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Item Type	Reference book
Authors	Comisión Económica para América Latina (CEPAL)
Publisher	Comisión Económica para América Latina y el Caribe CEPAL
Rights	Creative Commons Copyright (CC 2.5)
Download date	2026-06-20 13:18:24
Link to Item	http://hdl.handle.net/20.500.12424/203222

GENERAL
LC/CAR/G.670
26 November 2001
ORIGINAL: ENGLISH

**ADVANCING GENDER EQUALITY IN THE CARIBBEAN:
LEGISLATIVE APPROACHES TO SEX DISCRIMINATION**

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ADVANCING GENDER EQUALITY IN THE CARIBBEAN: LEGISLATIVE APPROACHES TO SEX DISCRIMINATION

Introduction: Advances in gender equality

The 1990s was marked by a process of review of governmental policy towards the attainment of the goal of gender equality and equity. To a large extent, this review process was facilitated and strengthened by the preparation for the Fourth World Conference on Women which allowed for assessments and reviews both of the achievements and as well as the strategies for the promotion of gender equality.

In this review, the Economic Commission for Latin America and the Caribbean/Caribbean Development and Cooperation Committee (ECLAC/CDCC) secretariat convened the Third Ministerial Meeting on Women, 4-6 October, 1999 at which a number of recommendations were made. The meeting acknowledged that the member States had all signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (the Women's Convention). However, the delegates urged the strengthening of the process of review and reform of legislation and of administrative and bureaucratic practices to ensure the full compliance with, in particular, the Women's Convention.

This paper seeks to contribute to that process by providing a review and assessment of equality legislation in the Caribbean subregion, with particular attention to the English-speaking Caribbean.

Elimination of discrimination

Throughout the region, in the 1990s governments continued their focus on the elimination of direct and indirect forms of discrimination against women through legislative reform and through the implementation of gender sensitive social policy. Simultaneously, however, many of the countries in the region entered into structural adjustment programmes which prioritised the need to reduce significantly the public debt. Elemental to these policies was the reduction of expenditure in the public sector as well as the freezing of public sector wages. The reduction in public expenditure on the social sector under these economic policies exacerbated poverty levels in the region, widened social inequalities and contributed towards the decline in living standards. Women

appear to have been negatively affected by these processes in specific ways because of their location in the economy as unskilled and low waged workers on the one hand, and on the other, because of their primary role for the economic reproduction of the household. The results of State activity have, therefore, had contradictory impacts. Even while ideological relations are changing towards equality, the material conditions for a significant proportion of women continue to be of central concern in the Caribbean subregion.

Caribbean States have sought to comply with the provisions of the Women's Convention through the removal of discriminatory laws and the enactment of enabling legislation which expands women's options for self-empowerment. Constitutional prohibitions against discrimination on the basis of sex exist in most independent Caribbean countries. But similar prohibitions against discriminatory treatment on the basis of sex do not generally extend to the acts of non-State actors in most of the countries in the region.¹

Still governmental response to unequal treatment by non-State actors advanced in the extension of protection for women from some aspects of discriminatory treatment in the workplace. Specific maternity protection legislation now exists in most countries. In Saint Lucia the highly controversial provision which rendered an unmarried teacher liable to dismissal on the basis of pregnancy was finally revoked in the face of sustained campaigning by organizations representing teachers and women's rights.

Within State structures therefore, gender inequality, where it exists, is grounded and supported less by discriminatory laws than by discriminatory administrative and bureaucratic practices based on dominant cultural norms on the roles and status of women and men. Examples of this can be found in some countries where teenage mothers are debarred or discouraged from continued access to secondary education though there is no similar bias in relation to teenage fathers. Even here however, States have sought to eliminate this, such as in St. Kitts and Nevis where towards the end of the 1990s a policy was elaborated outlining the right of the teenage mother to return to school after delivery.

Economic and social rights

The framework of the Women's Convention calls upon governments to take an integrated approach to the realization of women's human rights. The Convention recognizes that specific and positive measures must be pursued to ensure equal access to resources, services and opportunities in education, health, social security and employment. This understanding of the parameters of State responsibility was advanced significantly in the Beijing Platform for Action which spoke not only to the continued need to eliminate all forms of discrimination, but also for State action based on a broader understanding of

social equity, one which addressed the alleviation of poverty, access to economic opportunity and to quality health and education services and social security.

Education

In the post-independence period in the Caribbean subregion, State commitment to universal access to education has ensured equality of access to primary and secondary education. In most countries, legislation mandates a compulsory age for school attendance which ensures that girls and boys have access at least to primary school education.

Regional enrolment ratios indicate that except for the pre-primary and primary levels, where males are marginally more numerous, more females are enrolled at all levels of the system. The magnitude of the gender differential is most marked at the secondary level, where it favours girls as opposed to the primary level, where there is relative equality in enrolment. At the pre-primary level, there was also relative gender parity, suggesting that gender-related impediments in access to education are not an issue at those levels. (See Table 1: Regional enrolment ratios by sex in the Caribbean).

	Pre-Primary	Primary	Secondary	Technical/Trade	Community College	University	Other	Total	
Female	4.1	63.0	28.1	0.9	0.7	1.2	2.0	100.0	
Male	4.2	65.6	26.2	0.9	0.5	1.0	1.5	100.0	
Total	%	4.1	64.3	27.2	0.9	0.6	1.1	100.0	
	No.	33242	516263	217949	7402	5020	8662	14173	802711

Source: Brown-Chen, C: The Employment Problem in CARICOM Countries. The Role of Education and Training in its Existence and in its Solution. 1990-1991 Population and Housing Census of the Commonwealth Caribbean. CARICOM.

	Pre-Primary	Primary	Secondary	Technical/Trade	Community College	University	Other	Total	
Female	49.7	49.5	52.3	49.3	57.9	55.4	57.3	50.5	
Male	50.3	50.5	47.7	50.7	42.1	44.6	42.7	49.5	
Total	%	100.0	100.0	100.0	100.0	100.0	100.0	100.0	
	No.	33242	516263	217949	7402	5020	8662	14173	802711

Source: Brown-Chen, C: The Employment Problem in CARICOM Countries. The Role of Education and Training in its Existence and in its Solution. 1990-1991 Population and Housing Census of the Commonwealth Caribbean. CARICOM.

A trend which emerged in the 1990s was the growing female/male enrolment gap at the tertiary academic level. Statistics from the University of the West Indies show steadily increasing rates of female enrolment and certification, from 52.5 per cent in 1985/86 to 61 per cent in 1994/1995. For some countries these figures are even more marked. Women accounted for 74 per cent of all graduates from Trinidad and Tobago from the University of the West Indies (UWI) in 1996.

Year	Males	Females	Total	Female as % of Total
1948/49	23	10	33	30.3
1954/55	275	109	384	28.4
1959/60	446	249	695	35.8
1969/1970	2914	1713	4627	37.0
1974/1975	3871	3057	6928	44.1
1979/1980	4782	4229	9011	46.9
1984/85	5007	5565	10572	52.6
1990/91	5459	7169	12628	56.8
1994/1995a	6303	9888	16191	61.1

Source: Bailey, Barbara. Women's Education: The Caribbean Situation.⁴

The data from UWI also indicates that women dominate numerically in the faculties of arts, law and the humanities and have a lesser, but increasing presence in some areas of science and technology. There is now relative equality in enrolment in the faculties of medicine and the natural sciences. As these gender shifts reach the workforce, it can be expected that the professional and occupational distribution of the labour force will show more females in medical professions, science and technology and engineering.

While more women than men are attending academic institutions, the converse is the case for attendance at technical and vocational institutions in some territories. Data from Trinidad and Tobago for 1996/1997 show that 70 per cent of students enrolled in technical and vocational schools are male. Within these institutions, the female enrolment tends to be concentrated in home economics and office management courses. Similarly, gender biases in subject selection are also observable from data from the University of Technology in Jamaica with men pursuing the more technological and vocational based subjects⁵. Sex segregation in curricula choices is also discernable at both secondary and tertiary levels. Segregation of the curriculum along traditionally accepted gender boundaries continues with girls

dominating the arts and soft sciences and boys the hard sciences and technical and vocational fields.

This segregation has consequences for employment and labour force participation particularly for girls from marginal economic backgrounds. The education system appears to leave them less equipped to enter the job market or equips them for only low paying and low skilled jobs in the service sector. So, for Jamaica unemployed girls in the age group 15-19 comprise 59 per cent of the unemployed in that age group. The corresponding figure for Barbados is 66 per cent.⁶

The declining male attendance at academic tertiary institutions along with high levels of male violence has fuelled a contentious discourse around the existence of male gender gaps or male marginalisation within Caribbean social structure. Within this discourse can be discerned an underlying assumption that female educational attainment has resulted in the near eradication of discrimination against women in the region. As advanced by Miller,⁷ women's increased access to education has allowed for social mobility and the translation of these educational opportunities into better jobs and higher income. He argues that this social transformation has been accompanied by a deterioration in the socio-economic status of certain groups of men which is apparent in poor educational achievement, unsatisfactory performance at the workplace and chronic frustration among youth on street corners unable to find jobs. The assumption behind the thesis being that women's increased access to presumably finite resources has been to the detriment of men.

Notwithstanding these educational achievements, feminist academics and researchers have pointed to other social statistics which show that women continue to experience gender inequality.⁸ They argue further that a closer examination of the patterns of female achievement within the education system suggests strongly that the pattern of segregation evident in subject selection has had the effect of maintaining the unequal and inequitable division of labour in the home and in the workplace. Women predominate in the occupational categories which are the lowest paid and least protected. By and large the work which women do in the formal economy is less technical, lower skilled and therefore accorded a lower monetary status.

While there is no doubt that significant numbers of the male youth population are experiencing social and economic deprivation, it is disputed that gender is the principal or sole variable to explain this phenomenon. Sociological research is needed to explain the gender and class differentials in educational attendance and achievement.

Poverty and labour force participation

Poverty assessment studies conducted in certain countries in the region indicate that in many countries over one quarter of the population is classified as poor. Whether the gender of the household head is a causal factor in determining the experience of poverty continues to be the focus of research and study. Uncontested however is that poverty impacts differently and more acutely on women than it does on men. For Belize, for example, 30.5 per cent of female-headed households were defined as poor as opposed to 23.6 per cent of male-headed households.⁹ In 1996 in Barbados 12.7 per cent of all households lived below the poverty line, and 60 per cent of these poor households were headed by women. In Jamaica, 47 per cent of urban households are headed by single women and, of these, 30 per cent live below the poverty line.¹⁰ Female heads of households tend to have lower educational and occupational levels than their male counterparts and also greater responsibilities since the households are larger and, more often than not, there is no male income earner in such households.

Table 4: Unemployment rate by country and sex, labour force participation rate by country and sex				
	Unemployment Rate by Sex		Labour Force Participation Rate by Sex	
	Male %	Female %	Male %	Female %
Anguilla (1992)	6.3	9.0	82.0	60.7
Antigua and Barbuda (1991)	6.4	5.6	81.6	62.9
Aruba (1997)	6.7	8.4	71.5	54.3
Bahamas (1999)	6.0	9.7	83.1	70.9
Barbados (1999)	7.7	13.3	74.7	61.5
Belize (1999)	9.0	20.3	79.7	39.6
British Virgin Islands (1991)	3.4	3.1	84.3	68.6
Dominica (1997)	19.6	27.2	74.9	59.6
Grenada (1998)	10.5	21.2	75.6	55.0
Guyana (1992)	8.4	18.1	81.2	39.3
Jamaica (1999)	10.0	22.4	73.0	56.5
Netherlands Antilles* (1998)	14.1	19.5	48.6	38.3
St. Lucia (1999)	16.0	20.3	77.0	62.0
St. Vincent & the Grenadines (1991)	18.4	22.1	80.8	35.8
Suriname (1998)	7.2	17.0	71.0	37.0
Trinidad and Tobago (1999)	10.9	16.8	75.0	46.6

Source: ILO. Caribbean Labour Statistics : www.ilocarib.org.

* This relates only to Curacao

Labour force and income data support the contention that women experience poverty more severely than do men and this is directly related to lesser opportunities in the labour market. The 1990/1991 Population and Housing Census data, indicated that there was a 60:40 ratio in regional labour force participation rates in favour of males. This situation was not very different at the end of the decade. (See table 4). Labour force data collected by the International Labour Organisation (ILO), for 1996, indicated that women accounted for 44 per cent of the labour force, but held only 41% of the jobs. As a consequence, they accounted for approximately 60 per cent of the unemployed. Collectively they had an unemployment rate of 21.4 per cent.¹¹

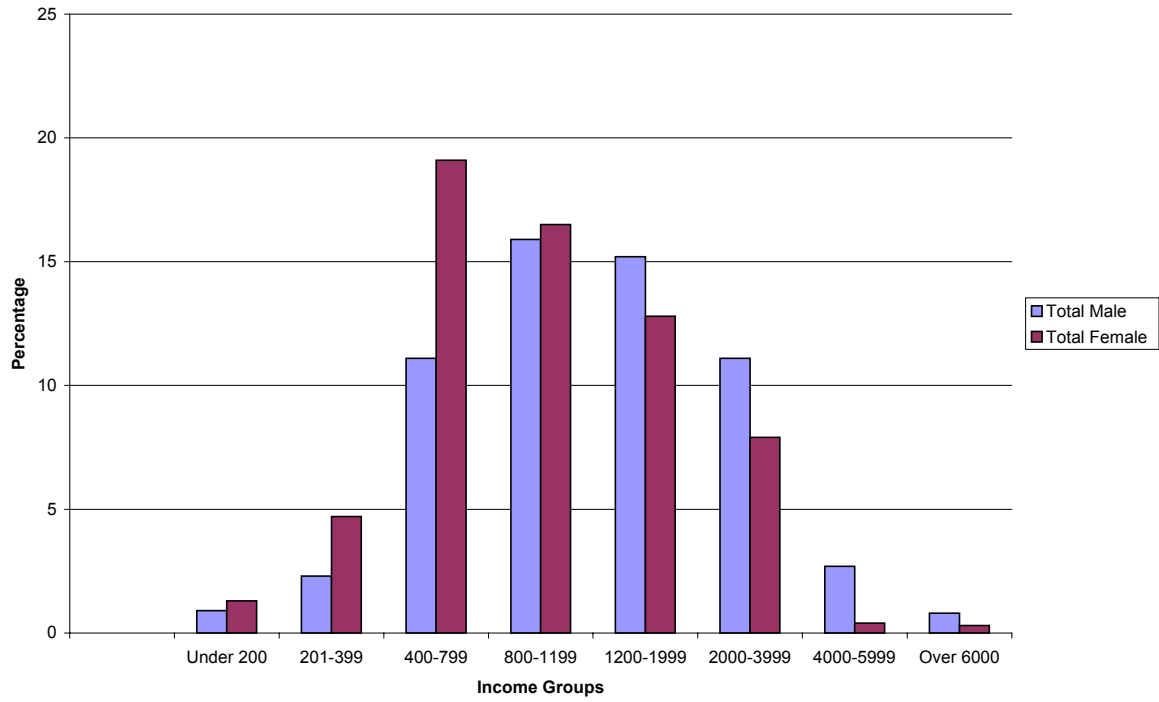
In respect of employers and own account workers, data collected in preparation for the United Nations Fourth World Conference on Women, indicated for 1980, 1985 and 1992 that the proportion of women was approximately 25 per cent.¹² The data presented in the 1990-1991 Population and Household Census supported this as it indicated that women comprise less than a quarter (22 per cent) of this category of the workforce in the subregion¹³.

The absence of pay equity in the region continues to be an area of concern as men consistently make more money than women. According to a World Bank study, in the Caribbean, wages in the private formal sector are as much as 33 per cent less for women employees.¹⁴ Also, the World Bank Report of 1996 noted, as well, that there “are some indications of discrimination in the labour market. There are concerns that wages among women are lower than male counterparts, and that employers in some countries may be reluctant to hire women of childbearing years, particularly pregnant women.”¹⁵

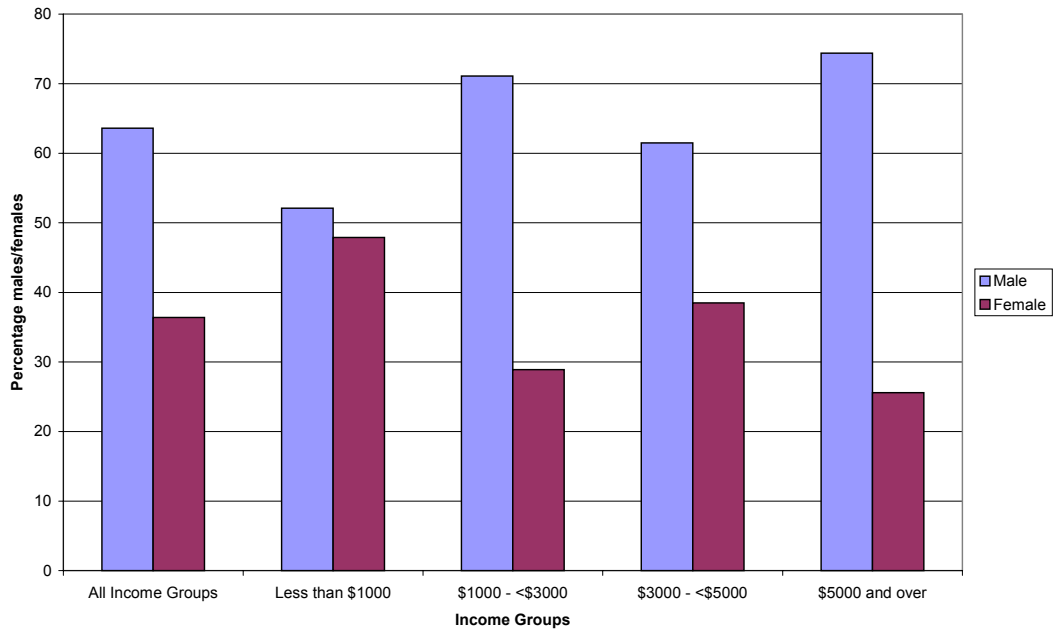
The data for Trinidad and Tobago reveal that in every sector of employment women are paid lower incomes than their male counterparts. So 70 per cent of persons making between TT\$1000-TT\$3000 were men as opposed to 30 per cent of women. Sixty-five percent of those earners, making between TT\$3000-TT\$5000 were male and the figure becomes even more skewed at the over TT\$5000 level where 75 per cent of such earners are male.¹⁶

Similar differentials are also apparent for Saint Lucia¹⁷. The data on gross income for that country in 1999 indicates that 25 per cent of all women earned a gross income of under EC\$799 as opposed to 15 per cent of male income earners. There is relative equality in the rates for those who earn between EC\$800-1999 (30 per cent for women and 31 per cent for men). However the disparity is greatest at the highest income levels where 16 per cent of men reported earning in excess of EC\$2000 per month as opposed to 9 per cent of women.

Gross Income 1999 (All Age Groups) St. Lucia



Income Groups in Trinidad and Tobago by Sex (1996)



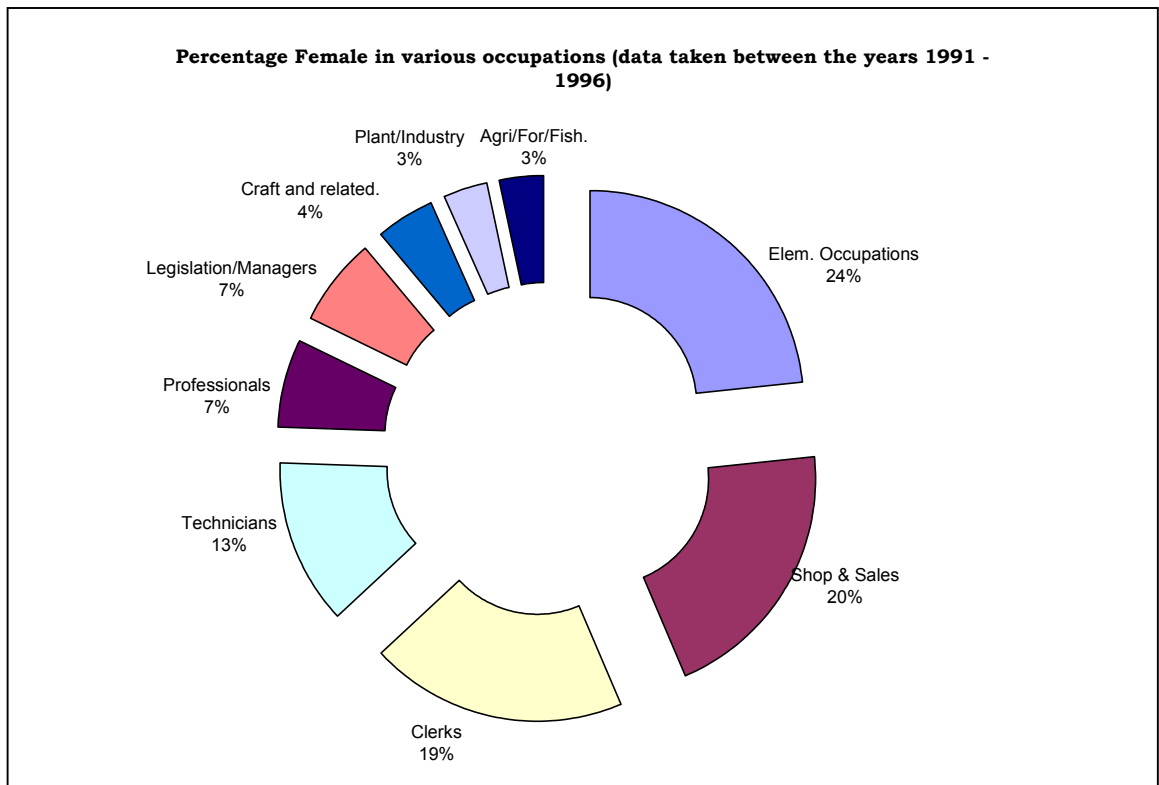
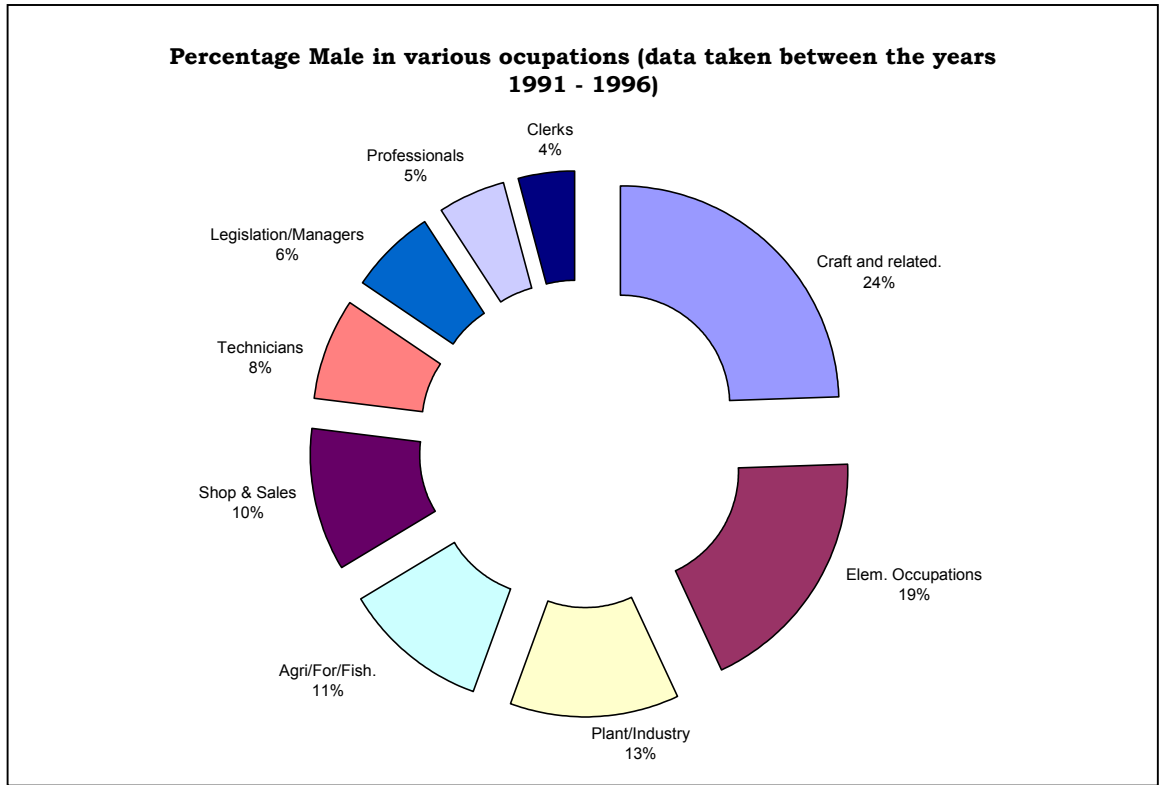
Apart from wage differentials, it is the case that work which is traditionally associated as women's work has been ascribed less value within the money economy. Across the subregion, the sexual division of labour persisted, as women continued to be concentrated by occupational group and by economic activity. Regionally, in the mid 1990s, 24 per cent of women in the workforce participated in elementary occupations (largely domestic employees); 20 per cent were in sales and service occupations and another 19 per cent were in clerical occupations. By contrast, men participated in a wider range of occupations and in sectors that are better paying – craft, industry, agriculture and elementary occupations.

While there is a lack of data on the numbers of domestic employees in the labour, it would appear by reference to the category of elementary workers within the occupational classification that significant numbers of women are domestic employees. So for example, it is reported that in 1991, 15.3 per cent of women working in Jamaica worked as household workers¹⁸.

This category of worker, typically, is the lowest paid, suffers from employment insecurity, harsh conditions of work and can be excluded from the legal definition of "worker" for the purposes of accessing the industrial tribunals, as is the case in Trinidad and Tobago. The vulnerability of such employees to exploitative labour practices is underscored by the existence of essentially discriminatory practices, sometimes legislative, within the region. In Belize, the general rate for manual work is \$2.25 per hour. Export and agricultural workers get at least \$2.00 per hour and domestic workers and shop assistants, who are mostly female, have a minimum of \$1.75 per hour.

In 1998, Trinidad and Tobago passed a Minimum Wage Act which provides a minimum wage of universal application thereby eliminating the inherent discrimination in the old legislative order under which household assistants were granted the lowest minimum wage.

The income and occupation data presented indicates both a vertical as well as a horizontal segmentation within the labour market which are disadvantageous to women. The marked gender disparities at the highest levels of income indicate continued vertical segregation where men occupy the most senior jobs. The concentration of women in a few occupation groupings that are among the lowest paid, reveals a horizontal segregation.¹⁹



Source: ECLAC/CDCC, "The Caribbean Subregional Review and appraisal Report on the Implementation of the Beijing Platform for Action" LC/CAR/G. 583 (1999)

International norms and standards on non-discrimination

The fundamental nature of the principle of equality or freedom from discrimination to the modern human rights framework is apparent from the presence of non-discrimination clauses in all the major human rights conventions as well as in the Universal Declaration on Human Rights. Cook²⁰ notes that the international struggle for the protection and promotion of women's legal rights has progressed through several stages. The first stage focused on the protection of specific rights of particular concern to women through the development of specialised conventions such as the Convention Concerning Employment of Women during the Night (1919) and the Maternity Protection Convention (1919).

The prohibition of sex discrimination in the Universal Declaration of Human Rights and its two implementing covenants, The International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) represented the second stage. This development at the international level has been mirrored at the national level as many constitutions now prohibit discrimination on the basis of sex.

Country	ICCPR	ICESCR	CEDAW	CRC	Belem do Para/OAS
Antigua & Barbuda			R	R	R
Bahamas			R	R	R
Barbados	R	R	R	R	R
Belize	R		R	R	R
Cuba			R	R	
Dominica	R	R	R	R	R
Dominican Republic	R	R	R	R	R
Grenada	R	R	R	R	R
Guyana	R	R	R	R	R
Haiti	R		R	R	R
Jamaica	R	R	R	R	
St Kitts/Nevis			R	R	R
Saint Lucia			R	R	R
St Vincent & the Grenadines	R	R	R	R	R
Suriname	R	R	R	R	
Trinidad & Tobago	R	R	R	R	R

Source: www.unhchr.org

The third stage in the promotion of women's rights at the international level is the addressing of the persistent and structural nature of violations of women's rights which the Women's Convention represents. Additionally, the Optional Protocol to the Women's Convention which came into effect on 22 December 2000 allows the further monitoring of the implementation of the Women's Convention. The Protocol enables the Committee on the Elimination of all forms of Discrimination against Women to receive individual complaints from countries that have ratified the Protocol and whose rights under the Convention have been alleged to have been violated.

All of the member countries of ECLAC/CDCC have signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (the Women's Convention) and well as the Convention on the Rights of the Child. Apart from the Dominican Republic, no other State has ratified the Optional Protocol.²² In addition since 1995 all member States have also ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

The Women's Convention guarantees specific rights to women in a range of civil, political, social and cultural matters. It also establishes State obligations related to the rights; and creates mechanisms to monitor States' compliance with their obligations and allow individuals to seek redress for violations of their rights.

The Women's Convention moves beyond the guarantees of equality before the law and equal protection under the law, that is formal equality and sets out measures aimed at achieving substantive equality between men and women. The Convention binds State parties to seek to modify cultural patterns of behaviour and attitudes regarding the sexes, and attempts to impose standards of equality and non-discrimination in private as well as public sphere.

The Women's Convention specifically obliges States to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. The Women's Convention has, therefore, expanded the scope of State responsibility: encompassing both negative and positive obligations.

The Convention recalls in its preamble that the elimination of discrimination against women and the promotion of equality between women and men are central principles of the United Nations and constitute binding obligations under the Charter of the United Nations and other instruments. The Convention, it must be noted, requires progressive rather than immediate implementation of many provisions (most particularly those which required the State to take positive measures which are resource contingent). The Women's Convention contains obligations both of conduct and result.

The Women's Convention calls on all States to condemn discrimination against women in all its forms and to pursue a policy of eliminating discrimination against women. This general undertaking is to be implemented through the following actions:

To embody the principle of equality of men and women in their national constitutions and to ensure through law and other appropriate means, the practical realisation of this principle of equality and non-discrimination.

The Convention also calls upon States to adopt legislative and other measures prohibiting discrimination. The Convention therefore recognises that States have obligation to eradicate acts of discrimination or discriminatory results on the part of the State as well as non-State actors.

Discrimination under the Convention means:

“any distinction, exclusion, restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any field.”

The definition calls attention not only to direct acts of discrimination but also to discriminatory results of apparently gender-neutral laws or policies. The definition also draws attention to the full gamut of rights elaborated, for example in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Table 6: Ratification of ILO Conventions: Equal Remuneration Convention, 1951 (No. 100) Convention concerning Discrimination in respect of Employment and Occupation (No. 111)		
Country	Convention 111 Ratification date	Convention 100 Ratification date
Antigua and Barbuda	02.02.1983	
Bahamas	14.06.2001	14.6.2001
Barbados	14.10.1974	19.9.1974
Belize	22.06.1999	22.6.1999
Cuba	26.08.1965	13.1.1954
Dominica	28.02.1983	28.2.1983
Dominican Republic	13.07.1964	22.9.1953
Grenada		25.10.1994
Guyana	13.06.1975	13.6.1975
Haiti	09.11.1976	4.3.1958
Jamaica	10.01.1975	14.1.1975
Saint Kitts and Nevis	25.08.2000	25.8.2000
Saint Lucia	18.08.1983	18.8.1983
Saint Vincent and the Grenadines	09.11.2001	
Trinidad and Tobago	26.11.1970	29.5.1997

Source: www.unhchr.org

In addition to the covenants mentioned above, a number of ILO instruments are relevant in their elaboration of the parameters of State responsibility in ensuring and protecting the rights of women in employment. These include:

- Discrimination (Employment and Occupation) Convention (No. 111)
- Equal Remuneration Convention, 1951 (No. 100)
- The Declaration on Equality of Opportunity and Treatment for Women Workers 1975
- Resolution on Equal Opportunities and Equal Treatment 1985

The Declaration on Equality of Opportunity and Treatment for Women Workers stresses that:

"all forms of discrimination on the grounds of sex which deny or restrict equality of opportunity and treatment are unacceptable and must be eliminated".

The Declaration calls for the protection of women at work as integral to the improvement of living and working conditions of all employees.

Importantly, ILO Resolution on Equal Opportunities and Equal Treatment for Men and Women outlines a comprehensive set of measures for national action in various areas including:

- Equal access to employment and training;
- Promotion of the full implementation of the principle of equal remuneration for work of equal value;
- Provision of adequate maternity protection and benefits and their gradual extension to women in all sectors of activity and enterprises of all sizes;
- Harmonization of family and job responsibilities; and
- Equal treatment in social security coverage, and its extension to all categories of workers.

Because women's access to opportunities in the workplace is constrained by patterns of occupational segregation, the resolution also identifies specific measures for the elimination of occupational segregation in the labour market.

National constitutions

All of the constitutions of the ECLAC/CDCC member States contain chapters on fundamental rights and freedoms. Within the English-speaking Caribbean, the Constitutions elaborate rights which are within the civil and political realm and State entitlement to enjoyment regardless of number of grounds²³, including sex. The rights and freedoms assured generally include:

- Life, liberty, security of the person, enjoyment of property and the protection of the law;
- Freedom of conscience, freedom of expression (including freedom of the press) and of peaceful assembly and association;
- Protection of family life, privacy, the privacy of home and other property and from deprivation of property without fair compensation.

Equality before the law is also guaranteed in Haiti and St. Kitts and Nevis, Saint Lucia and Trinidad and Tobago. The latter country also specifically protects equality of treatment from any public authority in the exercise of any functions.

Generally speaking social and economic rights are not guaranteed by the Caribbean Constitutions though there are exceptions. In the case of Guyana,

under the Chapter on Principles and Bases of the Political, Economic and Social System, a host of economic and social rights are advanced, including:

- The right and the duty to work;
- Right to leisure;
- Right to medical attention and social care in case of old age and disability;
- Right to housing;
- Right to education;
- Equality for women.

However, it has been established that the "rights" contained in this section are not justifiable and are merely statements of intent or principle. This was made abundantly clear through a constitutional amendment in 1988 which provided that the Guyanese Parliament could, by law, provide that any provision of this Chapter be enforceable in any court and only in that circumstance would the provision be enforceable in any court or tribunal.

In addition to Chapter on General Principles, the Guyanese Constitution also contains a section on Fundamental Rights and Freedoms which is consistent with the other countries of the Commonwealth Caribbean.

The Grenadian Constitution specifies the right to work. The Constitution of Haiti not only protects political and civil rights but also make provision for certain economic and social rights. The Haitian Constitution recognises the right to health and education. Apart from the obligation to provide education free of charge, the Haitian Constitution also provides for preschool and maternal training.

These fundamental rights and freedoms, however formulated, are guaranteed regardless of, among other grounds, sex in all the Constitutions. The Constitutions are generally declared to be the supreme law and any other law that is inconsistent within to be void to the extent of the inconsistency (the supreme law clause). Therefore should any law deprive a woman of the declared rights and freedoms or place on the enjoyment of those rights restrictions not experienced by men, she would be entitled to apply to the court for redress or to have the law struck down.

For the constitutions which guarantee every person regardless of sex, enjoyment of the stipulated rights and freedoms, it has been argued that they secure protection only against laws which restrict a woman's enjoyment of her rights and freedoms, but not necessarily other laws which discriminate against women but leave these rights and freedoms untouched.²⁴

It is otherwise for the countries which specifically include the right to equality before the law. Here equality norms are more clearly advanced by virtue of this protection. All laws or actions whether or not referable to the rights and freedoms under the Constitution are reviewable for consistency with sex equality. These countries are Haiti, Saint. Lucia, St. Kitts and Nevis and Trinidad and Tobago.

Non-discrimination provisions

This possible constitutional gap is filled by the non-discrimination obligations. In addition to the elaboration of the fundamental rights and freedoms, the Constitutions provide that no law shall make any provision which is discriminatory on the basis of sex either of itself or in its effect. Such a provision obtains in the Constitutions of Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Jamaica, St. Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Sex is not one of the prohibited grounds of discrimination in Barbados, The Bahamas and Jamaica. "Discriminatory" means

“affording different treatment to different persons attributable wholly or mainly to their respective descriptions by...sex .whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.”

The scope of this clause is limited in effect by a number of exceptions. For example, the non-discrimination sanction does not apply to laws which make provision for the appropriation of public revenues or other public funds, which pertain to persons who are not citizens or which, while discriminatory are reasonably justifiable in a democratic society. (Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Belize).

In Barbados, Belize, Dominica, Jamaica, St. Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines, the exemptions also apply to laws with respect to adoption, marriage, divorce, burial, devolution of property on death or like matters which is the personal law of persons of that description. Since these are the areas of law which most affect women's status, their exemption from constitutional scrutiny on the basis of non-discrimination is somewhat problematic.

The principle of equality of women is spoken to under the Chapter on General Principles within the Guyana Constitution. There it is stated that women and men have equal rights and the same legal status in all spheres of

political, economic and social life and that all forms of discrimination against women on the basis of sex is illegal. However, this provision is inoperative and to ensure non-discrimination on the basis of sex, other legislation was required which in fact was enacted in 1990: the Equal Rights Act which explicitly stated the intention to give effect to Section 29 of the Constitution.

Similarly the Surinamese provision would proscribe all acts and acts of the State which discriminate against women. The Haitian Constitution does not contain a non-discrimination clause which cites sex as a prohibited ground of discrimination. Article 19, however, makes clear that the State has the absolute obligation to guarantee life, health and the respect for the human person for all citizens without distinction, in conformity with the Universal Declaration of Human Rights. Article 2 of the Universal Declaration states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Specific non-discrimination provisions are not contained in the Trinidad and Tobago Constitution, however, it does guarantee women equality before the law and equality of treatment by public authorities. This would protect women from both discriminatory laws and actions of public officials.

In the area of equality and non-discrimination as well as in the enjoyment of protected fundamental rights and freedoms, increasingly the provisions made for the saving of laws inconsistent with the constitutions have been called into question. All the Commonwealth Caribbean constitutions contain a savings clause which continues in force laws existing at the date of the commencement of the constitutions. However, generally the Constitutions of the member countries of the OECS require that such laws be "construed with such modifications, adaptations, qualifications and exceptions to bring them into conformity with the Constitution". It is otherwise for The Bahamas, Barbados, Belize, Guyana, Jamaica and Trinidad and Tobago which protect existing law from constitutional challenge on certain bases. In Belize, this provision was clearly a transitional provision allowing the legislature the time to make the necessary reviews of existing laws to bring them into conformity with the Constitution (the provision having effect for five years after Independence Day).²⁵

In the case of Jamaica and Trinidad and Tobago the savings law clause applies to both written and unwritten law while the similar clauses in Barbados and The Bahamas apply only to written law. The effect of this is that in those countries, existing laws which are saved cannot be held to be unconstitutional even though they violate equality and non-discrimination norms.

This anomaly in the constitutional framework, therefore left untouched manifestations of sex discrimination in a number of countries. One dramatic example of this was the continued lack of legal redress by a woman raped by her husband. Some of the statutes relating to sexual offences in the region exempt from criminalisation, acts of sexual assaults committed by a husband against a wife in certain circumstances. Direct discrimination also exists in relation to citizenship in both Barbados and the Bahamas where women do not have legal rights equal to men to confer citizenship on their spouse and children.

In the context of limitations, it is also pointed out that the provisions of the Constitution only bind the State, the constitution being the social contract between the State and the citizens.

This was reiterated by the Privy Council in the case of *Maharaj v A.G. of Trinidad and Tobago*:

“the protection afforded was against contravention of those rights or freedoms by the State or by some other public authority endowed by law with coercive powers. The chapter is concerned with public law, not private law...”²⁶

Therefore discriminatory acts of non-State actors are not rendered illegal under the Constitution.

It is in the context of these limitations of constitutional protection, that across the Caribbean there have been calls for constitutional reform made by women’s organizations and civil society. A review by the Caribbean Community (CARICOM) secretariat of the constitutions of the Caribbean also made calls for a clearer commitment to equality and the elimination of exceptions.²⁷

In some countries, constitutional review was commenced in the latter half of the 1990s. In Barbados the Constitutional Review Commission made its recommendations in December 1998. Of relevance here was the recommendation that the category of gender should be one of the bases upon which discrimination would be unlawful. The Commission, recognising the limitations of the Constitution to protect the violation of fundamental rights by non-State actors, recommended that Parliament enact remedial legislation to provide an appropriate remedy against private action in all areas where the Constitution provides remedy and redress against governmental action. The Commission also called for the deletion of the provision which saves existing law and derogates from the supremacy of the Constitution.

Law Reform

This decade has seen the enactment of legislation to protect women's economic rights in the subregion. Significant among this legislative activity has been the reformation of laws dealing with maternity protection and minimum wage and work conditions and equal pay. Legislation which can be broadly defined as advancing the legislative norms around equality is to be found in only a handful of countries in the English-speaking Caribbean. These are as follows:

- Equality of Opportunity Act, 2000: Trinidad and Tobago
- Prevention of Discrimination Act, 1997 Guyana
- Equality of Opportunity and Treatment in Employment and Occupation Act 2000, Saint Lucia.

Apart from these laws which attempt an integrated response to discrimination in a number of spheres, more limited legislation in relation to equal pay exists in some countries, including:

The Antigua and Barbuda Labour Code

Dominica Labour Standards Act.

Saint Vincent and the Grenadines: Equal Pay Act, 1994

Jamaica: The Employment (Equal Pay for Men and Women) Act 1975 Act

This paper will focus only on the legislation that extends the obligation of equality of treatment to private actors.

In other parts of the Commonwealth where discrimination legislation has been enacted, the approach has been to develop separate pieces of legislation to address specific bases of discrimination. In the United Kingdom, for example, apart from the Sex Discrimination Act, there also exists a race discrimination law. This approach is also evident in Australia as well as in New Zealand. In the Caribbean, the approach evident is a horizontal one, where different grounds of discrimination are dealt with by common measures.

Notions of equality

Within the discourse on equality, the nature of State responsibility has been shaped by the debates on formal as opposed to substantive equality; between equality of opportunity as opposed to equality of result.

Formal equality prescribes identical treatment of all individuals regardless of their actual circumstances and requires that a rule or condition

treats women and men on the same terms without special barriers or favors on account of their sex. So, for example, formal equality with respect to access to public office is satisfied as long as there are no laws which, on their face, bar women, or men, from holding office.

The formal equality principle has been linked to an equality of opportunity approach which ensures that access to important social and political institutions, power and resources should be open to all on universalistic grounds, and in particular on the basis of grounds of merit as opposed to ascriptive grounds, such as sex and race. The removal or sanctioning of discrimination is seen as providing the enabling environment for merit-based achievement. The main criticism of this approach has been that equality of opportunity is at odds with the reality of pre-existing inequality and hierarchy.

In the context of that criticism, much has been written on the need to move beyond equality of opportunity towards more substantive equality, equality of results or outcome. Equality of results aims to achieve equal results regardless of the individual's place in society. Equality of outcomes looks beyond the provision of formal equality or the removal of discriminatory laws, creating obligations by the State or private actors to see and recognise that de facto inequality will not be eradicated only by the elimination of formal discrimination and requires a host of affirmative type actions or redistributive actions.

Much of the equality literature addressing the difference between formal and substantive equality criticises formal equality approaches for not ensuring the production of equal results or of taking sufficient account of significant differences in the characteristics and circumstances of women and men. Advocates of substantive equality demand that these differences be considered to avoid gender-related outcomes that are considered unfair. Affirmative action provisions or attempts to remedy the effect of past discrimination are one kind of example of substantive equality provisions. Another type of substantive equality focuses on the biological differences which have historically disadvantaged women with respect to job opportunities. Maternity leave provisions and child care assistance are examples of measures within a substantive equality framework that are designed to neutralize this disadvantage.

The Women's Convention acknowledges that formal guarantees of equality have not been successful in eliminating women's inequality. It states that despite the existence of various treaties guaranteeing equal rights to women, "extensive discrimination against women continues to exist." To that extent the Women's Convention rejects formal equality as the framework for advancing women's rights. The explicit purpose of the Convention is to ensure

that measures are adopted that will "[eliminate] ... discrimination in all its forms and manifestations."

Equal opportunity legislation

Within the English-speaking Caribbean, Guyana was the first country to enact legislation making unlawful discriminatory acts by non-State actors. The Equal Rights Act (1990) was passed to make provision for the enforcement of the principles enshrined in the Constitution on non-discrimination on the basis of sex. The Act restated the constitutional position that "Women and men have equal rights and the same legal status in all spheres of political, economic and social life"²⁸ and declared all forms of discrimination against women or men on the basis of sex or marital status illegal. This Act, unlike the Prevention of Discrimination Act enacted in 1997, focuses exclusively on discrimination which is sex-based.

The Equal Rights Act pays particular attention to eliminating sex-based discrimination in employment and in particular to equal remuneration. The Act provided for equal remuneration for the same work or work of the same nature and generally made unlawful discrimination in respect of any employment, appointment or promotion on the grounds only of sex.

The Act however exempts and therefore protects special measures taken to facilitate women's access to employment by exempting special labour and health protection measures for women or from making provision for conditions enabling mothers to work or for material and moral support for mothers and children, including paid leave and other benefits for mothers and expectant mothers.

Acts of discrimination are not merely unlawful but constitute criminal offences. The Act specifies that contravention of its relevant sections amounts to a criminal offence punishable by a fine of \$5000.00 and imprisonment for six months and in the case of a continuing offence to a further fine of \$5000.00 for each day after the first day during which the offence continues.

In 1997 a more exhaustive approach to equality was advanced in the enactment of the Prevention of Discrimination Act. Like the legislation in Saint Lucia (Equality of Opportunity and Treatment in Employment and Occupation Act 2000), it is based in part on the model legislation developed by the CARICOM Secretariat on "Equality for Women in Employment".

General provisions

The Guyana and Saint Lucia laws in essence make all prohibited acts of discrimination unlawful and therefore bring discrimination in the realm of the

criminal law. In contrast, the major focus of the Trinidad and Tobago legislation is to provide a framework for defining discrimination and providing avenues for redress to discrimination. To achieve this, the Trinidad and Tobago legislation establishes a scheme which calls for the establishment of an Equal Opportunity Commission as well as specialised tribunal, an Equal Opportunity Tribunal which would hear and determine complaints within a civil as opposed to criminal jurisdiction.

Definition of discrimination

It has been recognised that discrimination against women on the basis of ascriptive characteristics, such as sex, can take two forms, direct and indirect. Direct discrimination involves a law, rule or practice which patently creates harmful differential treatment on the basis of particular group characteristics. On the other hand, indirect discrimination (also referred to as adverse effect discrimination or disparate impact discrimination) occurs when the application of an apparently neutral law or policy has a disproportionate and harmful impact on individuals on the basis of particular group characteristics.

Indirect discrimination on the basis of sex would be where an apparently neutral provision or condition or requirement is imposed that applies equally to both sexes but the proportion of one sex able to comply with it is considerably smaller than the other or is liable to adversely affect a person or persons of certain status.

The two forms of discrimination are addressed though the legislation itself does not seek to draw a clear definitional distinction between the two. The Saint Lucia and Guyana legislation define discrimination as "the making of distinction, exclusion, preference the effect or intent being to nullify or impair equality of opportunity or treatment" on the specified grounds. Intention is not a necessary ingredient in proving discrimination and it is sufficient to assert and prove that the act or omission, practice or policy complained of has had the effect of nullifying or impairing equality of opportunity.

The absence of the requirement to show intention is consistent with the understanding of discriminatory acts as often expressions of deeply held, subconscious stereotypes which are embedded in cultural norms and practices. Saint Lucia and Guyana, by eliminating the need to show intention in effect, call upon persons/establishments affected by the legislation to consciously review their policies and conduct to ensure equality of opportunity.

The Trinidad and Tobago legislation does not address indirect discrimination and makes it clear that discriminatory treatment will be found where the discriminator treats the aggrieved person less favourably than another person of a different status in circumstances that are the same or are not materially different.

Areas in which discrimination is prohibited

For Saint Lucia the Act prohibits discrimination in matters related to employment and to occupation. The Trinidad and Tobago and Guyana legislation prohibits discriminatory acts not only in relation to employment and occupation but also to the provision of goods and services and only in the case of Trinidad and Tobago to the provision of accommodation.

Prohibited grounds of discrimination

In relation to sex equality, the legislation clearly prohibits discrimination on the basis of sex. In addition, however, discrimination is also prohibited on the basis of marital status and in Guyana and Saint Lucia, family responsibilities. Both Saint Lucia and Guyana have included pregnancy explicitly as a prohibited basis of discrimination. Arguably, this inclusion was made out of an abundance of caution since it has been well accepted that pregnancy-based discrimination is a facet of sex discrimination.

It is to be noted that the ILO has promulgated a Convention on Workers with Family Responsibilities which applies to both men and women with family responsibilities²⁹. However, in its preamble, the Convention makes clear that the context to which it is responding is advancing equality of opportunity and recalls that that States Parties to the Women's Convention are "aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women".

That Convention calls on State parties to make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities³⁰. It is also stated that family responsibilities shall not constitute a valid reason for termination of employment.

Discrimination on the ground of family responsibilities is arguably a feature of indirect sex discrimination which would affect women disproportionately given the association of family and child maintenance with the female realm of responsibility. However, like pregnancy, the stipulation of a clear prohibition on discrimination on the basis of family responsibilities is salutary even if only for educational purposes.

In addition to sex and sex related grounds, other prohibited grounds or status to which the Acts applies are:

- Race (Trinidad and Tobago, Saint Lucia and Guyana)
- Religion (Trinidad and Tobago, Saint Lucia and Guyana)
- Colour (Saint Lucia and Guyana)
- Ethnicity/Ethnic origin (Trinidad and Tobago, Saint Lucia and Guyana)
- Disability (Trinidad and Tobago and Guyana)
- Age³¹ (Saint Lucia and Guyana)
- Indigenous population (Guyana)
- National extraction/geographic origin (Guyana and Trinidad and Tobago)
- Social origin (Guyana)
- Economic status (Guyana)
- Political opinion (Guyana)
- Indigenous population (Guyana)

Apart from the prohibited grounds or status to which the Acts apply, the Acts prohibit discrimination in respect to characteristics which pertain or are generally attributed to persons of certain status. In addition to the status or grounds listed above, Saint Lucia includes social origin and political opinion.

It can be seen that the prohibited grounds or status for Trinidad and Tobago are much more restricted applying only to sex, race, ethnicity, origin, religion, marital status or disability. It is also clear that the Guyanese legislation and the Saint Lucian legislation, with the inclusion of categories as social origin and/or economic status, understand discrimination to be not only that which is associated with biological or physical categories but also with social and economic disparities.

In all three laws, the categories of prohibited grounds are more extensive than the grounds provided in the Constitutions. It is to be noted however that the legislation applies equally to the State or State agencies³² as it does to private individuals and so because of the new legislation the State may not discriminate on any of the enlarged grounds spelt out. The parliaments may wish to consider amendments to the Constitutions to bring them in line with the legislation given the fact that the Constitution is the supreme law and defines the social contract between the State and citizen. It is the normative framework. Additionally, the fundamental rights sections of the Constitutions are typically entrenched, requiring more than a simple majority to amend and are therefore more difficult to change, this in itself reflective of the fundamental nature of these provisions to the social contract.

Non-discrimination duty

The duty to ensure non-discrimination applies to specified categories of social actors. The Acts prohibit discrimination in the areas of::

- Employment (Guyana, Saint Lucia and Trinidad and Tobago);
- Education (Trinidad and Tobago)
- The provision of goods and services (Guyana and Trinidad and Tobago)
- Accommodation (Trinidad and Tobago)
- Admission to membership of trade-related organisations and professional partnerships (Guyana and Saint Lucia)

1. Employment

Employment matters to which the legislation applies are not only to those in the employment relationship, i.e. employer and employee, but also to individuals and agencies which impact on the creation, formation and maintenance of the employment relationship: trade unions or other organizations of employees, organizations of employers; qualifying or licencing bodies; vocation training bodies; employment agencies and advertisements of employment.

Generally the Acts prohibit discrimination by employers and prospective employers in a range of circumstances. In relation to prospective employers, there shall be no discrimination in the advertisement of the job; or in the terms and conditions on which employment is offered, in the creation, classification or abolition of jobs³³

In relation to an existing employment relationship, an employer may not discriminate on any of the bases established in the Act in relation to the following:

- Terms and conditions of employment;
- Conditions of work or occupational safety and health measures;
- Provision of facilities related or connected with employment;
- Denial of access or limiting access to opportunities for promotion, training or other services or benefits associated with employment;
- Dismissal or retrenchment or otherwise subjecting the person to a detriment or disadvantage.

A noticeable feature of all the legislation is the absence of absolutism and the extent to which they allow or permit persons to derogate from the equality norm. For Trinidad and Tobago, the non-discrimination provisions do not apply at all to employment of not more than three persons in domestic or personal

services or in relation to the home of the employer.³⁴ In all three pieces of legislation as well, there is an all-encompassing exception which provides that the non-discrimination provisions would not apply to any distinction, exclusion or preference based on the prohibited ground if such status was a genuine occupational qualification.

Although from country to country the exceptions are developed somewhat differently, there are some common features.

An exception: Sex as a genuine occupational qualifications

The legislation provides for specific situations in which sex discrimination in the employment field is allowed, where being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training for the following reasons:

Physiology/Physical attributes or authenticity: The nature of the job may call for either a man or a woman for reasons of physiology (excluding strength or stamina) or authenticity e.g. a model or an actor.

Decency or privacy: The job may involve physical contact, or there may be circumstances arising from the job where members of one sex might reasonably object to the presence of the other sex because they are in a state of undress or using sanitary facilities.

Single sex accommodation³⁵: Residence may be necessary where privacy of sleeping accommodation is not available and it is not reasonable to expect the employer either to equip the premises or to work out a practicable solution of usage of premises for members of both sexes.

Single sex establishments: The work may be related to only one sex and require special care, supervision or attention e.g. hospitals, prisons.

Employment or training for the provision of personal services concerning welfare, education and health: Provision of a service may be most effectively provided by a member of a particular sex e.g. rape counselling.

2. Education

Apart from employment and occupation matters, the Trinidad and Tobago legislation prohibits sex discrimination in relation to education, in particular to admissions policy, access to benefits, facilities or service and exposure to expulsion or other detriment on the part of the student.

This is an important provision since it speaks directly and can provide relief to female students who on becoming pregnant are either barred or discouraged from re-entering the school. The involuntary discontinuance of

schooling within the formal education system because of childbearing has been noted in several Caribbean countries. This is discrimination which is not only pregnancy-related but also an expression of sex discrimination since it is a policy which does not apply to boys who become teenage fathers during their schooling years.

It is to be noted that the notion of the single-sex schools is excepted from a charge of discrimination as the provisions of the Act do not apply to the non-admission of students of a particular sex by an educational institution which admits normally only students of a particular sex.

3. The provision of goods and services

Both Trinidad and Tobago and Guyana prohibit unequal treatment on the basis of sex in the provision of goods and services to the public through the refusal to supply goods, facilities or perform the services or in the terms of manner in which goods are supplied or services provided or services performed except if the nature of the service in question is such that it can only be provided to members of one sex.

The phrase "facilities and services" is broadly defined in the Trinidad and Tobago legislation to include hotel accommodation, banking, insurance, entertainment, recreation, transport and services provided by a statutory or municipal authority.

The Act again provides exemptions for insurance or other similar matters involving an assessment of risk where the treatment was affected by reference to actuarial or other data and was reasonable having regard to such data.

4. Accommodation

The Equal Opportunity Act of Trinidad and Tobago prohibits discrimination in accommodation in relation to the terms on which accommodation is offered; the refusal or deferment of an application for accommodation. Additionally discrimination by denial or limitation of access to accommodation or eviction is also circumscribed.

As in every other area, there are also a host of exceptions made to the provisions on accommodation. Excepted from this prohibition is accommodation in which the provider resides, or a relative resides; on premises which comprise no more than three units available for lease; accommodation which is provided by a religious or charitable body and shared accommodation for reasons of privacy or decency.

5. Admission to membership of trade-related organisations and professional partnerships

The Acts of Saint Lucia and Guyana prohibit discrimination in business partnerships in the arrangements they make for the purpose of determining who should be offered a position or partnership or in expelling persons from the firm or partnership. This provision applies only to firms of professionals consisting of six or more partners and to employment in professions which are largely provided through partnership firms.

This provision is noteworthy because it seeks to break the glass ceiling so complained of in particular professions in which advancement and promotion are determined by access to partnership status. Still the exception of all partnerships of under six people is questionable in small societies such as the Caribbean where one may well expect that many professional partnerships may well be under the prescribed size.

Similar prohibitions on discrimination in trade union membership are also made.

Victimisation

All three Acts are concerned to protect persons who may be victimised while pursuing or supporting a claim of discrimination. The Trinidad and Tobago legislation, for example, makes clear that less favourable treatment meted out to a person who has brought proceedings in relation to equality of opportunity would be guilty of discrimination by victimisation. The legislation therefore aims to protect persons who seek to litigate breaches of the equality of opportunity legislation from further decimation. This protection also applies not only to a complainant but also to a person giving evidence or information in proceedings; or to one who has made allegations or is aware that there are such intentions.

While the Trinidad and Tobago legislation creates a complaint of discrimination by victimisation, the Guyana and Saint Lucia legislation goes one step further by creating a criminal offence of an act of victimisation. In Saint Lucia, the offence if proven is punishable on summary conviction to a fine not exceeding \$5000 and in Guyana to a fine not to exceed \$15000.

Victimisation therefore presents a separate course of action for anyone treated less favourably by reason that they brought a discrimination claim or did anything else as a result of the legislation. Such a person making a claim of discrimination by victimisation or alleging an offence of victimisation would need to prove two elements, that they have been treated less favourably and this because of the pursuit of a discrimination claim.

Under the Trinidad and Tobago legislation, in deciding whether there has been victimization, the tribunal will have to ask itself three questions: has the complainant done a protected act; was the complainant treated less favourably, (the comparator being a person who has not done the protected act) and did the defendant treat the employee less favourably because of his knowledge of a protected act.

Equal pay provisions

The ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value calls upon ratifying States to ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The Convention applies to both private and public sectors. Article 1(a) of the Equal Remuneration Convention defines remuneration very broadly to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.

This obligation is enforced at national level very specifically in Saint Lucia and Guyana beyond the general prohibition on discriminatory treatment in the terms and conditions of employment. Sections devoted to equal remuneration create an obligation to pay equal remuneration to men and women performing work of equal value. What constitutes “work of equal value” has been the source of much ambiguity in other countries which have grappled with this comparative exercise. The legislation in Guyana and Saint Lucia defines this as

“ work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work”.³⁶

The burden of proof in establishing that equal remuneration has been paid rests on the employer. This is advantageous to the aggrieved worker since it would be highly unlikely that a case could be successfully prosecuted should the employee have the evidential burden without access to company records. The placing of the burden on the employer can be seen as an attempt to equalise the comparative positions of employer and employee in the context of litigation.

Specific equal pay provisions also exist in Antigua and Barbuda (Labour Code), Dominica (Labour Standards Act (No. 2 of 1977), Jamaica (The Employment (Equal Pay for Men and Women) Act, 1975 and Saint Vincent and the Grenadines (Equal Pay Act No. 3 of 1994).

For Antigua and Barbuda the employment of women on terms or conditions less favourable than those enjoyed by the male workers employed in the same occupation by the same employer constitutes a criminal offence.³⁷ In addition to a criminal prosecution for breach, the court may also order the employer to pay to the aggrieved employee such sums to satisfy the underpayment. It is noted that the definition, does not allow for a comparison of jobs in relation to value but is limited only to same occupations.

In Dominica Section 24 of the Act creates the obligation for equal pay for equal work. No employer can establish lawfully or maintain differences in wages between male and female employees employed in the same business who are performing under the same working conditions, the same or similar work or jobs requiring similar skill effort or responsibility.

The legislation in Jamaica also stipulates the right to equal pay for equal work. Equal work is defined as work which is "similar" or "substantially similar" having regard to the duties, responsibilities or services to be performed; the conditions under which such work is to be performed; and in the qualifications, degrees of skill, effort and responsibility required to perform the job. To secure due diligence in meeting this obligation, the Act requires all employers to keep records on remuneration of their male and female employees. Like St. Lucia infringement of this provision constitutes a criminal offence.³⁸

The Equal Pay Act of Saint Vincent and the Grenadines provides a scheme not only for the prosecution of violations of the equal pay for equal work duty but also for mandatory mediation prior to eventual prosecution. Like, Antigua and Barbuda, the legislation addresses equal work as opposed to the broader approach of "work of equal value". In making the claim of unequal treatment in pay, the complainant must show substantial similarity in duties and responsibilities, conditions of work and qualifications, degrees of skill and effort.

The approach in the equal opportunity legislation of Guyana and Saint Lucia can be seen as an advance on the equal pay for equal work approach evident in Antigua and Barbuda, Dominica, Jamaica and Saint Vincent and the Grenadines. That approach requires that male and female employees be paid the same wage only if they are performing similar work or substantially similar work.

On the other hand the "equal pay for work of equal value" approach does not compare work, but the value of work. Comparisons are therefore allowable between dissimilar jobs. This approach represents an advance in the context of a labour market which is clearly gender-segregated and where women's labour

has been traditionally less valued in the monetary sense, than the labour of men.

Still, it has been found elsewhere³⁹ that the approach of “work of equal value” does not always meet the requirements of ensuring the removal of pay inequities between men and women. Claims of unequal pay have to be made by an aggrieved complainant and employers are not obliged to implement pay equity until a female employee has actually raised a complaint. In response to these difficulties, the concept of “pay equity” has developed based on the assumption that wage discrimination against women is widespread not only as a result of direct discrimination but as a consequence of the under-valuing of work associated with women more generally. A regulatory approach is therefore emphasised as opposed to only a complaints mechanism. Such an approach sets positive obligations on employers to inspect their pay practices and ensure that these practices comply with legislation.

In a review of pay equity legislation internationally conducted for the ILO⁴⁰, a more proactive approach was advocated through which employers would be required to implement pay equity whether or not there has been a complaint. Examples cited included France, Australia and New Zealand, where employers are required to prepare programmes or plans for promoting equality between the sexes.

Based on this review of international pay equality legislative schemes, a number of recommendations on the need to promote and achieve the principle of equal pay were made, including:

- Provision to make equal pay claims easier;
- Clarification of legal principles, particularly on equal pay;
- Provision of guidance on criteria to be taken into account to ensure equal pay for work of equal value;
- Extension of the scope of comparison between jobs in different organizations and industries;
- Improvement of the collection and dissemination of pay data; and
- Promotion of awareness of equality concepts;

Sexual harassment

An important feature of the law in Guyana and Saint Lucia is the explicit prohibition on sexual harassment committed by an employer, managerial employee or co-employee as constituting unlawful discrimination⁴¹. Sexual harassment is defined as

“Unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a

condition of employment on the employee or which creates a hostile working environment for the employee.”

The definition captures both quid pro quo harassment (imposed as a condition of employment) as well as the hostile or offensive environment. "Quid pro quo" (something for something) harassment involves express or implied demands for sexual favors in exchange for some benefit (a promotion, a raise) or for the avoidance of some detriment (termination, demotion) in the workplace. By definition, it can only be perpetrated by someone in a position of power over another. The law does not require proof of actual detriment as the mere threat is sufficient to the imposition of liability.

Sex harassment may also arise from unwanted conduct which creates an intimidating, hostile, or offensive educational or working environment. The allegation of a hostile work environment harassment does not require proof of an impact on an economic benefit or detriment and can involve coworkers or third parties, not just employers or supervisors. It is not limited to sexual advances and typically has been expressed, for example, in the presence of pornographic material in the work place. In addition, arguably a hostile work environment can occur even when the conduct is not directed specifically at the claimant but still impacts on one's ability to perform the job.

Whether what constitutes "unwanted sexual conduct" is to be determined by the subjective test, that is, acts which are unwelcome by the complainant as opposed to acts which could reasonably be regarded as being sexually or otherwise offensive, (the objective test), is unclear. It is arguable that the use of the subjective criterion in determining sexual conduct of an unwanted nature leaves less room for the introduction of prejudicial or stereotypical views on sexual conduct which is offensive.

It is also unclear whether an employer will be vicariously liable for the commission of an act of sexual harassment perpetrated by fellow employees, employees or co-employees, though presumably that would be the case based on common law employment duties of the employer to maintain trust and confidence. Additionally, under general principles of vicarious liability, the employer is exposed to liability where the act of the employee is connected with his employment function and there is an element of employer control and a failure to take reasonable steps to prevent the harassment occurring.

Considering that sexual harassment constitutes a criminal offence in Guyana and Saint Lucia, the lack of clarity on the liability of the employer for acts of employees is regrettable. In this regard, recent legislation in Ireland makes clear that anything done by a person in the course of employment shall be treated as being done by the employer sufficient to invoke liability, whether or not the employer knew or approved of it, the only defence being that the employer took such steps as were reasonably practicable to prevent the

harassment from occurring or to reverse discriminatory treatment that the employee suffered as a result.⁴²

Similarly the Sex Discrimination Act of Australia also makes it clear that employers are vicariously liable for the actions of an employee or agent unless they have taken all reasonable steps to prevent the prohibited action. There it has been decided that the employer's duty is not confined to the development of written policies and codes of conduct concerning sexual harassment. Employers are required to have an effective education programme for employees on their rights and duties under the Sex Discrimination legislation as well as sustained follow up and scrutiny to ensure these responsibilities are being implemented.⁴³

General exceptions

The legislation in all three countries provide a slew of exceptions to and exemptions from their operation. Exemptions are provided where, as stated above:

- Sex is a genuine occupational qualification;
- In the provision of insurance and like services;
- In partnerships of less than six persons (Guyana and Saint Lucia);
- In employment of less than three persons in domestic or personal services (Trinidad and Tobago alone).

Within the Trinidad and Tobago legislation the majority of general exceptions are in relation to sex-based discrimination. So the legislation exempts from its purview discrimination on the basis of sex in relationship to:

- Club membership;
- Composition of voluntary associations and
- Participation in competitive events where the physical strength, stamina or physique of an average woman puts her at a disadvantage to the average man; and
- Rights or privileges in connection with pregnancy or childbirth.

Apart from these specific exceptions, all three pieces of legislation provide for general exceptions in relation to provisions of a deed, will or other document which confers charitable benefits or enables charitable benefits on persons on the basis of any of the prohibited grounds. The acts also make far-reaching exceptions for the training and ordination of priests or ministers of religion or for any practice of a body established for religious purposes so long as the practice conforms to the doctrines or beliefs of that religion. In Trinidad and Tobago a further exception is made for the employment of persons in any educational institution under the control of a religious body.

These exceptions which mirror similar legislation in other parts of the Commonwealth, including Australia and England, have been widely criticised in these countries as inconsistent with the spirit of the gender equality goals and as granting the “imprimatur to discriminatory behaviour in a wide range of areas”⁴⁴. Specifically, the argument is that all exceptions weaken the principle of non-discrimination. Many of the exceptions provided for find their justification in the realm of cultural practice which by its very nature is the most difficult realm to effect change.

In relation to voluntary associations and clubs, the right to freedom of association has been canvassed as a competing right in opposition to the right to non-discrimination. On the other hand, it has been advanced that the omission of private clubs results in discriminatory rules and arrangements which support stereotypical images of women and men and ignores the ways in which the public and private spheres are interrelated.

With regard to insurance matters, it has been argued that genuine equal treatment means considering an individual without regard to general assumptions related to sex as those assumptions often result in women having to pay higher contributions for the same coverage as men⁴⁵.

Temporary measures

The Women’s Convention accepts that States may have to promote affirmative action in support of women for the purposes of accelerating equality. Such actions are seen, so long as they are temporary, as remedial and therefore not discriminatory. Out of an abundance of caution, the Convention also makes clear that measures aimed at protecting maternity shall not be considered discriminatory. Derogation from the equality norm in the name of positive or affirmative action is therefore permitted.

In this regard, both Guyana and Saint Lucia stipulate that special and temporary measures taken by employers to promote equality of opportunity would not be unlawful. No such general provision exists within the Trinidad and Tobago legislation. However rights or privileges granted in connection with pregnancy or childbirth are exempted from challenge as being discriminatory.

Remedies

Creation of criminal offences

The primary emphasis of the legislation in Guyana and in Saint Lucia is on the creation of criminal offences related to discrimination. A general penalty clause exists in both countries (a person who contravenes a provision of this Act commits an offence⁴⁶) and it is provided that a person found guilty of an

offence, is punishable upon conviction to a fine not exceeding \$5000 in Saint Lucia and \$20000 in Guyana. So criminal offences are created in Saint Lucia and in Guyana in relation to workplace discrimination, sexual harassment in the workplace, discrimination in trade unions, trade-related organizations and partnerships. Additionally in Guyana an offence is created in relation to discriminatory treatment in the provision of goods, services and facilities.

Normally, criminal liability will only lie where intention to commit an offence is proved. Criminal liability is generally fault-based, that is, based on the understanding that a person should not be exposed to a penalty without proof of subjective fault. Fault is established through a voluntary act and a culpable state of mind. Exceptionally, there are offences for which intention is not necessary and these are known as strict liability offences. Usually, such offences are created with reference to specific policy goals. They are exceptional because they tend to come into conflict with constitutional guarantees around fair hearing and due process of law, and in particular the presumption in criminal law of innocence until proof of guilt.

It would appear that in both Guyana and Saint Lucia the legislators intended to place the responsibility or burden of ensuring equal treatment upon persons/agencies whose actions could possibly have a discriminatory effect in important areas of life, most particularly employers. However it is open to question whether criminal as opposed to civil liability for unintended acts is appropriate. Discrimination and, in particular, sex discrimination is deeply embedded in the structures of society and internalized at the individual level. The removal of expressions of discrimination requires an educative and dialogic thrust. In this context, therefore, it is open to question whether there should be criminal culpability and the exposure to a fine on the part of someone who had no intention of engaging in an act of discrimination. Civil remedies on the other hand are larger in scope and more responsive both to the practical needs of the aggrieved person (e.g. injunctions or prohibitive orders, damages, reinstatement) and to the goals of rehabilitation.

In addition to the right to lay a criminal complaint of discrimination in those areas, in both Guyana and Saint Lucia an aggrieved person may pursue existing legal remedies whatever those may be in tort law or in labour law, both areas which have been notoriously unresponsive to violations of equal treatment norms. Perhaps in response to this deficiency, the legislation in these two countries also provides for the application of a range of practical relief. In the case of Guyana somewhat inconsistently having regard to the range of potential violators, these remedies are available only against the employer. This perhaps is a drafting error and the provision in Saint Lucia that is otherwise identical includes relief against not only the employer but against any other relevant person or body covered by the Act.

These remedies include:

- Damages for any loss caused directly or indirectly as a result of the contravention;
- An order directing the redress of the contravention including an order if both agree to reinstate the aggrieved party;
- An order making any decision based on unlawful discrimination voidable; and
- Residual powers to make any order the court may deem fair and just in the circumstances.

Unlike Saint Lucia, the provision for the reinstatement of an aggrieved employee in Guyana is contingent upon the agreement of both parties. In the Saint Lucian legislation the power to employ or reinstate is exercisable whether or not the post is otherwise filled and notwithstanding that the employer is liable to a claim arising from the need to terminate the services of another employee to accommodate the employment or reinstatement of the aggrieved person. The consent of the employer is immaterial in the exercise of the court's discretion to order employment or reinstatement. This would seem to be a more preferable position from the point of view of granting the court powers to give effective remedies in the interest of the aggrieved party as well as in the advancement of the non-discrimination norm.

It is to be noted that neither Saint Lucia nor Guyana creates any special institutions to determine discrimination cases nor do they create special institutions to monitor the progress towards non-discrimination. This is at odds with the prevailing legislative practice throughout the Commonwealth and is also a substantial departure from the CARICOM model legislation on equality of opportunity.

The CARICOM model advocated for the appointment of a Commissioner for Equal Opportunity who would act as an advocate for equal opportunity through consultations, development of policies and programmes and the carrying out of investigations and research related to discrimination. This provision is based on the understanding that the elimination of discriminatory practices cannot only be accomplished through the coercive powers of the law but perhaps more importantly through education and persuasive argument.

Additionally the CARICOM model also gave the Commissioner the responsibility for receiving individual complaints and for engaging in conciliation of such matters that are amenable to this procedure. The CARICOM model recommends the establishment of an Equal Opportunity Tribunal comprised of experts who would hear and determine allegation of sex discrimination.

In keeping with this thrust recommended by CARICOM, the Trinidad and Tobago legislation is focused on civil as opposed to criminal remedies and has created Equal Opportunity Commission and an Equal Opportunity Tribunal.

The Equal Opportunity Commission

The Equal Opportunity Commission comprised of five commissioners with training variously in the fields of law, sociology, industrial relations and administration has a number of functions in working towards the elimination of discrimination. These include:

- Review the working of the Act;
- Receive, investigate and as far as is possible conciliate allegations of discrimination;
- Develop, conduct or foster research and educational programmes promoting equality of opportunity; and
- Preparation of guidelines for the avoidance of discrimination.

The Equal Opportunity Tribunal

The tribunal has the same jurisdiction of a high court and is therefore conferred with all the powers inherent in such a court. The tribunal is comprised of a judge equal in status to a high court judge and by two lay assessors. The Tribunal has the jurisdiction to:

- Hear and determine complaints referred to it by the Commission;
- Require attendance of persons for the purpose of giving evidence and producing documents; and
- Make such declarations and orders and awards of compensation as it thinks fit.

The Tribunal has powers to order a host of remedies, including damages, declarations and injunctions as it is given all the powers inherent to a superior court of record.

There is an appeal as a matter of right to the Court of Appeal in any decision made by the Tribunal.

Procedure for complaints

A person who has alleged a violation on the non-discrimination provisions is entitled under the Trinidad and Tobago Act to make a complaint to the Equal Opportunity Commission within six months of the date of the alleged act. The Commission is empowered to investigate the complaint and to

conciliate the matter if it determines that there are grounds or evidence in support of the complaint. Refusal to engage in conciliation required by the Commission is a criminal offence punishable upon conviction of a fine of \$1000. Where the Commission is of the opinion that the matter cannot be resolved it is obliged to refer the matter to the Equal Opportunity Tribunal.

The provision for conciliation reflects the concern to afford equitable and accessible justice through alternative dispute resolution while ensuring the preservation of the coercive power of the law in anti-discrimination matters. Whether this dual structure will meet the demands of efficient and fair hearing is left to be seen. In other countries, it has been found that this tripartite structure (inquiry by the Commission, conciliation and possibly hearing by the Tribunal) was inefficient and prone to exacerbate the distress of the complainant.

Burden of proof

While the burden of proving equal remuneration clearly rests with the employer without the apparent need for any threshold evidence, in relation to all other claims of discrimination in Saint Lucia and Guyana, the person alleging a violation of the Act bears the burden of presenting a prima facie case of discrimination in both civil and criminal cases related to discrimination. What this means is that there must be some evidence to support a claim of discrimination. However once an arguable case of discrimination has been raised the burden of proof shifts to the employers to disprove the allegations. In relation to most criminal offences, this is a departure since the burden of proof stays always with the person making the allegation and is a high burden of beyond a reasonable doubt. The shifting of the burden even in relation to criminal offences created under the Act is probably based on the perception of the difficulties of proving discrimination, and more particularly indirect discrimination.

Who can bring a complaint

The legislation in all three countries gives individual aggrieved persons the right to bring complaints (either civil or criminal) alleging discrimination. However, no provision is made for the bringing of a complaint by a group of persons complaining of discrimination that is not targeted at a specific person, but rather is systemic. This is a deficiency as much of the discrimination which occurs in the contemporary Caribbean is not necessarily direct discrimination aimed at a particular individual but the expressions of discrimination rooted in culture which reinforce or perpetuate gender inequality. An example of systemic discrimination which is immune to legal challenge is discriminatory or gender-exploitative advertising.

Conclusion

Caribbean States have all signed and ratified the Women's Convention and in so doing have signalled their commitment to meeting the goals of equality amplified. Significant progress has been made in meeting these goals and these advances are evident in increased labour force participation rates and in increasing levels of female educational attainment. Important components of these obligations involve legislative measures to ensure the enjoyment of fundamental rights and freedoms. Throughout the region steps have been taken to address indirect discrimination through law reform in relation to domestic violence and other aspects of family law. Minimum wage legislation, which removes sex-based occupational distinctions in the determination of wage levels, has also advanced equality as has the extension of maternity and now paternity leave.

Still, legal protection against all forms of sex-based discrimination by both the State and non-State actors is uneven in the Caribbean. Constitutional guarantees need to be unambiguous and all exceptions to the equality norm removed unless they meet the test of being reasonably justifiable in a democratic society.

By virtue of the ratification of the Women's Convention, Caribbean States undertook to eliminate discrimination against women through the embodiment of the principle of equality in their national constitutions. The obligation also extended to creating sanctions for sex discrimination on the part of non-State actors. In this regard, and in the words of the Beijing Platform for Action, women's full enjoyment of equal rights in the Caribbean is "undermined by the discrepancies between some national legislation and international law and international human rights instruments."

All States need to consider the enactment of equality of opportunity statutes which do not only guarantee formal equality but also substantive equality, which prohibits both direct and indirect forms of discrimination. The CARICOM model provides a guide to this exercise as do the approaches taken in Guyana, Saint Lucia and Trinidad and Tobago. This review of the equal opportunity legislation highlighted a number of strengths as well as limitations in the existing laws.

The legislative regime provides a procedural right of individual complaint on specific grounds in specific circumstances, rather than a positive right to freedom from discrimination. It is therefore recommended that the legislation contain a general prohibition of discrimination in accordance with the Women's Convention.

Primarily, it can be argued that the numerous exceptions and exemptions created weaken both the strength of the law as a tool for litigating

rights as it does as an advocacy tool for articulating equality norms. It is to be recommended that the exceptions be limited or removed and a test of reasonableness introduced. This test would allow the Court to consider the circumstances in which the alleged discrimination has taken place and to come to a determination, in all the circumstances, as to the reasonableness or otherwise of the complained treatment.

It is also suggested that like the Trinidad and Tobago legislation, equality laws, particularly as they affect employment, focus on the creation of effective remedies and specialised tribunals to hear and determine questions of discrimination. While the invocation of the criminal law is important because of its symbolic and practical function of penalising that which offends the norms of equality, it may be that this is not the most effective or appropriate remedy to sex discrimination.

Countries may also wish to consider the inclusion of systemic discrimination within the purview of the legislative framework. In this regard, an equal opportunity commission may be given the power to, on its own motion, investigate conduct that appears to be discriminatory for the purpose of making recommendations to bring an end to such discrimination. This mechanism would also serve an important educative function and bring into the public domain the hidden structures of sex discrimination for dialogue around the definition and impact of discriminatory treatment.

Bibliography

Bailey, Barbara. Women's Education: The Caribbean Situation. Paper prepared for CARICOM/UNIFEM/ECLAC Caribbean Subregional Ministerial Conference in preparation for the seventh Session of the Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean (1997).

Barriteau, E: Re-Examining Issues of Male Marginalisation and Masculinity in the Caribbean: The Need for a New Policy Approach. Paper presented at the Commonwealth Ministers Responsible for Women's Affairs. Sixth Meeting, New Delhi, India, 16-19 April, 2000

Brown, D.: A Review of Labour Market Trends and Development in Trinidad and Tobago: 1986-1996. Working Paper Series. Department of Behavioural Sciences. 2000

Buckley, L: Employment Equality Act 1998 in Industrial Law Journal Vol. 29, No. 3 September 2000. Oxford University Press 2000.

Cook, R. : Enforcing Women's Rights Through Law in Gender and Development Vol. 3, No. 2 June 1995 OXFAM.

ECLAC/CDCC. Achieving Social Justice, Equality, Peace and Development: A Review of the Status of Women of the Caribbean Subregion in Preparation for the Fourth World Conference on Women, 1995. LC/CAR/G. 442, 31 January 1995.

ECLAC/CDCC: The Caribbean Subregional Review and Appraisal Report on the Implementation of the Beijing Platform for Action, Port of Spain, 1999. LC/CAR/G.583

The Equal Opportunity Commission: Equality in the 21st Century. A New Sex Equality Law for Britain. 1998. Equal Opportunity Commission. United Kingdom 1998

Guest, K.: The Elusive Promise of Equality: Analysing the Limits of the Sex Discrimination Act 1984. Research Paper 16 1998-1999 Website: www.aph.gov.au/library/pubs/rp/1998-99

Huws, Ursula: Equality and Telework in Europe. November 2000. Available online at <http://www.euro-telework.org>.)

ILO: Domestic Workers in the Caribbean. A Reference Handbook. ILO, Port of Spain. 1998

ILO: Digest of Caribbean Labour Statistics, 1997. ILO Caribbean Office 1998

The Law Commission of Trinidad and Tobago: Working Paper on Equal Opportunity Legislation. Port of Spain. 1996

Määttä, P.: Equal Pay Policies: International Review of Selected Developing and Developed Countries. Labour Law and Labour Relations Branch ILO, Geneva 1998.

Mendes, Douglas: Report on a Study to Monitor the Legal Status of Women in Member States of the Caribbean Community. Georgetown, Guyana: CARICOM Secretariat, 1986.

Miller, E.: The Caribbean Male in Perspective. In Caribbean Social Structures and the Changing World of Men. UN ECLAC, Port of Spain. October 1997

Mondesire, A. and Dunn, L.. 1990-1991 Population and Housing Census of the Commonwealth Caribbean. An Analysis of census Data in CARICOM Countries from a Gender Perspective. CARICOM 1997 p 76.

National Committee for Families and Children and UNICEF Belize: The Right to a Future. A Situational Analysis of Children in Belize. 1997

Nieminen. A.: EU Social Policy: From Equality of Outcome to Equality of Opportunity. Paper prepared for the COST A7 Workshop on Welfare Systems and European Integration. Finland 24-27 August, 1995. Online: www.helsinki.fi/~arniemin/eu.

Strachan, G: Promoting Productive Employment for Poverty Eradication: Issues, Policies and Programmes for the Caribbean. Port of Spain. ILO 1997

Tang Nain, G.: Historical Review in Caribbean Social Structures and the Changing World of Men. UN ECLAC, Port of Spain. October 1997

United Nations: The Beijing Declaration and The Platform for Action. Fourth World Conference on Women. 1996

World Bank. Poverty Reduction and Human Resource Development in the Caribbean. May 14, 1996.

End Notes

¹ Exceptions are the Cayman Islands, Cuba, Guyana, Netherlands Antilles, St. Kitts/Nevis and Saint Vincent and the Grenadines

² This data is for the CARICOM region, with the exception of Jamaica.

³ This data is for the CARICOM region, with the exception of Jamaica.

⁴ Bailey, Barbara. Women's Education: The Caribbean Situation. Paper prepared for CARICOM/UNIFEM/ECLAC Caribbean Subregional Ministerial Conference in preparation for the seventh Session of the Regional Conference on the Integration of Women into the Economic and Social Development of Latin America and the Caribbean (1997).

⁵ Barriteau, E: Re-Examining Issues of Male Marginalisation and Masculinity in the Caribbean: The Need for a New Policy Approach. Paper presented at the Commonwealth Ministers Responsible for Women's Affairs. Sixth Meeting, New Delhi, India, 16-19 April, 2000

⁶ ILO: Digest of Caribbean Labour Statistics, 1997. ILO Caribbean Office 1998

⁷ Miller, E.: The Caribbean Male in Perspective. In Caribbean Social Structures and the Changing World of Men. UN ECLAC, Port of Spain. October 1997

⁸ See Bailey, B: Women's Education: The Caribbean Experience. Paper presented at the CARICOM/UNIFEM/ECLAC Caribbean Subregional Ministerial Conference, Georgetown, Guyana. 6-8 August 1997. Tang Nain, G.: Historical Review in Caribbean Social Structures and the Changing World of Men. UN ECLAC, Port of Spain. October 1997

⁹ The National Committee for Families and Children and UNICEF Belize: The Right to a Future. A Situational Analysis of Children in Belize. 1997

¹⁰ This information is based on the National Report prepared for the UN General assembly Special session on Beijing Plus Five submitted to ECLAC Subregional Headquarters for the Caribbean in 1999.

¹¹ ILO. Digest of Caribbean Labour Statistics 1997 p8

¹² ECLAC/CDCC. Achieving Social Justice, Equality, Peace and Development: A Review of the Status of Women of the Caribbean Subregion in Preparation for the Fourth World Conference on Women, 1995. LC/CAR/G. 442, 31 January 1995, p32.

¹³ Mondesire, A. and Dunn, L.. 1990-1991 Population and Housing Census of the Commonwealth Caribbean. An Analysis of census Data in CARICOM Countries from a Gender Perspective. CARICOM 1997 p 76.

¹⁴ This is cited by Strachan, G: Promoting Productive Employment for Poverty Eradication: Issues, Policies and Programmes for the Caribbean. Port of Spain. ILO 1997

¹⁵ World Bank. Poverty Reduction and Human Resource Development in the Caribbean. May 14, 1996. p 5

¹⁶ Brown, D.: A Review of Labour Market Trends and Development in Trinidad and Tobago: 1986-1996. Working Paper Series. Department of Behavioural Sciences. 2000

¹⁷ Government of Saint Lucia Statistics Department: Labour Force Survey, 1999

¹⁸ ILO: Domestic Workers in the Caribbean. A Reference Handbook. ILO, Port of Spain. 1998

¹⁹ It has been argued that labour market segmentation takes other forms, including:

Segregation by contractual form where 'core' jobs with permanent, full-time employee status are monopolised by privileged groups, whilst disadvantaged groups are found disproportionately in temporary or casual employment; and segregation by working hours such as the concentration of women in part-time work, characterised by lower levels of employment protection and fewer advancement opportunities compared with full-time work.(see Huws, Ursula: Equality and Telework in Europe. November 2000. Available online at <http://www.euro-telework.org>.)

The data on these areas are not widely available in the Caribbean though this is an area that deserves closer attention.

²⁰ Cook, R. : Enforcing Women's Rights Through Law in Gender and Development Vol. 3, No. 2 June 1995 OXFAM

²¹ R - Ratified or Acceded

ICCPR: International Covenant on Civil and Political Rights

ICESCR: International Covenant on Economic, Social and Cultural Rights

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CRC: Convention on the Rights of the Child

Belem do Para: Inter-American Convention on the Prevention, Punishment and Eradication of Violence against women

²² Cuba signed the Optional Protocol on 17 March 2000.

²³ Other grounds include race, place of origin, political opinion, colour and creed.

²⁴ Mendes, Douglas: Report on a Study to Monitor the Legal Status of Women in Member States of the Caribbean Community. Georgetown, Guyana: CARICOM Secretariat, 1986.

²⁵ The Mendes Study reviews these constitutional provisions exhaustively.

²⁶ Maharaj v AG of Trinidad and Tobago [1978] 2 All ER 670 at p.677

²⁷ Mendes Study, op cit;

²⁸ Section 2(1) Equal Rights Act No. 19 of 1990

²⁹ Only Belize has ratified this Convention.

³⁰ ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities Article 3(1)

³¹ Except for purposes of retirement or the protection of minors.

³² Saint Lucia: s. 4 : "This Act applies to all employees and employers in the public and private spheres who are engaged in an employment relationship"
Trinidad s.57: "This Act binds the State".

³³ The last two in relation to Guyana and Saint Lucia

³⁴ s. 13

³⁵ Saint Lucia and Guyana

³⁶ S. 9(2)(b) Guyana; 6(3) Saint Lucia

³⁷ Laws of Antigua and Barbuda Chapter 27 Antigua and Barbuda Labour Code, section E8.

³⁸ This information was taken from the ILO website on employment: www.ilo.org

³⁹ Määttä, P.: Equal Pay Policies: International Review of Selected Developing and Developed Countries. Labour Law and Labour Relations Branch ILO, Geneva 1998.

⁴⁰ Määttä, P.: *ibid*;

⁴¹ Guyana s. 8; Saint Lucia s.8

⁴² Lucy-Ann Buckley: Employment Equality Act 1998 in Industrial Law Journal Vol. 29, No. 3 September 2000. Oxford University Press 2000.

⁴³ Guest, K.: The Elusive Promise of Equality: Analysing the Limits of the Sex Discrimination Act 1984. Research Paper 16 1`998-1999 Website: www.aph.gov.au/library/pubs/rp/1998-99

⁴⁴ See Guest, *op cit*;

⁴⁵ The Equal Opportunity Commission: Equality in the 21st Century. A New Sex Equality Law for Britain. 1998. Equal Opportunity Commission. United Kingdom 1998

⁴⁶ Guyana section 25; Saint Lucia section 23(1)