challenges" (Quoted in Budlender, 1992: 21). So a sexist society will result in sexist job evaluations. Unless otherwise constructed, comparable worth "simply applies to women's jobs the same value and criteria that have been devised to rate traditionally male jobs" (Evans & Nelson, 1989: 170).

Treiman, one of the experts in the field of job evaluation, shows how the choice of "operational indicators" is biased towards male-dominated jobs:

"effort is usually measured by strength requirements rather than fatigue levels, with the consequence that predominantly male blue-collar jobs will almost invariably score higher on the effort factor than will predominantly female blue-collar jobs, even if they are equally fatiguing for the average worker. In the case studies presented here this was reflected in discussion about the 'difficulty' of work done by women who walked long distance and spent a lot of time bending over to pick vegetables, compared to the work done by men lifting heavy objects. As another example, manual skill factors stress ability to handle tools rather than manual dexterity, which has the effect of downgrading fine assembly work, done largely by women. In office and executive plans, interpersonal skill factors stress negotiating rather than counselling or conciliating roles. Responsibility is defined in terms of supervising, or budgetary control, rather than in terms of organising." (Burton, 1988: 5)

The weights given to the different factors "are calculated so as to give final scores which match the status quo" (Budlender, 1992: 22).

Once the system of job evaluation is chosen, the personal value system has especial impact at two points - when the job description is drawn up and then when that description is given value. In practice, women's job descriptions are often given shorter and less forceful descriptions, which do not show the complexity of the job. In Ontario, it has been argued that supervisors should not review the job evaluation

questionnaires of their subordinates as they are less likely to want to acknowledge the range of work done and skill exercised by those below them. (Budlender, 1994:4)

2.2.2 Principles of non-discrimination in job evaluation

Job evaluation is complicated by the issue of what is included in the definition of pay that is measured. The Australian Equal Pay Handbook (Jost, 1998) uses case law and case study examples to flag a range of areas where discrimination issues arise. These relate to discretionary payments, paying allowances, using performance pay systems, offering superannuation benefits, managing hours of work and calculating market value. Jost (1998:11) argues that undervaluation of work may account for 25% of the pay gap. She says it is important to limit discretionary pay as differences in payments made at the discretion of the employer could constitute 6% of the pay gap.

Jost (1998:38) outlines a number of principles that can be applied to ensure that a job evaluation system does not discriminate against women. These principles are summarised in the box below.

Job evaluation must:

- use criteria that reasonably reflect the range of skills of the entire workforce;
- make explicit the types and levels of all skills required, including language, literacy, self-management, and interpersonal skills;
- recognise demands of specialist technical and provisional jobs whether or not these involve supervision of people or management of significant budgets or other material resources;
- recognise co-ordination as well as supervision as a skill and responsibility;
- recognise communication to inform, coach or support as well as to persuade or negotiate;
- recognise skills gained through work and life experience as well as formal training;
- avoid language that is vague, ambiguous or subjective in criteria;
- provide for objective means of determining skills (for example competency based assessment) as opposed to reliance on time served or 'reputation';
- accurately and completely describe jobs;
- present a coherent hierarchy where classification and levels are linked with pay, and differences correspond to real and identifiable differences in skills, requirements and responsibilities; and
- set a proportional and non-discriminatory relationship between job value and reward.

Job evaluation must not:

- value skills and responsibilities more likely to be found in male-dominated jobs more highly than those found in female dominated jobs if this is not reasonable according to objective evidence;
- be arranged in such a way that skills and demands typical of women's jobs are absent from high-scoring criteria and are clustered under low-scoring criteria;
- fail to acknowledge high levels of responsibility in low-paid typically female jobs;
- double-count the same job characteristics (for example supervision);
- measure responsibility solely in terms of degree of supervision; and
- artificially maintain existing relativities when these are not reasonable according to objective evidence. (Jost, 1998:38)

In the United Kingdom workers can challenge a job evaluation system before a Tribunal. Bob Hepple, a leading UK economist, says this is a problem because it means that you can only bring an independent expert after the company has already implemented the system. (In Budlender, 1994:8) Workers and unions must have the right to bring in their own experts when the system is first being discussed and implemented.

Complaints-driven systems are, however, a good fall back and protection for unorganised workers. But Budlender (1994) argues that they must be user-friendly. The Ontario government has funded a pay equity legal clinic to provide assistance and representation for non-unionised women because fighting discrimination in courts is so “technical, complex, protracted and expensive”. (In Budlender, 1994:8)

2.2.3 Pay equity legislation

Most of the legislation in Western Europe appears to refer only to equal pay for equal work, and does not cover equal pay for work of equal value. Breugel and Humphries (1998) conclude from the experience of Western Europe that formal equality is insufficient to overcome problems of gender domination and subordination. They say that legislation providing only for equality of opportunity is insufficient to change the position of women in an economy because this is governed more by the way in which pay is determined, and the social security and welfare system.

Equal pay for work of equal value has been legislated in a number of countries. This has happened especially for government employment. So, for example, by August 1987, 20 USA states and 167 local governments in the USA had comparable worth legislation and another 26 states were debating such legislation.

Budlender (1992:22) points out that it is important for the state, as an employer, to set an example by laying down requirements for state and parastatal employment. She points to the Canadian public service as an example. In that country an important part of the evaluation of a manager is the extent to which she or he promoted the development of women and minority groups.

The Canadian state of Ontario, has probably the most advanced system in the world. Their laws apply to both government and private employment. Ontario has a Pay Equity Commission, which is responsible for conciliation and mediation, as well as education, information and research. A Pay Equity Hearings Tribunal hears unresolved disputes. (Hyman, 1994:128)

The Australian Workplace Relations Act of 1996 also covers government and private sector employers. It provides for equal remuneration to men and women workers performing work of equal value. It also provides for pay equity in industrial awards, and for certified agreements and Australian Workplace Agreements to be free from discrimination on the grounds of sex. (Jost, 1998:8) The specific pay equity provisions were considered necessary despite the existence of the Sex Discrimination Act of 1984, which prohibits direct and indirect discrimination in the workplace more broadly. The Sex Discrimination Act applies to all private sector organisations including small business, commonwealth (national) government departments, agencies and business enterprises, NGOs, educational institutions and

voluntary bodies. It does not apply to state (provincial) government departments. (Jost, 1998:9)

A limitation of this type of legislation is that it does not usually allow for comparisons across industries. Or, if it allows for comparisons, it is not always easy to find comparable jobs in other industries. Another limitation is that it does not tackle how jobs are graded in the first place. It only corrects for different wages within a given grade. In the case of France, Laufer (1998) explains that the introduction of pay equity into law in 1972 was ineffective because it did not define what work of equal value meant. This “left untouched many practices which gave rise to gendered pay differences as well as the existing hierarchy between traditionally men’s and traditionally women’s jobs.” (Laufer, 1998:56)

2.2.4 Legislating employment equity quotas

Some countries have pro-active measures that require the public sector and private employers to provide annual reports on their efforts to eliminate race, gender and other types of discrimination. Budlender (1992:21) argues that for these reports to be useful, they must include a breakdown of employment by grade and wage, together with figures on the characteristics of workers hired, fired and retrenched. This is required because a workplace where 50% of the workers are women is not gender-neutral if all these women are at the bottom end of the pay scale.

Monitoring can be instituted through collective bargaining, legislation or both. Programmes are most effective if “result-oriented”. (Oliver, 1991:16) The Ontario legislation requires the public sector and all private employers with more than 10 workers to produce an annual ‘pay equity plan’ with goals and timetables, and explanations as to why the previous goals have or have not been adhered to. In the United States employers are required to engage in ‘underutilization analyses’ which measure if and to what extent the proportion of workers from various groups in their workforce differs from that of the pool of qualified workers. South Africa’s Employment Equity Act (1998) provides for reporting and monitoring along similar lines.

These regulations are most effective if all figures and reports are easily available for public scrutiny. This has been found to be “(o)ne of the most effective mechanisms” in enforcing Canadian legislation.” (Oliver, 1991:8)

Budlender (1994:9) argues that the state can also introduce positive measures to encourage companies to adhere to employment equity plans. She uses the example of government contracts, which could be restricted to companies that comply with minimum guidelines with respect to their race and gender profiles, and race and gender wage distributions. A further example would be the restriction of access to state export and other incentives (such as the Duty Credit Certificates used to encourage the export of clothing) to employers who are implementing employment equity plans effectively.

2.2.5 Collective bargaining and the role of unions

Budlender (1992:21) notes that trade unions are “among those with the most potential for influencing and enforcing gender practices in the workplace, whether

positive or negative.” She cites evidence from South Africa and other countries that unions have prevented women from entering certain jobs, or even certain industries.

Budlender (1992) says that since the 1980s many South African unions have, at least at a policy level, taken up the issue of gender discrimination. O’Reagan and Thompson C (1993:31) report from their survey of 14 South African unions that, “Encouragingly, a clear majority of unions reported that the process of collective bargaining had contributed to improving the position of women in the workplace.”

O’Reagan and Thompson B (1993:13) suggest that unions are least likely to achieve women’s demands and have strong women leadership where women make up less than 50% of the union membership, but their membership is “nevertheless significant enough to pose a threat to the interests of male members, and to have significant financial implications for management.” Union negotiating teams are themselves not always representative of women workers. Firstly, in most unions women are not represented in negotiating teams in proportion to their union membership. Secondly, the negotiating team or even the union, might not include sufficient numbers of certain groups of workers. Clerical workers and part-time or casual workers, in particular, are often not sufficiently represented. (Budlender, 1994:9)

Budlender (1994:9) argues that bargaining over pay equity must be separate from the ordinary wage bargaining. Bigger increases in wages for women (or black workers) must not be bargained off by smaller increases for men (or black workers). The money to rectify the discrimination which women and black workers are suffering must be an extra budget, added to the ordinary annual increments. Systems of percentage-based general increases must be very carefully considered as they can exacerbate existing pay differentials.

It is also important how the standard for women’s wages is chosen. The standard must be the male wage, not the average of all wages. Otherwise the discriminatory women’s wages are included in the calculation.

Unions are limited by the scope of collective bargaining being restricted to the ‘bargaining unit’ which usually includes workers in the lowest grades. Unions have tackled this problem in two ways. Firstly, there has been an attempt to recruit ‘white-collar’ workers. Secondly, labour has taken up the issue of the “wage gap” between management and ordinary workers.

Hyman (1994:127) points out that the heavily centralised nature of collective bargaining arrangements in Australia seems to assist in the implementation of employment equity across firms in industries. The centralisation of collective bargaining at industry level is encouraged by South Africa’s Labour Relations Act (1995).

2.2.6 Technical complexity

A limitation of pay equity legislation is that the implementation of the policy can become very technocratic, bureaucratic and statistical. It can be difficult for workers to understand what is being done. Unless simple methods of measuring, monitoring and reporting are found, workers will not be able to understand and control this process. The policy adviser in the Ontario Ministry of Labour says one must beware

of “complex quantitative classification systems”. When they developed such a system it became “a full-employment scheme for management consultants and lawyers”. (In Budlender, 1994:7)

Evans and Nelson (1989:169) note that “when comparable worth efforts become driven primarily by technocratic concerns, they can change collective bargaining practices dramatically by reducing the scope of what can be bargained.” Unions and management must not rely on the numbers and formulae of experts against the ‘gut feel’, knowledge and experience of workers. On the other hand, ‘gut feel’ should be examined for its own gender bias. This was borne out by the sexist views of some women farm workers in our case studies. For example, a number of women undervalued their own work because they did not use the mechanical skills that men needed to do their work.

Lapidus and Figart (1998:21) argue that achieving pay equity at workplace level need not be a complex exercise:

“In the 1980s comparable worth reforms were characterized by time-consuming and relatively expensive job evaluation projects performed by management consultants. Private sector employers have resisted this approach to overhauling their classification system to eliminate bias. More ad hoc approaches, backed by appropriate legislation, could empower private-sector workers and their organisational representatives to document inequities and bring about change. Realignment job hierarchies need not involve job evaluation of the whole workforce.”

Figart (personal communication) described two ways in which this could be done. One method would be to list all the job categories in an organisation by percentage women workers and wage, and see if there seems to be a relationship. If women-dominated jobs are paid less than men-dominated jobs, and interviews with employees/managers and review of job descriptions suggests that some higher-paid male jobs are equivalent to lower-paid female jobs, then a ‘low pay campaign’ could be run to raise the pay in women-dominated jobs. A more sophisticated approach would be to run wage regressions and ascertain the relationship between the percentage women and/or percentage race group and wages. One would then try to fix the problem through negotiation.

If unions or the CGE take up pay equity issues, they will need to be preceded by information and education programmes so that both women and men workers can understand the issues. These programmes will need to continue through the implementation phase so workers can understand what the remedies are meant to do, and assess for themselves whether they achieve their objectives.

2.2.7 Consumer pressure

Above we have mainly described legislative mechanisms for achieving pay equity. There are, however, advocacy methods that can be used in this area. Consumer pressure is one such method that can be effective when workers are involved in the production of consumer goods such as agricultural commodities.

Barrientos et al (forthcoming) describe the UK Ethical Trading Initiative (ETI) to which most of the main UK supermarkets belong. The ETI has a Base Code which covers a

range of issues such as the free choice of employment, freedom of association and the right to collective bargaining, safe and hygienic working conditions, no child labour, payment of a living wage, no excessive working hours, no discrimination, provision of regular employment and no harsh treatment.

The idea of retail codes of conduct is not new to South Africa. In 1995/96, the Southern African Clothing and Textile Workers' Union campaigned for retailers in the industry to sign a code of conduct that committed them to stemming the tide of illegal imports of clothing into the country.

In addition, local and international consumer boycotts were familiar forms of protest under apartheid. Successful boycotts included the international boycott of South African wines and fruit and the local Fattis and Monis and Wilsons Rowntree boycotts.

2.2.8 Impact of pay equity

As with all attempts to alter the labour market – and particularly to address pay issues – there are questions as to who will bear the costs and who the benefits. Feminist economists in the USA have done some interesting quantitative work on this issue.

Blau et al (1998:54) note that previous research shows that in the USA “reductions in occupational segregation had a relatively modest effect on trends in the gender gap [in pay] over the 1970s and 1980s.” They argue, however, that it is still important to overcome occupational segregation as “the negative effects of occupational segregation are not limited to the gender wage gap. Occupational segregation may adversely affect the economic status of women by reinforcing exaggerated notions of gender capabilities, preferences, and social and economic roles.”

Figart and Lapidus (1995:62) conclude that pay equity adjustments “have more of an impact on female poverty than does a moderate increase in the minimum wage.” They found that it would take an increase in the minimum wage of 96 cents, to \$5.21 per hour, to have the same poverty reduction effect for women as a national pay equity policy implemented along the lines they recommend. They go on to explain that,

“Because of the overrepresentation of women among minimum wage workers, a minimum wage increase under any scenario used above helps women more than it does men in relative terms. However, if the policy goal is to decrease poverty among working women, a comparable worth policy would generally yield a greater percentage reduction in poverty... Therefore, high rates of poverty-level wages among women in female-dominated occupations represents something more than a high proportion of women in low-wage jobs” (Figart and Lapidus, 1995:72)

Figart and Lapidus (1995:72) also address the issue of who is to pay the cost of wage adjustments to implement pay equity. They argue that the US government is currently paying for not implementing comparable worth in the form tax rebates for the poor and welfare transfer payments: “Rather than representing an increased cost to government, comparable worth in part shifts the cost of reducing poverty to the private sector. Furthermore, those costs would be relatively small, or less than 4

percent of payroll... under a scenario in which small employers are excluded from a nation-wide comparable worth policy.”

Lapidus and Figart (1998:14) point out that several case studies of pay equity implementation show that related wage adjustments do not lead to major job losses.

3 INTERNATIONAL LAW

This section outlines international law on pay equity, and South Africa's international obligations to implement pay equity. It also looks at the context in which pay equity issues must be considered in southern Africa and Africa as a whole.

3.1 ILO conventions

The International Labour Organisation (ILO) aims to improve the working and living conditions of workers and harmonise working conditions globally by promoting minimum standards in employment conditions. Member countries can then improve upon these minimum standards. Feys and Kalula (1999) explain that the value of this approach is that ILO conventions specify only the goals to be attained, leaving the choice of form and methods to achieve the required results to the member states. ILO standards are intended to be applicable to countries displaying different levels of development, so they are inherently flexible. This openness is, however, also a disadvantage as the conventions are often vague. ILO recommendations are more specific, but are not binding as they are not capable of ratification by member countries.

For an ILO convention to be ratified in South Africa, it must first be proposed for ratification to the National Economic Development and Labour Council (NEDLAC) by one of the social partners (government, organised labour and business and the community constituency). NEDLAC's labour market chamber agrees on a process for proposed conventions to be discussed. Some conventions have been discussed by the full chamber, while others have been referred to a sub-committee or the constituency convenors of the chamber. Recommendations are made by the labour market chamber to NEDLAC's executive committee. Conventions recommended by NEDLAC are tabled in parliament. If parliament agrees to the ratification, the conventions are then deposited with the Department of Foreign Affairs (DoFA) and the ILO.

It is noticeable that the South African government was quick to ratify CEDAW and the Children's Rights Convention, but slower on the ILO conventions. This is despite perceptions that the labour movement is much stronger than the women's or children's movements. The slow pace of ratification is even stranger given that many of the basic standards included the conventions are covered by South Africa's constitution. The NEDLAC official responsible for co-ordinating the labour market chamber, said that one reason for the ratification process being slow is that government needs to ensure that it is able to comply with the ILO reporting requirements before it can agree to recommend a convention for ratification. The negotiation process in NEDLAC could also contribute to delays.

A number of ILO conventions are directly relevant to pay equity for women and men. Table 1 summarises the status of these conventions in South Africa.

Convention	Subject	Status
100 (1951)	Equal Remuneration for Men and Women Workers for Work of Equal Value	<ul style="list-style-type: none"> • ratification agreed by parliament in 1999 • still to be deposited with the DoFA and ILO
111 (1958)	Discrimination in respect of Employment and Occupation	<ul style="list-style-type: none"> • ratified in 1997
122 (1964)	Employment Policy	<ul style="list-style-type: none"> • not ratified • proposed by labour for discussion in NEDLAC
103 (1952)	Maternity Protection	<ul style="list-style-type: none"> • not ratified • not tabled for discussion in NEDLAC
156 (1981)	Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities	<ul style="list-style-type: none"> • not ratified • not tabled for discussion in NEDLAC

Source: based on information provided by NEDLAC

Table 1: Status of ILO conventions related to pay equity in South Africa

Convention 100 concerning equal remuneration for men and women workers for work of equal value commits member states to ensure that pay equity is applied to all workers through national laws, wage determination machinery, collective bargaining or a combination of these methods. It provides for action to be taken that promotes “objective appraisal of jobs on the basis of the work to be performed” to assist with the implementation of pay equity. Importantly, ‘remuneration’ is defined to include the ordinary basic wage and any additional payments made directly or indirectly in cash or kind.

The related ILO recommendation 90 concerning equal remuneration, 1951, details steps member states should take to ensure that convention 100 is applied. These include the need for workers and employers to be fully informed about legal requirements relating to pay equity, provision for the progressive application of pay equity through decreasing pay differentials or equalising pay increments, encouraging methods for the objective assessment of work to be performed, and action to promote equal access for women to occupations and posts. Provisions like these could advance pay equity in the country. But South Africa is not obliged to comply as they are only contained in a recommendation.

The concept of equal pay for work of equal value is accommodated by the idea of substantive equality contained in South Africa’s constitution. It is, however, not specifically stated in South African labour law. The broad definition of remuneration is echoed in the Employment Equity Act (1998). The act provides space for the issue of pay equity to be taken up, but little detail or elaboration.

Convention 111 concerning discrimination in respect of employment and occupation includes sex in a range of characteristics according to which member states commit themselves promoting equality of opportunity and treatment, and eliminating

discrimination. The terms 'employment' and 'occupation' are defined broadly to include "access to vocational training, access to employment and to particular occupations, and terms and conditions of employment." Convention 111 states that special measures of protection or assistance provided for in other ILO conventions (such as measures to advance pay equity) are not taken to be discrimination.

This convention most importantly allows for affirmative action programmes, as does South Africa's constitution. The broad definition of employment and occupation is echoed in the definition of 'employment policy or practice' in South Africa's Employment Equity Act.

Article 12(c) of convention 122 on employment policy says that any programme to overcome unemployment should ensure that there is "freedom in choice of employment and the fullest possible opportunity for each worker to qualify for ... a job for which [she or] he is well suited," irrespective of sex among other characteristics.

This provision of convention 122 is covered by the equality clause in South Africa's constitutional bill of rights which prohibits discrimination on the basis of sex, and the clause in the bill of rights which says that every citizen has the right to choose their trade, occupation or profession freely. The Employment Equity Act (1998) and Skills Development Act (1998) are intended to ensure that ordinary South Africans are given the fullest possible opportunity for employment. The limitations on the effectiveness of these acts are discussed more fully in sections 4.2 and 4.6.

Convention 103 regarding maternity protection (revised) entitles women to at least twelve weeks maternity leave, with compulsory leave of not less than six weeks after confinement. The convention says that women on maternity leave must receive cash and medical benefits for herself and her child from compulsory social insurance or from public funds, but does not say how much they should receive. It provides for protection from dismissal during pregnancy and protection from the reduction of wages when work is interrupted for the purpose of nursing.

South Africa's Basic Conditions of Employment Act (1997) improves on the length of time provided for maternity leave in this convention. For payment while on maternity leave, women currently rely on access to the Unemployment Insurance Fund for 45% of their wage, and voluntary employer contributions for the rest. Employer contributions are only likely where union organisation is strong and the union takes the issue of maternity pay seriously, or where the employer is 'kind'. It is likely that women on farms often do not receive full payment either because they are not registered with the UIF, or because the farmer is not willing to contribute. South Africa does have free health care for pregnant women and children under six years.

South Africa's Labour Relations Act (1995) includes dismissal on the grounds of pregnancy as an automatically unfair dismissal, and the Employment Equity Act (1998) prohibits discrimination on the basis of pregnancy. It does not provide for the 'reasonable accommodation' of pregnant women as an anti-discrimination measure. This means that employers do not have to make an effort to change work arrangements to prevent discrimination. They could, for example, deduct wages when work is interrupted for the purposes of nursing.

Convention 156 on workers with family responsibilities says that policy in member states should facilitate access to employment for people with family responsibilities. They should not face discrimination or “to the extent possible”, conflict between employment and family responsibilities. The convention applies to responsibility for the care of ‘dependent children’ or ‘other members of the immediate family who clearly need care or support’.

Family responsibility is not included in a South Africa’s constitution as a ground on which discrimination is prohibited. However, it is included in the Labour Relations Act (1995) and the Employment Equity Act (1998). The EEA does not, however, provide for the ‘reasonable accommodation’ of people with family responsibilities as an anti-discrimination measure. The definition of family responsibility in the EEA is in line with the convention. The Basic Conditions of Employment Act (1997) provides for three days family responsibility leave per year.

3.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

South Africa ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) without reservation in 1995.

CEDAW defines discrimination against women and says that the state must punish people who discriminate against women, make sure that no person, organisation or business discriminates against women, and change or remove all laws, regulations, customs and practices which discriminate against women. Article 11 on employment says that the state must remove discrimination against women in the area of employment. It specifies that women must have the right to “equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as quality of treatment in the evaluation of the quality of work.” Article 11 also says that the state must make sure that women are not discriminated against simply because they are pregnant or married. Amongst other measures, the state must introduce paid maternity leave, protect working women who are pregnant, and make sure there are support services for working parents.

Article 14 on rural women says that the state must take special steps to make sure that the convention is applied to women in rural areas. An example of the specific measures states must take is ensuring that rural women receive training and education, especially functional literacy and technical skills training.

3.3 Southern African Development Community (SADC)

The SADC is in the process of finalising a Social Charter of Fundamental Human Rights. Feys and Kalula (1999) explain that the draft charter is based on the Southern African Trade Union Co-ordinating Council’s (SATUCC) Charter of Fundamental Rights of Workers in Southern Africa. It is, however, less detailed and relies on national tripartite institutions and existing regional structures to ensure implementation. According to Feys and Kalula, the original SATUCC charter was ratified by the tripartite Southern African Labour Commission in 1992, but apparently some government representatives have interpreted the ratification as less than binding.

The revised draft SADC charter (recommended for adoption by a meeting of the SADC's employment and labour sector in April 1999) includes an article on equal treatment for men and women, and an article on conventions of the ILO. Article 4 on equal treatment for men and women refers specifically to remuneration and other related areas. It is outlined in the box below.

“SADC Member States shall create an enabling environment consistent with ILO Conventions on discrimination and equality and other relevant instruments such that:

- a) Gender equity, equal treatment and opportunities for men and women is ensured;
- b) Equal opportunities to both men and women shall apply, in particular, to access to employment, remuneration, working conditions, social protection, education, vocational training and career development;
- c) Reasonable measures shall also be developed to enable men and women to reconcile their occupational and family obligations.” (SADC)

It was intended for the charter to be adopted in August 1999 at the Ministers' Summit, which brings together Ministers from SADC countries representing the range of SADC sectors. According to a Department of Labour official, the charter was not agreed this year as a related protocol on the free movement of persons had not been finalised in time. It is now expected that the charter will be adopted at Ministers' Summit in August 2000.

The draft SADC charter calls on member states to ratify a number of ILO conventions, including 100 and 111 on discrimination in employment. Table 2 indicates which SADC countries have ratified conventions 100 and 111.

SADC member country	Convention 100	convention 111
Angola	Ratified	Ratified
Botswana	Ratified	Ratified
Democratic Republic of Congo	Ratified	
Lesotho	Ratified	Ratified
Malawi	Ratified	Ratified
Mauritius		
Mozambique	Ratified	Ratified
Namibia		
Seychelles		
South Africa		Ratified
Swaziland	Ratified	Ratified
Tanzania		
Zambia	Ratified	Ratified
Zimbabwe	Ratified	

Source: Department of Labour

Table 2: Status of ILO conventions 100 and 111 in SADC countries

3.4 Organisation for African Unity (OAU)

The OAU does not have any broad agreements on gender equity. Issues relating to women are on the annual agenda of the OAU meetings, and different issues are dealt with each year. The 1997 meeting of the OAU discussed the implementation of the African and global platforms for action on women, arising in connection with the Beijing Conference, in the field of socio-economic development. Recommendations made included that women should be given equal opportunities and responsibilities as men, that women should be empowered economically, that there is a need to educate and train women and girls, and that governments should ratify the ILO conventions on discrimination against women. These recommendations are not legally binding on member states, but members are required to report on progress with implementation.

4 SOUTH AFRICAN LEGISLATION

This section reviews South African legislation that has an impact on pay equity. We look at how the legislation might promote equity or discriminate against women, particularly black women.

The focus of this study is on women working on vegetable farms where basic conditions are poor and many women are employed as temporary, seasonal or casual workers. So we also pay attention to legislation that can make improvements in this area.

4.1 Constitution

The constitution includes the achievement of equality and non-sexism as values on which the post-1994 South African state is based. The constitution embodies the notion of substantive rather than formal equality. It recognises the need to have equality of outcome rather than simply equality of opportunity or treatment. This is important for pay equity where discrimination is often indirect and women and men may be doing different jobs, or clustered in different industries.

Section 9 on equality in the constitution's bill of rights allows for affirmative action: "To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." (The Constitution of the Republic of South Africa Act, 1996) The clause also prohibits discrimination on a number of grounds, including gender, sex, pregnancy and marital status.

4.2 Employment Equity Act (1998)

The Employment Equity Act (EEA) is the law that deals with pay equity issues most directly. The act aims to achieve equity in the workplace by eliminating unfair discrimination, and implementing affirmative action in respect of race, gender and disability.

The act recognises the need for 'designated groups' – black people, women and the disabled - to be equitably represented in all occupational categories and levels in the workforce. This is important for women given the indication that when there is a high level of female participation, women are usually disproportionately represented at lower levels.

A general weakness of the EEA is that measures are confined to individual workplaces. The act does not directly address the clustering of women in lower-paid sectors, industries and even geographical areas.

We now discuss measures contained in the act in some detail. We attempt to highlight areas that may be important for education, advocacy, precedent-setting legal cases or legislative reform. We do not pay attention to detailed redrafting proposals. Recommendations on this, drawing usefully on foreign jurisdictions, can be found in O'Sullivan (1998) and CIQLSW (1998).

4.2.1 Anti-discrimination measures

The EEA and Labour Relations Act (LRA, 1995) both prohibit direct and indirect discrimination on the basis of family responsibility in addition to sex, gender, pregnancy and marital status, which are covered in the constitution. The EEA does not take into account a broader definition of pregnancy proposed by the Committee on the Improvement of the Quality of Life and Status of Women (CIQLSW, 1998:4) to include potential pregnancy.

4.2.2 Inherent requirement of a job

Section 6(2)(a) states that it is not unfair discrimination to “distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.” This can be used as a defence by an employer in a discrimination case, and it will depend on the gender sensitivity of the adjudicator as to whether s/he accepts it. O’Reagan (in O’Sullivan, 1998:9) explains the key difficulty with this defence:

“[D]iscrimination legislation is aimed at prohibiting the disadvantage caused to women (and men) by sexual stereotyping. The genuine occupational requirement defence may well be used to persist in disadvantaging women because of stereotypes. ... Permitting the defence in any circumstances where it is based on socialised differences between men and women may result in perpetuating stereotypes.”

4.2.3 Reasonable accommodation

The affirmative action measures in the EEA include the responsibility of employers to make ‘reasonable accommodation’ for people from designated groups to enable them to have access to or advance in employment. This means that employers must adjust either jobs or the working environment, for example to accommodate pregnant or nursing mothers. However, indirect discrimination is not defined in the act and therefore does not specifically include the lack of reasonable accommodation. CIQLSW (1998:6) explains the importance of this as it “would mean that the elimination of discrimination must also take place through employers taking positive steps”.

4.2.4 Sexual harassment

Sexual harassment mostly affects women and often negatively affects their ability to progress in the workplace and achieve pay equity with men. The EEA prohibits harassment as a form of unfair discrimination. This provision includes sexual harassment, although this is not highlighted specifically. Sexual harassment cases can be taken up in terms of the dispute provisions in chapter II on unfair discrimination, which are legally enforceable. This is an improvement on the LRA.

4.2.5 Affirmative action measures

The EEA requires designated employers to implement affirmative action measures by consulting with employees, conducting an analysis of the workforce profile and employment practices, preparing an employment equity plan and reporting to the Director-General of the Department of Labour on implementation. This process reflects the ‘carrot’ rather than ‘stick’ approach that the Department of Labour is taking to this Act, where it is encouraging employers to come in willingly.

4.2.6 Limited application of affirmative action measures

The affirmative action measures in the EEA apply only to ‘designated employers’ – those who employ 50 or more workers, or have a total annual turnover equal to or above that of a small business in terms of schedule 4 to the act. A designated employer who employs 150 or more workers must report to the Director General annually. Those who employ less than 150 are required to report only every two years.

The limited application of the act is problematic as international evidence suggests that women are more likely to work in smaller companies. Ntsika’s (1998:13) input-output model data, which combines different CSS data sources, indicates that 52% of employment in agriculture, forestry and fishing is in companies with less than 50 employees. Over 95% of employment in this sector is in agriculture/hunting, according to Ntsika (1998:13) figures based on the October Household Survey of 1995.

For small employers, the EEA allows for voluntary compliance. This is unlikely, but does create space for public pressure to be put on companies.

Section 61 (2) of the act states that “No employer may knowingly take any measure to avoid becoming a designated employer.” This is particularly important in industries where it is relatively easy for employers to break the workplace into smaller units. An example is the clothing industry, which employs mostly women. The Bargaining Council for the industry has historically struggled to prevent this practice as a means for employers to avoid implementing minimum standards for the industry. The act does not mention anything about the burden of proof, and this provision obviously requires widespread awareness and effective policing to have any impact.

4.2.7 Labour brokers are included

The act says that labour brokers are responsible for implementing affirmative action measures together with the users of their services when these services are used for three months or longer. Our case studies indicated that at least some farms sub-contract labour from former homeland areas through brokers, and this clause could be important for women workers in agriculture.

4.2.8 Individual and group definitions

The EEA defines ‘designated groups’ as black people, women and people with disabilities. It does not explicitly provide for consideration of a combination of these characteristics. CIQLSW (1998:1) notes that black women face particular discrimination that results from “a combination of race, gender and class discrimination and oppression.” The committee expressed a concern that employers will be able to introduce affirmative action plans to employ mostly black men, white women and white people with disabilities. It is also possible that affirmative action programmes will result in these groups of people being employed at higher levels, and black women being employed in lower paid jobs. Section 42(a)(i) requires the Director-General to take into account the “demographic profile of the national and regional economically active population” in assessing compliance, so a company’s workforce should be expected to reflect the profile of people in the area where the company operates. This presents an opportunity, therefore, for lobbying the Department of Labour and the Commission for Employment Equity.

Section 54 says that the Minister, on advice of the Commission for Employment Equity (CEE), may issue a code of good practice that prioritises certain designated groups. This provides space for women to be prioritised, and possibly black women, but as a code of conduct will not be legally enforceable.

4.2.9 Targets

Section 20(2)(c) states that where analysis identifies that designated groups are underrepresented, employers are required to prepare an employment equity plan that includes numeric targets as opposed to compulsory quotas. Again, this reflects the 'carrot' rather than 'stick' approach of the EEA.

The act says that guidelines regarding factors to be taken into account in determining numerical goals will be included in a code of good practice. It also says that the provisions on assessing compliance, which include the reference to national and regional demographics, are relevant to the setting of numerical goals.

Section 20(2)(c) refers to equitable representation of "suitably qualified" people from designated groups. The definition of the term 'suitably qualified' in section 20(3) is important. It allows for the recognition of formal qualifications, prior learning, relevant experience or a "capacity to acquire, within a reasonable time, the ability to do the job." This is vital for women who may not have had access to formal education or workplace training. For example, the women we spoke to on farms felt able to learn and get licences to drive tractors, thereby gaining access to better-paid jobs as tractor drivers from which they had previously been excluded.

4.2.10 Consultation

Employers are required to consult a representative trade union (or other employee representatives if there isn't one) about the workplace analysis, their employment equity plan and the report. There is no need for the employer to reach agreement with workers. In the context of the paternalistic relationships still very much in evidence between farm management and workers, it is unlikely that this process will really allow workers to make an impact on the process.

Employers are also required to share information with workers. For this to be meaningful for workers, they will need to be literate and be trained to deal with pay equity and job evaluation issues specifically in relation to gender.

4.2.11 Pay equity

Section 27 says that designated employers must include information on pay and benefits for workers in each occupation and level of the workforce when they report to the Department of Labour. The act says that where there are "disproportionate income differentials", employers must act to "progressively reduce differentials". Actions may include collective bargaining, compliance with sectoral determinations in terms of the Basic Conditions of Employment Act, and skills development initiatives in terms of the Skills Development Act.

No definition is provided of what counts as "disproportionate" differentials. The act states that the Employment Conditions Commission must "research and investigate norms and benchmarks for proportionate income differentials". The ECC is then to

advise the minister as to how “disproportional” (sic) differentials should be reduced. The act also makes no clear provision for equal pay for work of equal value in looking at pay differentials. There is scope here for a progressive commission to use equal pay for work of equal value analysis in establishing norms and deciding on appropriate measures to remove pay discrimination. Thus while section 27 upholds the minimum standards outlined in the ILO convention 100, it does not, without appropriate elaboration, implement fully recommendation 90 and nor does it comply with article 11 of CEDAW.

Section 3 of the EEA does, however, say that the act must be interpreted in compliance with South Africa’s international law obligations. So cases for equal pay for work of equal value cases could be argued using these two sections together.

4.2.12 Information

In terms of section 27(5), the Employment Conditions Commission is not allowed to disclose information on pay differentials in a specific company. Parties to a collective bargaining process may, however, request the information for collective bargaining purposes.

Public companies (registered on the stock exchange) must publish a summary of their general equity report to the Department of Labour as part of their annual financial reports. The reports of state employers must be tabled in parliament. Something about information in reports being public information. Section 41 requires the Minister of Labour to keep a register of designated employers that have submitted reports.

The Department of Labour is still in the process of planning a database for information gathered through the implementation of the EEA. Breakwater Monitor, based at the University of Cape Town’s Graduate School of Business, is assisting.

Pay equity advocates will need to lobby for useful public access to the information that is generated through the EEA.

4.2.13 Implementation issues

The Department of Labour is relying on workers and employers working together to implement affirmative action programmes. It is unlikely that the Department’s inspectorate has the capacity to enforce the measures contained in the EEA using a punitive approach. In the context of workplaces covered in our case studies and other research on the agricultural sector, voluntary and meaningful compliance from the majority of employers appears unlikely.

The EEA establishes a Commission on Employment Equity (CEE) to advise the Minister of Labour on codes of good practice, regulations and policies needed to implement the act. The nine-member CEE has recently been appointed, with only two women members. It comprises two African women, five African men, and two white men. One of the white men is disabled.

4.2.14 Disputes and punitive measures

The EEA assigns the burden of proof in cases of unfair discrimination to the employer. This is important for workers, and in particular rural women workers who

are unlikely to have the resources to prove their case. It is also important because the EEA does not define indirect discrimination in detail, and this is often difficult to prove.

However, the act also provides for unfair discrimination disputes to be referred to the Commission for Conciliation, Mediation and Arbitration. The CIQLSW (1998) submission on the bill includes an attachment outlining concerns of the Human Rights Commission submission on the use of conciliation and mediation to deal with discrimination issues.

If an employer is found by the Director-General to be not complying with the affirmative action measures in the EEA, the matter may be referred to the Labour Court. Nicky Taylor of the Centre for Rural Legal Studies described some of the extreme difficulties farmworkers have with the Labour court: "It is more difficult to access justice now than with the Agricultural Labour Court. That court went to the rural areas. They had paralegals to represent workers. ... To get legal representation now, you must first apply to the Legal Aid Board [for funding]. Most attorneys are not prepared to apply to the Board."

4.3 Basic Conditions of Employment Act (1997)

The Basic Conditions of Employment Act (BCEA) sets out the minimum standards for employment in the country. The Congress of South African Trade Union's (COSATU) publication on the BCEA explains the importance of the BCEA for the most vulnerable workers: "While the BCEA protects all workers, it is really the unorganised workers who are most dependent on it. Organised workers generally use their collective strength to win better conditions for themselves than those in the Act. ... [S]omething like 4.8 million unorganised workers have had only the BCEA with which to protect themselves against greedy and exploitative bosses." (Khanya College: 9) The fact that the BCEA focuses on unorganised workers means that it is of particular importance to women. Official statistics show that in 1995 35% of all non-domestic workers were organised, compared to 29% of men (Budlender, 1998:23). If one adds the domestic workers, the vast majority of whom are unorganised, the disparity would increase further.

4.3.1 Application

Most provisions of the new BCEA apply to all workers, including farmworkers and domestic workers. (Domestic workers who work on farms are defined as farmworkers under the Act.)

Almost all of the rights in the BCEA apply to casual workers. The act does not define what a casual worker is. (None of the new labour legislation provides a definition for a casual worker, although some wage determinations may, and many employers seem to think that a casual worker is one who is employed for fewer than three days a week.) The BCEA says that workers who work less than 24 hours in a month, which is three days a month, will not get certain rights. Workers who work less than 24 hours a month are not covered by the chapters on details of a worker's job and pay, regulation of working time, leave, and termination of employment.

On the mixed vegetable farm in our case studies, 20 'casual' workers were employed in addition to the 230 full-time workers. All the casual workers were women. The

farmer told us that these 'casual' workers work for three days a week. They should, therefore qualify to benefit from most rights in the BCEA. Given that even the full-time contract workers on this farm were not paid overtime in line with the BCEA and did not appear to be aware of their rights, it is unlikely that this even more marginalised group of workers would be.

Workers who work for labour brokers are covered by the BCEA. Labour broking occurs when the worker does not have a contract with the farm owner for example, but rather with another company or individual that supplies labour to the farm. If the labour broker does not obey the act, then the labour broker and the employer for whom the worker is doing the actual work are both responsible for breaking the law. The importance of this was highlighted in the same mixed vegetable case study where workers said they had been 'sub-contracted' to work on the farm in Gauteng from Transkei. Here again the employer appears to be contravening the act.

4.3.2 Hours of work

The BCEA says that an employer may not make a worker work more than 45 hours in a week excluding overtime. Farmworkers can continue to work for up to 48 hours per week until the end of 1999. After that they must work a 45 hour week.

In the mixed vegetable farm case study, workers were working at least 52½ hours per week according to information provided by the farmer. From what workers said about their hours of work and overtime pay, it appeared they usually work at least 57½ ordinary hours a week. While workers were unhappy with the long hours and that there was no set knock-off time, they did not appear to be aware that they are protected against working such long hours by the law.

4.3.3 Pregnancy

The BCEA provides for at least four consecutive months maternity leave.

The act does not resolve the issue of payment for maternity leave, but says proposals will be made to cabinet to change the Unemployment Insurance Act so that maternity benefits paid to workers from the Unemployment Insurance Fund can be increased.

The act says that the Minister of Labour must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child. This code was issued in November 1998. As a code, it is not legally enforceable. It can, however, be used for lobbying.

4.3.4 Changing basic conditions of employment

The BCEA sets minimum standards, but it also allows employers to vary them downwards (or upwards) in agreement with workers. This is a major problem for weakly organised sectors like farms, and particularly for marginalised workers within those areas, like women and seasonal workers, who are even less likely to know their rights.

Standards that cannot be varied downward include the maximum working week of 45 hours, four months maternity leave, and six weeks paid sick leave over a period of 36 months.

4.3.5 Sectoral determinations

The BCEA allows for the Minister of Labour to make a sectoral determination that sets out basic conditions for workers in a sector or an area. The minister can only make a determination when workers and employers are not covered by a bargaining council agreement and the sector or area is not covered by a statutory council agreement.

The BCEA does not itself stipulate minimum wages. Sectoral determinations can, however, set minimum conditions of employment, including minimum wages, for particular sectors and say how and when and in what form wages should be paid. Sectoral determinations apply even if the provisions are worse for workers than those in the BCEA as long as they are approved by the Minister of Labour. But the sectoral determinations cannot give less protection than the act on ordinary hours of work and hours of work set by the minister to protect health and safety.

The BCEA sets up an Employment Conditions Commission (ECC), which must advise the Minister of Labour on sectoral determinations and other issues relating to basic conditions of employment. The ECC is made up of three government nominees, one labour nominee and one business nominee. All the members of the ECC are black men except for one white woman who is a government nominee.

The minister recently announced that the ECC will determine minimum wages for farmworkers. Investigations will be conducted by staff in the Department of Labour on behalf of the ECC, and the department has started consulting with roleplayers and planning the research. So the outcome of the wage determination depends on the ECC and the minister.

4.4 Unemployment Insurance Act (1966)

Contribution to the Unemployment Insurance Fund (UIF) is important because it is the only certain way for many women to get some payment when they are on maternity leave. In terms of the current act, a woman who contributes to the fund receives 45% of her monthly wage for up to six months of maternity leave. The employer may top up the wage, but the act says that the UIF amount will be decreased if the employer pays more than 33%. Some employers have found ways of circumventing this provision so that employees receive 100% of the wage. This will, however, occur mainly in establishments where workers are well organised.

Farmworkers have been covered by the Unemployment Insurance Act (UIA) since 1994. However the rate of registration was slow, at least at first. Problems about workers not knowing their rights and not having identity documents raised in our case studies indicate the kinds of difficulties that could have slowed the registration process down.

Seasonal or temporary workers and domestic workers, including domestic workers on farms, are still not covered by the UIA. There have been a number of investigations into how domestic workers could be included in the act. The first, the Limbrick investigation, occurred before 1994. A further investigation, not confined to domestic workers, has occurred since. Despite the fact that concrete recommendations have been made, the matter has continually been deferred and referred. Domestic workers are left without a basic social security net.

A task team appointed by the Minister of Labour is in the process of drafting new legislation to govern the UIF. It is expected that an act will be finalised in the first parliamentary session in 2000. One of the main incentives for the redraft is the bankrupt state of the Fund at a time when unemployment is running very high. There have been suggestions that the domestic worker issue may still not be covered in the redraft, but rather again referred to the ECC or elsewhere for further investigation.

4.5 Labour Relations Act (1995)

4.5.1 Centralised collective bargaining

International evidence indicates that the centralisation of collective bargaining by industry or sector can serve as a tool to broaden pay equity beyond a single workplace. The LRA allows for centralised collective bargaining in bargaining councils, but requires workers to be fairly strongly organised in order to achieve this. This is unlikely, therefore in the agricultural sector which is difficult to organise. Even if it were possible to achieve this, job descriptions and allocation to grades are necessarily negotiated at plant level. So even a progressive grading system would require strong organisation on all individual farms to be implemented effectively.

4.5.2 Discrimination in collective agreements

In schedule 7 of the LRA, section 2(1)(a) says an unfair labour practice is any unfair act or omission between an employer and an employee involving discrimination, either directly or indirectly, against an employee on any arbitrary ground including gender, sex, marital status or family responsibility. Historically, court judgements have not upheld collective agreements where these involve discrimination. An example is the case of women teachers in the Western Cape who challenged a collective agreement made by the Western Cape Education Department and the South African Democratic Teachers' Union, which discriminated on the grounds of sex and marital status in granting housing benefits. (*George v Western Cape Education Department* (1995) ILJ: NHK26/2/0004) It was argued that the agreement was in contradiction to the Union's constitution. This argument was upheld by the court.

A contradictory judgement had been made during the last years of apartheid, when the industrial court refused to interfere with a management-union agreement which allowed for a commercial farm's retrenchment of women workers in place of men. The court said it "would be on dangerous ground if it sought to interfere with such an agreement" (*Ntsangani & Others v Golden Lay Farms Ltd* (1992) 13 ALJ:1206). It is disturbing that in both these cases the union party to the agreement was an affiliate of the supposedly progressive federation, COSATU, but nevertheless took a sexist stance.

4.5.3 Sexual harassment

Sexual harassment claims that result in unfair dismissals can be dealt with as automatically unfair dismissals in terms of the LRA. The same reservations about the Labour Court process outlined in section 4.2.14 (page 34) apply. The LRA also has a code of conduct attached to it. This serves simply as a guide to employers, and is not legally enforceable. It can, however, be used in lobbying.

4.6 Skills Development Act (1998)

The Skills Development Act (SDA) is important for pay equity as access to and recognition of skills and training are important for getting access to better-paid occupations and jobs at higher levels. The improvement of skills throughout the workforce can also increase productivity, which can translate into increased wages for ordinary workers, particularly those at lower levels.

The SDA sets out a framework for national, sector and workplace strategies to develop the skills of workers to be worked out and implemented. It says that these strategies must be integrated with the National Qualifications Framework (NQF) which is outlined in the South African Qualifications Authority Act (1995). The idea behind the NQF is that all qualifications will be linked to a common framework and will allow skills to be compared across workplaces and sectors. Job grading systems could be redefined on the basis of skills. Skills-based grading systems would link wages and skills.

The SDA provides for a National Skills Authority and sector education and training authorities (SETAs) to be set up. The Act also sets up a Skills Development Planning Unit in the Department of Labour, which is responsible for co-ordinating planning for skills development.

Together the SDA and NQF provide a framework for skills to be revalued and for women to access skills development at all levels. However, women will only benefit if a conscious effort is made to use this opportunity.

Unless SETAs think consciously about recognising the value of women's contribution, the process of defining levels of skills could reinforce the undervaluing of skills that women are more likely to have. The standard setting process through SETAs has been criticised for being too technical and bureaucratic. The ability for weakly organised farmworkers, and particularly women, to impact in this process appears limited. For it to be meaningful, resources would need to be allocated to ensure that when skills levels are defined for the agricultural sector they value equally the skills of equal worth that women and men use in agricultural work.

The Skills Development Levies Act (1999) says that, from April 2000, each employer must contribute 0,5% (to be increased to 1% from April 2001) of the company payroll for the training and education of employees. From this money, 20% goes to a National Skills Development Fund, and 80% goes to the SETA.

The SDA makes no provision for paid education and training leave. South Africa has not ratified the relevant ILO convention 140 concerning paid educational leave, but the convention has been tabled by labour for discussion in NEDLAC. The lack of paid leave will hamper access to training for workers at the lowest levels who will not be able to afford unpaid leave.

4.7 Equality Legislation

The Gender Research Project (1998) notes that equality legislation is being researched and drafted by the Human Rights Commission in conjunction with the Department of Justice. This legislation could further refine the discrimination provisions in the Employment Equity Act.

Draft legislation was released in August 1999. It is extremely wide ranging, and it appears it will be hotly debated and extensively amended before it is passed.

5 CASE STUDIES

In our presentation of pay equity issues on three vegetable farms, we look at the value of work in a number of ways. Firstly, we look at the traditional measure of value to the farmer, i.e. the price (or wage) that he or she is prepared to pay for the work done by a particular worker. This price is assumed, in traditional economic theory, to be equal to the value added by that particular farm worker through the labour process. We look at how this value is expressed through the grading of jobs and pay structure. Secondly, we highlight the discriminatory nature of these traditional measures. As noted in the literature review, Salgado (1994) developed an alternative model for calculating the value of women's labour on farms. However the data needed to input into her formula proved too complex and is not available.

5.1 Garlic farm

5.1.1 Overview

The garlic farm has been owned and run by the same family for over 100 years, and garlic has been grown on the farm for most of that time. The garlic side of the business has gradually expanded, and up to 180 tons of garlic are now produced on about 23 hectares of land each year. The farm also has some cattle, although most were sold a few years ago.

The farmer explained that garlic is "a very volatile product, because it can be transported easily from one part of the world to another. There are speculators who look for a surplus in one country and export to another country where there is a shortfall." It is also very dependent on weather conditions. The farmer commented that the local garlic industry is feeling threatened by the influx of imports, mainly from China, since the opening up of the South African economy to free trade.

5.1.2 Status of workers

Between 50 and 70 women, and 14 men, are employed on the farm.

Generally, workers in the focus groups appeared to have a relatively good relationship with the farmer and with each other. Most of the participants were older (above thirty) and had a long length of service on the farm.

Interestingly, men had worked on the farm longer than women. This might be because in an African culture (and indeed in many other cultures), men are seen as providers and therefore encouraged to enter the job market quickly to fulfil their expected role. Additionally, the length of service might reflect the farmer's view of men as permanent workers and women as casuals. Permanent workers are more likely to have long service.

The men were all permanent workers. It was confusing as to whether the women were working as casuals or on a permanent basis as different informants used the terms in different ways. The women reported that they were permanent. They worked five days a week and almost the whole year.

The farmer on the other hand said the women were all casual workers as they only worked for ten or eleven months of the year. He gave women's domestic role as his

reason for viewing women as casual workers: “I never know from day to day which women will be here. Traditionally, if a child is sick the mother would stay at home. ... The men are always here.” He did, however, acknowledge that not all women work irregularly: “That is a generalisation. There are some women who do come every single day, just like the men.”

The farmer’s definition of a casual worker is not provided for in the law, but it seemed that he deliberately employed the women on an irregular basis to make sure that they remained casual and were thus not eligible (in his view) for benefits. Also, it appeared that he did not want the responsibility for paying workers when there is a lull in the market, or less work on the farm for seasonal reasons: “As long as there is work for the women, they come.” He has a system of informing the women of his labour needs on a week-by-week basis.

The farmer described it as a pattern that there is a big turnover in women workers: “Only a core, maybe 20 out of my total staff have been here for year after year. The men have all been here for donkeys years.” He said that women may leave his farm to work on another, or move with their husbands to Johannesburg.

Overall, it appeared that the workers were accepting of their position. The guarantee of the little regular income they received appeared to instil a sense of security and stability in their lives. Most participants, whether women or men, did not see a life beyond that of working on the farm. Even if they were not completely satisfied they felt that they were powerless to change anything: “Generally farmworkers work under difficult circumstances. Should you play clever you will be dismissed. If you know that you don’t have much choice in the sense that you don’t have any other source of income, you would just keep quiet.” Others felt they were too old for change: “Some of us are old for changing jobs. We are just waiting for pension”.

5.1.3 Labour process

Garlic farming is very labour intensive. Everything is done by hand (from sowing, to planting, to harvesting, to cleaning, to packing, to loading) and is often time consuming.

The farmer explained that women are the majority of the workforce because they are more dextrous and are able to do work men cannot do or don’t do: “Women have the ability to bend down and work with their backs bent all day long, which the men cannot do.” However it is also likely that the farmer has employed more women because he feels he can pay them less than he would need to pay men for this labour intensive work. Wages account for 50% of the farm’s expenses, and the average woman’s wage is approximately 60% of the average man’s wage on the farm.

5.1.4 Division of labour

>From what workers said, it seemed that often women and men worked together. Workers did not specialise in any one task like planting or packing - everyone tended to do a little bit of everything depending on the needs of the farm.

However, there were clear differences in work done between women and men. Women could not drive and men were mainly involved in physically heavy work or

jobs that required some technical skill. For example, women would plant garlic, clean garlic, pack garlic and sort seeds; while men would look after cattle, make furrows, lay irrigation pipes, lift heavy things, and drive trucks and tractors. There was some confusion in the discussions about what 'heavy' physical work is. It could mean lifting or pushing heavy things only, or it could mean hard physical work like bending for long periods. The confusion is exacerbated by the use of words such as 'nzima' (Xhosa) and 'lukhuni' (Zulu) to mean both 'heavy' and 'difficult'.

5.1.5 Attaching value to work

Amongst the workers, it was interesting to note that some women felt men worked harder while some men felt women worked harder.

As on the other farms that were selected for this project, women farmworkers were limited in their skills. For example, they all lacked driving skills while at least a few men had these skills. Women felt that men should earn more because men had specific skills that they, as women, did not possess. Men on the other hand felt that they themselves possessed important, useful skills like how to tend to cattle and how to weld metal. This appeared to result in over-valuation of men's jobs.

In the discussions, men had a sympathetic tone towards women. As one man said: "These women work a great deal. Planting the seeds is a big job. Walking the whole farm, planting is not a joke". The men described their own work as hard labour for similar reasons: "[Taking the cattle to the field] is hard because we have to walk. It's quite a distance. The kraal is far and the fields are far."

The farmer acknowledged that women who worked on the farm had a particular "ability to use their hands." However, he did not place a high value on this skill because he felt it comes naturally to women. He linked these skills to women's domestic role: "In their own homes, the women traditionally have done the hoeing and the planting. So it is just an extension of that really. It is something that has just happened forever on this farm. We have never really questioned why it is."

The farmer indicated that in the same manner, men naturally have valuable skills that women are not able to acquire: "Men are more mechanical than women. When it comes to handling irrigation pipes, women sometimes don't know how to connect the pipes. It needs a man to do this. So from that point of view the man is worth more than the woman."

From the farmer's description, and somewhat in contradiction to the perception of some of the workers, it was clear that both women and men on the farm perform physically demanding tasks: "The men don't physically bend over and plant the seed. ... [When picking], some men might help to loosen the soil manually with forks. But the women would bend down and lift it out of the ground. ... The men arrange the platform on which women arrange the bundles of garlic and carry and put it in heaps. So the work is very similar, almost identical in terms of physical effort."

5.1.6 Payments

It was clear that workers did not know how their wages were structured and how much each person earned. However, participants were aware that they were not paid the same amount of money. Almost all workers we spoke to (both men and women)

were satisfied with the criteria used for determining wages. They felt that it was fair as payment was based on performance, productivity, skill and the length of service. As one said, "There is no way I can expect to earn the same as someone who has been here since 1965". They felt that other issues such as age, number of dependants, and experience from other farms should not be considered.

Women mainly got performance-related pay. The farmer explained that he is "very orientated towards reward for productivity". He pays women on the farm a minimum, and most of their pay after that is made up by a production bonus based on output. He said the productivity bonus system is "very complicated", because there are external factors like the weather, the size of the bulbs, and the size of containers that impact on the speed with which the women can work. He has a computerised system by which the person who is most productive gets a specified maximum wage, and the rest are then graded accordingly: "So somebody who has done half of what the best worker did would get half of the maximum."

This method of paying made women believe that they were able to determine their wages. As one participant said, "If you want to earn a lot, you should work hard". The faster you worked the more you earned. Therefore women felt they had more control over their wages. The performance related pay or bonus seemed to be an extrinsic motivator.

Whereas for women pay depended mainly on performance, for men payment was fixed and depended on the kind of job that one did and the length of service. For instance drivers earned more than other workers. The fact that a few men are drivers, and as such are paid considerably higher than other workers, seemed to dominate the discussion amongst workers in most of the focus groups conducted for our case studies. It seemed that undue importance is attached to the driving issue. One reason for this appeared to be that there are few other avenues for advancement or development for the majority of workers on the farms.

The farmer acknowledged that he uses different criteria for women and men. Amongst the men he said that wages were determined by technical skill like driving, or a "natural bent towards a particular job" like handling cattle. He also felt that men should be rewarded for their "reliability and permanence" with a higher wage that is fixed. He felt this made it worth investing in training them so that they have the technical skills needed to earn higher wages.

According to the farmer, the average pay (including the basic wage and piecework earnings) received by women on the farm is approximately R110 per week, while men earn on average between R160 and R180. The lowest-paid woman worker earns R75 per week. This is half the amount (R150) earned by the lowest paid man. The highest paid woman worker earns R165. This is only 47% of the amount (R350) earned by the highest paid man, and only 10% more than what the lowest paid man earns. It was interesting to note that most women believed that men should earn more than they did because they worked more hours as they often did overtime, and had skills that the women did not possess (such as driving).

Although men and women were satisfied with the criteria on which their wages were based (for example, skill), they thought the actual amount was little.

Aside from different criteria being used to value the work that women and men do, the farmer also confessed that women do not earn the same as men when doing the same work: "It's very difficult to compare. But I think it is true that the men are being paid more relatively than the women. I mean if you bring it down to an hourly basis, if the women and the men are together doing irrigation, carrying pipes for that hour, the men are earning a lot more than the women are."

5.1.7 Overtime

Hours of work and payment for overtime on the garlic farm appeared to be in line with provisions in the BCEA.

However, women never worked overtime; only men did overtime. When men did overtime they would sleep on the farm premises and get paid for overtime. Sleeping over at the farm saved them travelling money. It appeared that they had an option of sleeping over even when not doing overtime. This can be viewed as a benefit which women did not enjoy.

The women indicated that they could not sleep over, they had to go home as children and husbands were awaiting them at home. As one said, "No men would agree that he should sleep at home while you are sleeping at work". This also indicated the power dynamics that are in families. It seemed that even if women would want to work overtime they would not be able to do that because of fear of men and their "prescribed" status.

Generally, women play an essential nurturing role in the family and seemed to be more concerned about fulfilling that task. Men, on the other hand, were more concerned about fulfilling their roles as providers, as one participant (man) said, "My children are suffering. I cannot afford to buy meat for my children".

5.1.8 Benefits

The farmer was clear that only the men workers on the farm have a provident fund. He said that all workers get paid annual leave, UIF, sick leave and basic medical attention which he pays for informally. Women are given maternity leave, but the farmer did not indicate whether this was paid leave. It was also not clear whether all women who worked on the farm had access to all these benefits, or only the more permanent 'core'.

From what workers said, it was not clear whether women and men receive the same benefits.

Only men talked about a R20 per week food allowance. From what the farmer said, it appears that only the men used to be given meals on the farm, but this had been converted to a cash allowance.

Only women talked about an end of year performance-related bonus. This appeared to be a reward for low absenteeism.

As mentioned in the section on overtime, men had the option of sleeping over at the farm in hostel accommodation, while women did not.

5.1.9 Training

Most participants were satisfied with the training that they got from the farm, be it on-the-job training or other training such as a supervisors course that some attended. It seemed the training that they got strengthened their relationship with the farmer. As one of the men workers said: “This white man here taught me a lot”.

Women indicated a willingness or need to learn other skills that they did not possess such as driving. On the garlic farm, as in all the farms selected for this project, drivers were amongst the highest paid. Women were excluded from this job and training for this job, despite the fact that some of the women on the farm were better educated than men. So the barriers to training that women experience can be seen as a stumbling block to achieving pay equity.

The farmer seemed unwilling to train women because he felt they would simply leave the farm: “We had to train a health worker. I spent R400 sending her to courses. She was here for four months, then got married and left. So there is an aspect of reliability and permanence among the men.”

5.2 Mushroom farm

5.2.1 Overview

The mushroom farm in our case study is large and supplies the major national retail chain stores. The farm also exports its produce, mainly to countries in the SADC.

The farm operates on a 24-hour basis, all year round. Mushrooms are grown in a fully artificial environment in specially designed imported hot houses. This makes mushroom farming more capital intensive than other types of farming which rely on the natural elements.

Out of all three farms, the participants from the mushroom farm were by far the most talkative and informative.

This farm seemed to operate much more like a factory than the other two farms and indeed most farms. It is like a factory both in terms of the capital intensity of the labour process and it how it is organised. There were formal departments such as growing, canning, packing and operations. The farm used a clocking system, adhered to the prescribed 45-hour week and made UIF and Pay As You Earn (PAYE) deductions for all workers. The workers were also unionised. This seemed to ensure effective implementation of labour legislation and an awareness of worker rights amongst workers and management.

5.2.2 Labour process

Mushroom farming is more capital intensive than the other two types of farming covered by the case studies. Workers at the mushroom farm made use of heavy machines more than workers at the other two farms, which tended to rely only on manual labour. It does not, however, mean that work done on the farm is physically less demanding. For example, women still need to bend down to pick the mushrooms.

The farming process goes from compost manufacturing and laying of compost, to sowing of seeds, to watering, to picking, to sorting and weighing, to quality control. Then the majority of mushrooms get packed as fresh mushrooms, while the surplus goes to the cannery where it is canned.

5.2.3 Status of workers

There are about 400 workers on the farm, the majority (270) being women. Of the 400, about 330 live on the farm, while the rest live in the surrounding areas. We do not have a gender breakdown of workers living on and off the farm. It appeared that most of the workers who live on the farm come from the old 'homelands', where they return for December holidays each year. Although all the workers have South African identity documents, the farm's human resources manager was aware that some of them are from other countries in southern Africa.

All the workers are permanent. The artificial environment in which mushrooms are grown means there is no 'season' and work is not dependent on the weather, so work is available all year round. The farm employs temporary full-time workers on contract only when another worker is away, for example on maternity leave or annual leave over the December holiday period.

Generally, most workers seemed to be content working at the farm and they reported knowing what was expected of them in their jobs. However, a couple of workers felt strongly that they would prefer working somewhere else and many women and men workers raised issues of pay and other conditions of employment (such as accommodation) that they would like to see improved.

5.2.4 Division of labour

Within the different departments on the farm, there were clearly defined roles for women and men. Some of these are outlined in table 3. The division of labour between women and men is discussed in more detail below.

grade	women only	women and men	men only
A1		<ul style="list-style-type: none"> Cleaners 	<ul style="list-style-type: none"> trolley man tool assistant
A2	<ul style="list-style-type: none"> pickers labelling (cannery) tea-maker 	<ul style="list-style-type: none"> packers weighers 	<ul style="list-style-type: none"> packshed trolley man
A3	<ul style="list-style-type: none"> weighers (cannery) 	<ul style="list-style-type: none"> picker supervisor team leaders 	<ul style="list-style-type: none"> husky trolley operator winch operator artisans waterer
B1	<ul style="list-style-type: none"> crèche supervisors 	<ul style="list-style-type: none"> quality controller seamer operator (cannery) 	<ul style="list-style-type: none"> fork lift driver boiler attendant
B2			<ul style="list-style-type: none"> mechanical assistant tractor drivers retort operator
B3	<ul style="list-style-type: none"> receptionist 		<ul style="list-style-type: none"> senior artisan senior seamer packshed supervisor
B4			<ul style="list-style-type: none"> truck drivers storemen foreman

Source: based on information provided by human resources manager

Table 3: Division of labour and grading on the mushroom farm

The majority of women on the mushroom farm were pickers. It appeared that, even though there were fewer men than women on the farm, men did a wider range of jobs than women. Men on the farm tended to have more mechanically skilled jobs, and jobs that sometimes require physical strength. They pushed mushrooms on trolleys, carried heavy baskets, and drove huge compost machines that deposit compost into the growing bins, watering machines, tractors and front-end loaders.

Like the other farms, women not doing the labour intensive work of picking appeared to be involved in 'supportive' functions while men are confined to more 'productive' functions. For instance women did clerical jobs, like labelling packets, and running the crèche, while men were artisans, fork-lift drivers, and trolley operators.

It seemed that women had less control over their work than men and were more likely to be on the production line where their absence holds up the whole process. For example, they talked about the problems when they wanted to go to the ladies room. There is only one woman supervisor or team leader who is a woman.

Some women workers felt that given a chance they would do the kind of jobs that men did. However one respondent felt strongly that the work that men did required more "skills" and hard physical labour. She therefore felt that no women would be in a position to carry out that kind of work and women were limited because of their physical make-up: "We women have all kinds of diseases which are different from men's... have you heard of a men having a womb problem?"

The human resources manager on the farm said he would like to see more integrated and flexible job positions for women and men, especially if this leads to higher levels of efficiency: "We always encourage job sharing, and we discourage this ideology of having men jobs or women jobs." He said he has asked the women to be truck assistants and the men to pick. However no women or men had come forward to do the jobs that they had traditionally not had access to. He felt that women don't want to do what they deem to be heavy work, while the men think picking is somehow inferior (even though it would be an opportunity for some to earn more).

Both women and men workers spoke about the differences between them and white workers. For example, both the women and the men supervisors said that they themselves "worked" seemed to imply that this would be different for white staff. They also mentioned other differences, such as whites being foremen and managers and not having to adhere to the clock system.

5.2.5 Attaching value to work

Jobs on the mushroom farm were graded according to the Paterson grading system. The system grades jobs into four broad bands A to F (from lowest to highest), and each band is then sub-divided into a number of levels, from level one upwards. The main criterion used to grade the jobs in the Paterson system is decision-making. This immediately excludes the women and men workers we spoke to from the top four bands (C to F)! Bands C and D are reserved for management on the farm. The highest bands are occupied by strategic decision-makers, although often companies do not grade people at this level at all.

Table 3 on page 46 shows how the jobs done by women and men, and those that are shared, are graded. Women are concentrated in the second lowest grade (A2). They occupy few positions above this level, even where they share jobs with men. The jobs that only men perform are spread more evenly across the grades.

The majority of workers felt that they all worked hard. As one participant explained, “I think we all do heavy jobs irrespective of whether you are a man or women. It is 50-50. The work is heavy all over”. However, two woman workers felt that they did not work as hard as all other workers, particularly men. This could simply be a result of the conflation of heavy work with difficult work in the translation, and it is possible that they felt only that their work is not as heavy as that done by men.

In assessing the value of the jobs that men and women do, there was a tendency amongst the women and men workers to concentrate on strength requirements and ignore fatigue levels. However, it was clear that the jobs done by women and men were demanding. A woman who worked in the cannery explained that women spend the whole day standing there. However, the lifting of heavy pots by men was described as the heavy work in the cannery. A picker described how her “muscles are in pain” after walking to pick all day. The women supervisor explained that she got home so tired at the end of a long day’s work that she could not spend time talking to her children because she was “thinking about the mushrooms”. She was concerned about the impact this had on her family.

5.2.6 Payment

Weekly wages for workers in Paterson bands A and B ranged from what appeared to be a minimum of R170 for a worker at A1, to a maximum of R530 for a truck driver at B4. Generally, wages were considerably higher than those on the other two farms researched for this study.

The farm’s human resources manager informed us that the farm’s payroll makes up approximately 50% of the farm’s expenses. This is interestingly similar to the garlic farm, despite the relative capital intensity of mushroom farming. It is a result of wages and benefits on the mushroom farm being considerably better than those on the other two farms studied.

With the exception of pickers, workers received a standard basic wage for the job they did. Pay differences were not explicitly based on sex.

Pickers (the majority of women) were paid according to output. They had a basic minimum wage of R246, which could be increased depending on how many kilos a worker picked. The piece-rate system only kicked in after a minimum quantity of mushrooms was picked in a week. The human resources manager said that if the weekly pick was more than 60 tons, a worker could earn between R400 and R600 in a week. It appeared that the amount the women could pick also depended on how many mushrooms had grown: “Our work depends on stock. If there is little mushroom then we earn little.”

Interestingly, men wanted to earn more so that they could get married as one explained, “I am also looking forward to getting married. You cannot marry a woman without having property”. Like on the garlic farm men seemed to see themselves as

providers. Women felt that there should be equal pay for the same work. As one said, “We should earn the same amount because they do the same kind of work that men do. We carry the same load that they carry.”

On the mushroom farm, as on the other two farms, the possibility of upward mobility was based on a worker’s skill, responsibility or effort. In common with the garlic farm, women were most likely to earn more by working harder in order to increase money earned through the piece-work system for pickers. One of the men workers described how this is unfair towards women: “These women work more than men. A woman will earn more because she did her work. A woman would work hard to earn R300. But a man would just earn R300.”

There was more scope for men to earn higher wages by progressing (through the acquisition of skills) along a more traditional sort of career path, up the different levels. So for example a tool assistant (A1) could become a machine operator (A2) who could then progress to become a winch operator (A3), retort operator (B1), and mechanic assistant (B2). However, it was not clear that this actually happened on the farm.

5.2.7 Overtime

There is a 45-hour working week on the farm for all workers except pickers. Pickers generally work shorter hours. However these hours are not ‘worker-friendly’ as they are from four till ten in the morning.

Most workers worked more than five days a week, and all hours worked over the weekend were regarded as overtime. Workers were paid a higher hourly rate for this time, in line with provisions in the BCEA.

Women workers said that money is deducted from their basic pay if they are absent. The human resources manager said that workers received paid sick leave and paid annual leave in December, so it is possible that deductions are made only when additional leave is taken or workers are unable to account for their absence. For women, this could also be when they take time to care for their family.

5.2.8 Other benefits

All workers received a monthly production bonus. This bonus depended on how many tons of mushrooms were sold by the farm per month. According to the tonnage, workers’ monthly basic pay was increased by a certain percentage. This method of calculating the bonus disadvantages the women pickers as their basic pay may only account for less than half of their earnings.

All workers enjoyed three weeks’ paid annual leave. It appeared they were allowed to take an additional week if they wanted to accommodate travel to the former ‘homelands’, but this would be unpaid. According to the farmer they received an annual bonus equivalent to three weeks’ pay. The workers did not mention this benefit.

Women received fully paid maternity leave for three months, with provision for a fourth month unpaid leave. This means that the farm was making a contribution to maternity pay, to top up the amount workers could claim from UIF.

Men also mentioned having a provident fund, for which deductions are made from. Women said they were also given toilet rolls and a lunch allowance.

The majority of workers stayed on the farm. Accommodation was allocated to women and men workers independently according to their needs (single or family). It appeared that all workers are given a housing allowance of approximately R9. Workers staying on the farm mentioned contributing R7 or R9 per month towards accommodation, and those that stayed in the surrounding areas said they received an allowance of R9.

None of the workers in the groups, including the person who worked with salaries, seemed able to explain how the housing allowance worked. Some thought the deductions depended on how much a worker earns. Others believed it had to do with the size of the room, or whether the worker had a partner who was charged for using the toilet and water. It seemed that all deductions (accommodation, union subscriptions, payment for the crèche and provident fund) are presented together as a total figure on the workers' pay slips. This confused the women workers we spoke to. The men appeared angry about the large amounts deducted.

It appeared that only white employees on the farm had medical aid. It seemed to be part of their packages because they held senior positions.

A clinic was provided for workers on the farm. Workers did not pay for services at the clinic. The farmer said that these services included a social worker "to assist those who have drinking problems." The farm also introduced lessons on health-related issues such as AIDS.

There was a crèche for workers' children. Workers whose children attended crèche at the farm made a contribution of R10 per month towards this. At the children were given supervision and food, but not medical attention. The women seemed particularly concerned that the clinic on the farm only had "adult medication": "I once asked them and the company says [the clinic] is for workers not for our children. They don't consider children. They are only concerned about adults."

It appeared that the mushroom farm tried to provide safe working conditions and were concerned about the health of their workers. The workers were supplied with protective clothing such as boots and masks when using pesticides or when busy with risk-bearing functions.

The farmer said that the farm had public phones installed for the benefit of the workers. It also had a sports field, managed by a sports committee, to "discourage workers from fighting each other."

5.2.9 Training

Workers on this farm seemed better educated and more skilled than workers on the other farms studied for this project.

Nevertheless, the farm's human resources manager mentioned illiteracy as a major labour-related problem on the farm, and said that adult basic education and training was being introduced to address this. Women workers reported that it was important

that one understood a little bit of English and “one should be able to write”. However, they also felt strongly that a lack of formal education should not be used to devalue a worker’s contribution. One woman explained that the skills she has should be valued, regardless of where she got these skills: “Others are doing better jobs with no education. ... If I run short of something I would have to account and explain how it happened. So you see they must increase my salary.”

As on the garlic farm, a number of women seemed to be better educated than some of the men. Some women were furthering their studies, or had ambitions to further their studies.

Workers received training specifically for the kind of jobs that they did. For instance supervisors would go on a supervisor’s course. Both women and men workers felt that they did not have a say in which courses they attend. They would just be instructed to attend a course.

Workers said they were all trained as they were employed. However, men seemed to mention a much broader range of additional skills training in areas such as first aid, business principles, tractor driving, disciplinary procedures, forklift and front loading. Women mentioned only computer courses and supervisory courses.

The farm’s human resources manager had designed a training schedule. However, most of the skills that he wanted to develop related to jobs that are done by men on the farm, and typically for a few workers on higher grades. Examples include training to become electricians, plumbers and artisans.

5.3 Mixed vegetable farm

5.3.1 Overview

The mixed vegetable farm has been run by a family for the past 40 years. It is located relatively close to Johannesburg.

The farm specialised in a range of vegetables such as potatoes, cabbage, broccoli, spinach, lettuce, parsley, beans, baby marrows and cauliflower. The variety of vegetables grown (22 types) means that the farm is busy all year round. The farm is especially busy in the summer when it is hottest, and particularly over the December holiday period when the demand for fresh produce is also greatest.

The farm supplies wholesalers, but also sells directly to large retail chains and smaller vegetable outlets. A small amount of specialised produce (such as fennel and sugar snap peas) is exported to Europe. It seemed that the farm exported through a wholesale trader.

The manager of the mixed vegetable farm was a member of the family that owns the farm. He was at first rather reticent and reserved when we interviewed him, but opened when he was assured of his anonymity. The women and men workers involved in the focus groups on this farm were less open and seemed less free to express their views compared to workers on the other two farms. The focus group moderators had to work hard to draw information from the hesitant participants.

It appeared that there was blatant abuse and exploitation of workers. Most workers were not happy working at the farm. If they had a choice they would be working somewhere else. Despite poor conditions on the farm, it appeared that there were not many options open to workers. As one woman said: "I suffered a lot at home. That is why I decided to leave school and come here to work for the whites."

5.3.2 Labour process

Mixed vegetable farming involves a number of processes like planting, watering and fertilising, spraying, picking, packing and transporting. The farming methods appeared to be fairly labour intensive. Only the irrigation system and farm vehicles seemed to require a substantial capital investment. Light machines were used to make pre-packed salads and cut vegetables. Other tools used were welded in the farm's workshop.

According to the farm manager, African workers' wages constitute only approximately 28% of the farm's total expenses. If salaries for the five white administrative staff are included, the figure increases to 33%. This seems extremely low, especially compared to the other two farms (one labour intensive, and one capital intensive) where the payroll was roughly 50% of total expenses. The low ratio of the wage bill to total shows up the poor wages workers earn on the farm and the extreme exploitation they experience.

5.3.3 Status of workers

The mixed vegetable farm employed approximately 250 African workers, with roughly equal numbers of women and men. In addition, there are five white administrative staff members. The employment status of the workers is outlined in table 4.

	permanent	contract	casual
women	40	80	20
men	40	70	
total	80	150	20

Source: approximate figures provided by farm manager

Table 4: Employment on the mixed vegetable farm

While there are an equal number of women and men employed as permanent workers, more women than men are employed on contract and only women are employed as casuals.

The farm manager explained that workers can "choose" whether to be permanent or temporary. Temporary workers are contracted for a period of either six months or a year. It seemed that the majority of workers 'chose' to work as 'temporary' workers at the mixed vegetable farm because (unlike at the mushroom farm) having an identity document was not a prerequisite to be employed on contract. Workers indicated that it was difficult to get work somewhere else because they did not possess identity documents. The farm manager spoke of "sub-contractors" from Transkei, suggesting that he could be using labour brokers specifically to source workers without identity documents from the former 'homelands'.

Most of the workers in the focus groups were temporary. Women workers seemed to feel more insecure than men, but both women and men talked about their insecurity. One participant said, "You can be dismissed anytime when they realise that you are demanding a lot of money". Perhaps participants were hesitant to talk in the focus groups because of fear of losing their jobs or being physically abused.

All the permanent and contract workers live on the farm. The casual workers are picked up at random on the side of the road by farm supervisors each morning, and dropped off every evening. They are paid weekly and get no other benefits. According to the farm manager, these casuals can work five days a month to 20 days a month, depending on the need for extra labour. So the farm is contravening several clauses in the BCEA as most of their 'casuals' work more than the 24 hours a month required to qualify for certain benefits.

While there are usually about 20 casuals working on the farm, this often increases over the December holiday period when demand for produce increases and many permanent or contract workers take leave to travel to their homes. The farm manager explained that they employ up to 200 additional workers over the holiday period on a limited six week contract. Many of these workers come from Sekhukhuneland to work for the six weeks, and then return home.

Workers who participated in the focus groups at the mixed vegetable farm were younger than participants on the garlic and mushroom farms. Hence their length of service was less than that of other participants. It seemed that most of the women and many of the men participants were single. The farm manager said that most of the single women are mothers and their children lived with them on the farm.

The mixed vegetable farm employed most of its workers from former 'homelands'. Participants in the focus groups spoke many different languages (Tswana, Zulu, Xhosa, Sepedi, Venda, Sotho), and were not able to communicate with one another across the language barrier. It is possible that this was part of the farm's strategy to divide workers and prevent them from demanding improved conditions as a unified group.

Of the three farms, the mixed vegetable farm seemed to be the only farm that employed a substantial number of workers from other countries in southern Africa such as Zimbabwe, Malawi and Mozambique. It appeared that the farmer employed foreigners and people from underdeveloped areas to ensure that he has a vulnerable and cheap labour force.

Interestingly, it was reported that foreigners employed on the farm were all men. It could be that, as on the other farms, these men are seen as the main breadwinner and are under pressure to provide for their families. Also, it is probably easier for them to travel far, leaving their families, while women stay at home and look after the children. However, women workers from the former 'homelands' who had also left their families behind, referred to having to support family members much more than the men as their reason for working.

5.3.4 Division of labour

The majority of jobs on the mixed vegetable farm were done by both women and men. Also, workers vary their jobs according to the needs of the farm. So a picker is not exclusively a picker, but may often help in packing or planting if the need arises.

Workers operate in mixed-sex teams, such as packing teams, picking teams and planting teams. The teams are headed by captains who supervise the process and allocate tasks amongst the team members.

Within the teams, it appeared that tasks were allocated differently to women and men. So, although women and men may be loaders, if a women are loading they will tend to load the smaller boxes rather than the heavier ones. Similarly, although men are packers, the finer packing of smaller goods is usually a woman's jobs.

In addition there were some jobs that were exclusively done by women or men. Only women did work related to their traditional domestic role, as creche attendants, cooks and salad makers. As on the other farms, men seemed to do more mechanical and technically skilled jobs. For instance men drove tractors and trucks, welded in the workshop, and installed irrigation pipes. Only some of the work done by men required heavy physical labour. For example workshop assistants needed to lift heavy irons.

The mixed vegetable farm had the most complex hierarchy amongst workers of the three farms studied. While the other farms simply had supervisors or team leaders, this farm had captains, senior captains, indunas and an overall farm induna. A woman could be a captain, but would not be in a higher position of authority.

It appeared that men had a life outside the farm. They were involved in sporting activities such as bodybuilding. Some were involved in bricklaying, repairing televisions, tiling and installing ceilings. That means that men spend their 'leisure' time earning additional income earning, while women do unpaid work caring for children.

5.3.5 Attaching value to work

The farm manager had a grading system that he and his family worked out. The system applies equally to permanent and temporary workers. Workers understood the system, and explained how it operated in the focus groups.

According to the system, workers are grouped in six main categories based on the tasks they perform. These categories are:

- general (the majority of workers, including planters, waterers, pickers, packers, cooks, salad makers, crèche attendants)
- captain
- tractor driver (mechanical and workshop assistants also fall into this category)
- builder
- truck driver
- senior captain, induna and farm induna

The grading system has different levels (from C, the lowest to A, the highest) within each category based on skill and experience. New and inexperienced workers would start on a C grade and work their way up. According to the farm manager, grade

picker or driver would have experience, be reliable, work diligently and have worked on the farm for a significant period of time.

Table 5 ranks the job sub-categories according to pay and indicates the division of labour between women and men, to illustrate the value attached to different areas of work on the farm. The general B+ grade is highlighted in gray, as the farm manager said the wage paid at this level what the average worker earns on the farm.

women & men	men only	pay	% of average
general C+		R 50.82	73%
general B		R 62.15	90%
general B+		R 69.41	0%
general A		R 77.66	111%
captain C		R 83.62	120%
general A+		R 90.42	130%
captain C+		R 96.03	138%
captain B		R101.77	147%
	tractor driver C	R104.48	151%
captain A		R111.01	160%
	builder C	R120.98	174%
	senior captain	R124.21	179%
	tractor driver B	R135.50	195%
	induna	R141.31	204%
	truck driver C	R170.48	246%
	builder B	R184.80	266%
	tractor driver A	R189.75	273%
	truck driver B	R252.98	364%
	truck driver A	R316.27	456%
	farm induna	R518.63	747%

Source: based on information provided by farm manager

Table 5: Division of labour, grading and pay on the mixed vegetable farm

The farm manager said that women are as likely as men to be on the same level within the general category that includes planters, pickers, waterers, packers, cooks, and crèche minders. However, the only other category where a woman could be represented was as a captain. So women could only work in less than half of the sub-categories. From the table it can be seen that the nine categories in which women could work fall within the ten least valued levels.

There are only a few captains. But even if a woman were to reach the highest level in this category, she would still only earn just over one and a half times what the average worker earns (160%). Men truck drivers earn up to four and a half times (456%) more than the average wage on the farm, and best paid man earns seven and a half times more (747%).

Many women workers felt men worked harder than women because they “carry things and bring them to us” and because they work longer hours. Some men felt

women and men both did the same work, whereas others felt “Men do hard labour and women do soft work.”

Some men workers felt that they should earn more than women, regardless of the value of women’s work. It appeared that they held some old-fashioned values and feared a loss of power. As one participant said: “Most of the time when women earn the same as men, they tend to undermine us, and some of them leave us for men who earn a lot of money”.

5.3.6 Payment

Wages were determined solely by the grading system. A worker is paid at the level they are graded, regardless of the range of tasks they perform. So if a picker is watering or packing for a day, she will still be paid the same.

Unlike the other two farms, none of the workers’ ordinary pay depended on their output. Interestingly, the farm manager informed us of an incentive bonus system, whereby every fortnight each member of the most efficient team is given a bonus of no more than R8 per person. None of the workers mentioned this.

According to the farm manager, the average wage on the farm (for the general B+ grade) is around R69 per week. This adds up to under R300 per month, which is a quarter of the University of Port Elizabeth’s Supplemented Living Level for August 1998 for a low-income family with five members (R1 190 per month).

Almost all women workers on the farm fall into the general category, earning between R51 and R90 per week. The only opportunity women have to earn a bit more (between R84 and R111) is by being a captain of a team. The better paid jobs of senior captain, induna, builder, tractor and truck driver, and farm induna are done by men. Weekly rates for these jobs vary from R104 for an inexperienced tractor driver to R519 for the farm induna.

Both women and men workers seemed unhappy about the amount of money that they received as wages. Of workers on the three selected farms, those on the vegetable farm were the lowest paid by far.

5.3.7 Overtime

From what the farm manager and workers on the mixed vegetable farm said, it appeared that the BCEA provisions on hours of work and overtime pay were not implemented.

Workers said they work from Mondays to Saturdays. They reported that the time they knock off depends on when the work is finished, but women work on average 11½ hours and men up to 14 hours a day in the week. Saturday work is half-day. According to information provided by the farmer, workers were working at least 52½ ordinary hours per week.

Workers on the farm were not clear on what part of their working time counted as overtime, and were unsure what they earn for overtime. Some thought it was R1 per day when two to three hours overtime hours (over and above the legal normal working time) per weekday are worked. Others said it was R4 or R13 per fortnight. If

these workers earn R51 per week for a maximum 48 hour working week (as set out for agricultural workers in the Basic Conditions of Employment Act (1997) until the end of 1999, when the working week must be reduced to 45 hours), they earn R1.06 per hour during normal time. In fact, it appears they are paid less than their normal hourly rate for overtime, instead of an extra 50% as the law says!

While workers were unhappy with the long hours, poor overtime pay and that there was no set knock-off time, they did not appear to be aware that they are protected against working such long hours by the law, or the legal provisions on overtime pay.

5.3.8 Benefits

Unlike at the garlic farm, all permanent and contract workers stayed on the farm. Accommodation consisted mainly of two-room units for couples. There was also separate accommodation for single women and a hostel-type arrangement for single men. Unmarried women were allowed to have their children with them, and it appeared that most do. With the vast majority of couples, both partners work on the farm. There is only one family where the wife does not work on the farm. Casual workers are not given accommodation, but they are picked up and dropped off every day, so they don't have to pay for transport costs all the way to the farm. (It was not clear how far the road was from their communities, or if they required transport to get there.)

All workers received three meals a day from the farm, even on days when they were not at work (for instance on Sundays).

As on the mushroom farm, there was a crèche on the farm for the workers children. The crèche on the mixed vegetable was free. Interestingly, on this farm there were three caretakers who looked after the children according to language group.

Permanent workers enjoyed paid annual leave benefit. However it seemed that it was not easy to get permission to go on leave. This was an additional reason why some workers chose to remain temporary. Transport costs (one way only) for both permanent and contract workers to return 'home' when they go on leave are covered by the farm.

Provident fund and UIF contributions were only made for permanent workers. Only permanent women workers got paid maternity leave.

There was no health care available to workers on the farm, and they had to pay for any medical attention they were charged for as well as transport to the nearest facility. Money was deducted from workers' wages if they were off sick.

It appeared that at some stage there was an annual bonus paid to workers in December, but the benefit was terminated without a proper briefing or consultation with the workers.

5.3.9 Training

Only on-the-job training was provided at the mixed vegetable farm. Unlike on the other farms, workers had never been sent to training courses outside of the farm.

Women workers simply spoke about being “told what to do” when they arrived on the farm. As one woman said: “There is nothing else they can help us with here.”

Men appeared to feel their jobs required more training before they could be done properly. One participant explained why somebody needed to be taught to do his job as a sprayer for safety reasons: “He must be taught how to spray because this spray is so poisonous”.

6 RECOMMENDATIONS

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