

*The Situation of Vulnerable Groups
In Latin America and the Caribbean as it Relates to Access to the Labor Market-
Imagining A New Approach¹*

A Broad Vision of Access to Labour Markets

I have been asked to lay the framework for the conference dialogue as we seek, first of all, to examine the situation of vulnerable groups in the market place, and in particular, the challenges that they face in accessing work. There is a happy coincidence because I address you today in a triple capacity – first, my main rationale for being here – my capacity as the Commissioner who heads the newly minted Unit on Economic, Social and Cultural Rights of the Inter-American Commission on Human Rights, OAS, second, as the Rapporteur for the Rights of persons of African Descent and against Discrimination and third, the Commissioner with responsibility for the HIV portfolio at the Commission.

I also sit on the OAS Working Group for the Implementation of the San Salvador Protocol on Economic, Social and Cultural Rights, where we recently drafted indicators for the right to work, so this meeting is indeed timely. As the San Salvador Protocol clearly enunciates, economic, social and cultural rights are rights which must be given life and meaning. Among these, the right to work is arguably the most important.

I want to make clear from the outset that I view the notion of access to labour with a very broad lens. My vision of access to labour includes not only the traditional

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constructs of the employer –employee relationship, but also the informal workplace and further, the idea of ‘livelihoods’ that must subsist within the labour sphere - in other words – the opportunity to make a daily bread . . .

When I consider the institutional imperatives, I am also conscious that the policies that we put into place must lead, not merely to the protection of a right to work, now to be considered a fundamental human right, but significantly, a right to work that is consistent with every individual’s right to dignity. This is an underlying mandate of the IACHR, on which I sit.

When we speak of work, of labour – what do we mean? If it is *decent* work or decent labour, then the problems loom larger. We cannot simply address the obvious, the superficial – We need a broad framework.

When we view access to labour within these paradigms, therefore, we begin to understand the difficult questions surrounding enduring vulnerabilities in the labour sphere. Many toil, but do they have meaningful access to the labour market, to work which can acknowledge and protect their fundamental rights to live in equality and dignity, or is the kind of labour that simply perpetuates discrimination, marginalisation, poverty and despair?.

Identifying Vulnerability – The First Challenge

In one sense, the vulnerable groups that we must direct our policies and our attention to, seems obvious. Enough studies have been done, including by the IACHR, which

enable us to identify certain clearly disadvantaged groups in all of our societies. These include women, persons of African descent, indigenous peoples, persons with disabilities and to a perhaps lesser extent in this region, religious minorities. The issues relating to these groups are well known and have been widely aired, e.g. the particular context of women in the labour market. However, they are no less important to discuss, if only because the problems of disadvantage persist. For example, the IACHR Report on the Situation of the Rights of Persons of African Descent (and I take some liberty in ascribing the acronym - SAD Report), warns that “persons of African descent are deeply affected by the persistence of racism, which strategically prevents them from enjoying and exercising their human rights.”²

In more recent times, we have identified clearly too, that there needs to be a focus on other disadvantaged groups not previously considered as widely. For example, many persons are rendered vulnerable in the workplace and labour market, as in the wider society, because of their sexual orientation. This has led, in fact to the creation of a special unit at the IACHR to address these concerns and we have held many hearings on the subject.

Overt Discrimination Continues

Sadly, in some instances, situations of vulnerability, particularly in the context of these clearly identifiable groups, are still today created by overt discriminatory attitudes and actions, raw forms of prejudice which seek *intentionally* to exclude such persons from the labour market, or from the most advantaged tiers of the market. In most countries

² Para 11.

in this region, policy and hard law, have confronted and attempted to address these direct forms of discrimination, although there are exceptions. I acknowledge here that there are still important gaps in the Commonwealth Caribbean. I am reminded, for example, of legislation in the Commonwealth Caribbean which still permits the state to dismiss female police officers because of competing family obligations, which legislation has been deemed constitutional in Trinidad and Tobago.³ Further, many countries in the Commonwealth Caribbean do not even have anti-discriminatory legislation which will seek to outlaw discrimination, whether overt or otherwise.⁴

Notwithstanding the above, much of the work that is now needed is to formulate programs to correct historical inequities that have had enduring harmful effects in ways that will address such blatant discrimination, but can go further and also unearth more subtle and structural forms of discrimination and vulnerabilities.

Emerging Paradigms of Vulnerability

Identifying vulnerabilities and framing institutional policies and programs to address them, may indeed be more urgent when we consider new contextual situations existing in the market and wider society, as well as other vulnerable groups that are less obvious in the framework of discrimination. It is demonstrable that the concept of rights is not an isolated notion, but very much a function of its contextual challenges. There are now several emerging paradigms of vulnerability which are as yet, insufficiently contemplated by our policy makers and institutions. I will first describe these paradigms

³ See *Johnson and Bhalwant v AG of Trinidad and Tobago*, 2009 UKPC 53 (Trinidad and Tobago).

⁴ Important exceptions are Saint Lucia, Guyana, Trinidad & Tobago and to a lesser extent the Bahamas (s 6 in the Employment Act); Grenada and Belize.

and then place them in the context of discrimination, analyzing how they increase vulnerability and perpetuate and even deepen discrimination. We cannot discuss them all and the following list is by no means exhaustive, but some of these include:

(1) The Impact of extractive industries (e.g. mining) on access to work and labour markets *and in particular, the situation* of persons living in areas where operations of extractive industries are carried out. The resultant violations of human rights and the loss of livelihoods are subjects of increasing importance at the Commission, in light of the now several hearings on the subject.

(2) The challenges in the labour market faced by persons living with HIV;

(3) The situation of non-nationals in the workplace, including the phenomenon of increasing numbers of persons crossing borders in attempts to seek work, such as migrant workers;

(4) The situation of persons who are ex-convicts. This must now also include, the ever-growing phenomenon, of huge significance to the region, of deportees from the US who got into trouble with the law and are sent back to their birthplaces. This is now an important subject of human rights before the IACHR, but it is equally an important one for Ministers of Labour and all policy makers. Such persons are vulnerable groups and without proper policies in place, may also render their very communities more vulnerable. We therefore need to have policies in place for ex-convicts and deported

offenders sent to the region, not simply to isolate them, but to integrate them into the society through the vehicle of work. They too have a right to work.

It is notable too that there is a higher percentage of Afro-descendants and ethnic minorities who are convicted before the courts, which introduces another human rights dimension to this issue. I discuss some of these interconnections with race, etc. below.

(5) The increasing informalisation and casualisation of the work place and labour environment, because of emphases on flexibilisation of the market, often driven by external trade imperatives. This is now accentuated by the global financial crisis. It means that more persons are forced out of stable, salaried employment into precarious forms of employment, such as part time work, seasonal work and the like, or become self-employed.

(6) Further, with regard to the informal sector, in many instances this informalisation is achieved by deliberate initiatives of employers who aim to exploit and abuse employment models that rely on contractual obligations under a formal contract of employment. The practice of 'contracting out' work seeks to avoid employer obligations within this contractual framework and renders workers more vulnerable. Thus, employees who were owed benefits and obligations by employers find their employment terminated and they are then contracted as independent contractors to do identical work by franchises indirectly owned by the same employer, but without any responsibilities placed on the employer toward them.

This is a growing phenomenon in the hospitality sector, typically operated by foreign companies.⁵ Such distorted forms of independent contracting (contracting out) obstruct access to labour in the context of access to decent work, since such workers are rendered more vulnerable. Work is a complex construct and law and policy must be able to move beyond these rigid confines of the contract of employment and address such exploitative work relationships;

(7) The increasing pressures of survival and livelihood placed on persons living in rural areas as our economies move away from traditional, agricultural bases;

(8) The particular context of special situations such as armed conflict or violence. This may impact disproportionately on rural workers who are rendered even more vulnerable by this phenomenon, which prevent them from going about their business to earn their livelihoods; or by the emphasis on extractive industries, mentioned above, which displaces their lands and livelihoods and is often conducted within a context of violence. The Commission has held a number of hearings on such issues where these concerns have been raised and in December, carried out a country visit to Columbia, which also highlighted these matters.

All of these emerging paradigms of vulnerability raise significant issues of human rights within the labour sphere and particularly so, when we begin to deconstruct these issues and consider their within the overlay of already disadvantaged groups, below.

⁵ See Rose-Marie Belle Antoine, 'Rethinking Labour Law in the New Commonwealth Caribbean – A Framework for Change, COMP. LABOR LAW & POL'Y JOURNAL (2011) [Vol. 32:101], p 101.

Persisting Situations of Discrimination increasing Vulnerability

Other situations that increase vulnerability may not be new, but may be attributed to underlying patterns of discrimination and stereotyping in society. Thus, the SAD Report on Afro-descendants and the *Labor, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights* (2011), (LERW), both point to difficulties that persons of African descent and women, respectively, face in attempting to access capital and credit, because of negative stereotyping about their capabilities in the marketplace. This in turn impacts negatively their abilities to engage fully in the labour market, in particular to own businesses and earn successful livelihoods. Such discriminatory stereotyping also extends to indigenous peoples.

The Durban Declaration noted a: “deep concern whenever indicators in the fields of, inter alia, education, employment, health, housing, infant mortality and life expectancy for many peoples [of African descent] show a situation of disadvantage, particularly where the contributing factors include racism, racial discrimination, xenophobia and related intolerance.”

Similarly, our IACHR SAD Report demonstrated – “how the invisibility of the needs of Afro-descendants, together with ongoing stereotypes and prejudices, contribute to perpetuate historical situations of segregation and exclusion.”⁶ It is true that we have seen some progress, e.g. we recall that in the Black Power movement in the Caribbean – one complaint was that black persons, in particular, ‘dark skinned’ persons, could not

⁶ [para 256].

obtain employment in white collar enterprises such as banks.⁷ This has improved, but I have argued elsewhere that today we see similar patterns in the tourism, hotel sector at the upper levels, where a white face is often presented as the appropriate image, reminiscent of colonialism.⁸

Often, these discriminatory attitudes are not acknowledged in the labour market, so that it is difficult to formulate appropriate programs to address them. In this respect, the 2005 Report of Minority Rights Group International - *Afro-Descendants, Discrimination and Economic Exclusion in Latin America* states: "A prime cause for the lack of quantitative material, is that donors and governments have only recently begun to acknowledge Afro-descendant populations' existence."

It also reports that there are few development programmes that specifically target the needs of Afro descendant populations because of this economic marginalization.

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See e.g. Susan Craig, "1970 Confrontation: Trinidad and Tobago" in *Contemporary Caribbean: A Sociological Reader*, Vol. 2, ed. Susan Craig, 394: "A march in solidarity with the Trinidadian students on trial in Canada was a major catalyst for the demonstrations to begin. This, together with disillusionment with the PNM, (which, ironically, the spread of mass education had fuelled) culminated in February 1970 with the massive demonstrations of the Black Power movement, which came very close to overthrowing the government. Among the many demands behind the slogan of Black Power, perhaps the most urgent were against the racial discrimination in the society as a whole and in employment in particular. For example, commercial banks employed few black people. Other demands included an end to exploitation by foreign capital and the local mostly white business class, and for a change in the dominant cultural ideology, supported by the government, the Christian churches, the media and the education system, which revered aspects of European culture whilst denigrating those aspects, which had origins in India and Africa". See also, Victoria Pasley, 'The Black Power Movement in Trinidad: An Exploration of Gender and Cultural Changes and the Development of a Feminist Consciousness', <http://www.bridgew.edu/soas/jiws/fall01/pasley.pdf>; and David Lowenthal, Black Power in the Caribbean Context, *Economic Geography* Vol. 48, No. 1, Contributions to an Understanding of Black America (Jan., 1972), pp. 116-134;

⁸ Antoine, 'Rethinking Labour Law', *ibid.* The term re-colonialisation is not misplaced here.

It is instructive that these enduring discriminatory attitudes and contexts have been confirmed by states themselves. In our SAD Report, it was noted:

“49. According to the replies given, Colombia identified the following problems: i) low productivity and competitiveness in productive activities, ii) low education levels due to difficulties in access to, continuance in and quality of the education cycle, which take their toll on overcoming poverty, iii) fragmentation of the social stratum due to forced displacement, iv) insufficient policies, plans, programs and rules or its inadequate implementation, v) social practices of racial discrimination. Canada informed that the 2009 General Social Survey on Discrimination showed that 52% of Afro descendants aged 15 or over said to have suffered from discrimination at work or in employment application or promotion processes in the last 5 years prior to the survey. Mexico stated that the ENADIS (National Survey on Discrimination) (2010) pointed out that one out of ten Mexican people has felt that his/her rights were not respected because of his/her skin color.”

In the LERW Report, the Commission identifies similar patterns of inequity and discrimination for women:

“Among the main problems identified in said report are the widespread nature of direct and indirect forms of discrimination against women in the employment setting, namely: formidable barriers to access decent work;

- limitations in promotions and mobility; the wage gap between men and women;
- [occupational segregation] or the sexual division of labor; and the scarcity of

comprehensive policies providing for maternity, paternal, and parental leave; among other voids.”

However, other factors are also at play, such as “forms of violence and harassment by both teachers and students; the persistence of illiteracy; and the imparting of a sexist and stereotyped education.”

Persisting Situations of Discrimination and Persistent Poverty

Persisting discrimination, direct and indirect, as a result of structural patterns and stereotyping, leads to poverty in a vicious cycle that must be broken if we are achieve genuine social justice and equity. **Demonstrably, poverty is both a starting point and an end point in cycles of discrimination** and the quest for equality in economic, social and cultural rights. Thus, poverty results in the violations of economic, social and cultural rights, such as the right to education, to health and to work, which themselves impact on civil and political rights, but at the same time violations of such economic, social and cultural rights inevitably lead to and entrench poverty.

Accordingly, the SAD Report noted: “Afro-descendants in the region systematically inhabit the poorest areas with the most precarious infrastructure and are more exposed to crime and violence.”⁹

Further, the Minority International Report 2005 notes: “As the data demonstrates, poverty and the economic rights of Afro-descendants are closely tied to the right to work. These rights are severely hampered by racial discrimination on the part of

⁹ Para 11.

individuals and institutions. Afro descendants' poorly- paid, low-skilled, gender-specific work profile is the result of years of discrimination and of the low educational attainment levels of most Afro-descendants." –

This is a view endorsed by our own IACHR report.

An IDB statement of 2011 presents statistics that are instructive and alarming. It states: "People of African descent represent 33% of the population of Latin America and the Caribbean, and an estimated 50% of them live in poverty.

The LERW Report also noted this persistent poverty with regard to women, even with gains in education and increased employment: "Even with the steady increase in the number of women in the workforce, poverty persists and indigence is on the rise throughout the Americas, a situation that takes a disproportionately heavy toll on women."

"The 'de facto salary gap' between men and women persists. This is due to factors such as uneven promotional opportunities, occupational segregation - with 'women's work' attracting lower pay and less benefits due to informalisation, family obligations etc. It is notable that President Obama's first order of business when he assumed the presidency was to introduce equal pay legislation. This, in the richest country in the world.

"The situation is particularly dire in terms of lack of legal protection for women who are at particular risk of human rights violations, such as domestic workers, those who work

in the informal sector, women working in the *maquila* industry, indigenous women, afro-descendent women, girls, elderly women, migrant women, and others.”¹⁰

These particular contexts often involve double, or sometimes triple forms of discrimination. Indeed, we can now speak of the *feminisation* of poverty to add to the known *colouring* of poverty.

Child Labour, Trafficked Persons – Reverse Access

While this discussion is about access to labour, it is worth noting that labour policies must also address those vulnerable groups who should be excluded from the labour market, such as children and trafficked persons. Here too, we see parallels with other forms of discrimination in that gender and ethnicity variables are again at play. Once again, it is females, indigenous peoples and Afro-descendants who are most at risk, because of poverty and discrimination.¹¹ In this sense, therefore, we must consider the negative aspects of the right to access to work.

Glass Ceilings Due to Continued discrimination

The SAD Report notes also that Afro-descendants encounter “serious obstacles” accessing employment, “especially at the managerial and upper levels”. This is a known complaint also of women.

Trade Liberalization and Informalisation

Similarly, trade liberalization, accentuated by the financial crisis, leading to the flexibilisation of the market when translated into the labour market, has a

¹⁰ LEWR Report.

¹¹ (Noted at para 74 of the Durban Declaration).

disproportionate impact on already vulnerable populations, such as racial minorities and women, making work and livelihoods even more precarious.

These are questions of macro policy which must be confronted when considering structural discrimination and its impact on work, given that such phenomena may stifle development and growth.

Addressing Indirect Discrimination

What is instructive about these situations is that these are not isolated issues. While new situations can create fresh vulnerabilities in terms of access to work and other rights, in particular, economic, social and cultural rights, what we see is that more often than not, these emerging paradigms underline and exacerbate already existing vulnerabilities of groups with which we are familiar. These are the groups that we have already identified as vulnerable because of existing patterns of discrimination. Once again, therefore, we reference ethnic minorities, especially persons of African descent, women, indigenous peoples and the like.

These varied situations of vulnerability and the incidences with identifiable groups means that there is a great need to consider not just direct discrimination, but indirect discrimination in the labour environment, interrogating in in-depth ways the patterns of disadvantage and inequity that keep recurring.

These patterns of discrimination are often hidden, or de facto. Indeed, a basic premise of the LEWR Report is that discrimination against women is still engrained in the

structural inequalities and inequities between men and women in the countries of this hemisphere. These problems are still pervasive in all social sectors, including the economy, education, labor, health, justice and decision-making. This is the same conclusion arrived at with regard to race.

Interrogating Hidden Issues of Race and Ethnicity

For example, on the issue of race, vulnerabilities that attach to rural populations may be exacerbated where certain ethnic peoples reside mainly in these areas. We see this for example, in the claims of Afro-descendants in Columbia, given that the armed conflict (though not officially classified as such) has been largely played out in lands belonging to persons of African descent and more recently, where extractive industries have located.

Less obvious linkages perhaps, are controversial questions relating to nationality. The IACHR is at the moment hearing a petition which involves persons of Haitian descent living in the Dominican Republic, some of whom were born there, others who migrated. Such persons do not have the rights of citizenship or resident status and claim that their human rights are being violated since they are rendered virtually stateless. Looking below the surface, these questions are also linked to race and ethnicity. It is also the case that a person whose legal status is not regularized, who has no ID card, etc. cannot find formal employment or progress in the world of work.

Issues of migration and Haitian peoples are also aired in relation to the US and other countries of the region where migration policies are different for that of other nationals.

Secondary Characteristics as Hidden Forms of Discrimination

Superficially neutral factors such as secondary characteristics, continue to be used to keep vulnerable groups out of the market with arguments that they do not 'fit in'. In the case of Afro-descendants and other ethnic minorities, it is often appearance and cultural traits (requirement for 'neat hair', or to play golf, notwithstanding Tiger Woods), while in the case of women, it can be strength, or image, or hours of work, or family responsibilities. Modern principles of indirect discrimination provide ways to challenge what are really discriminatory assumptions about difference.

All of these instances of discrimination, whether direct or indirect, must be examined in order to project appropriate policies for equal access to the labour market.

Institutional Integration – Finding the Inter-Connections and Synergies

In order to fully address the inherent vulnerabilities of certain groups in the labour market, it is also imperative to discern the intricate intersections between rights violations and other factors, which result in multiple forms of discrimination, or which multiply the effects of discrimination generally. For example, infringements of the right to work are often the result of a failure to secure the right to education, or even the right to health. There may be even larger issues at play, such as a trade policy that impacts negatively on rights.

This mandates institutional policy that is able to harmonise and connect issues across the spectrum. Labour programs attempting to address rights to access to labour/ work, cannot be isolated if they are to achieve far reaching, meaningful policy change, sensitive to the myriad of concerns.

Interconnections with Health

Where health is concerned for example, some interconnections easily come to the fore. Thus, the ability of the disabled to achieve adequate access in the labour market, will depend on their right to health being realized. Similarly, persons living with HIV cannot remain competent and productive in the workplace if their health concerns are not met, a major issue in a region such as ours with high incidences of HIV and where the most productive component of the workforce is also the most vulnerable to HIV, that is, our young people.

More surprisingly, perhaps, are the linkages between gender discrimination and health, in particular, HIV, especially when the connection with gender violence is realised, itself a product of gender inequality in our societies. More women are susceptible to HIV because of this inequity and the term ‘feminization of HIV’ has been used to express these linkages.¹²

We see similar connections between health, HIV and race. A startling revelation in the 2012 World Aids Conference was the alarming statistics of HIV in relation to black males in North America. These interconnections invariably exist within the context of poverty.

Indeed, persons of African descent are also found to face serious obstacles with regard to accessing health services generally, according to the SAD Report.¹³

¹² By Mary Robinson, former President of the Republic of Ireland and UN Commission on Human Rights, for example.

¹³ Para 11.

There are, of course, also clear parallels with HIV and the issue of discrimination on the basis of sexual orientation, giving the stereotypes that still exist on this issue. Indeed, the region has been prominent in recent asylum cases, from Columbia and St Kitts and Jamaica involving persons fleeing their countries on account of their HIV status and fear of persecution on grounds of sexual orientation. These were argued successfully on human rights grounds before UK and other courts.¹⁴

Similarly, persons living with HIV, despite assurances of non-discriminatory policies, continue to be denied entry into our countries. If already in the country, they may be denied treatment on account of their nationality. CARICOM is now examining ways to address through its HIV Migrant Project, which I head.

We recall that health was one of the 8 Millennium goals and it is easy to see why, given that health is so fundamental to our very existence and has such a huge impact on access to work.

Intersection with Right to Education

There are clearly important synergies between work and education. The region has made considerable strides in bringing educational opportunities to greater numbers of the population, including to women and minorities. Yet, access to quality education is imperfect as a result of varied factors, such as location (rural areas), uneven standards, with marginalized groups receiving less than quality schools and the impact of poverty

¹⁴ See, e.g. *RG (Columbia) v SOS for the Home Dept.* (2006) WL 63658.

(again creating circles of poverty and discrimination, since education is a power tool to lift groups out of poverty).

More disturbing perhaps, is that even where education succeeds, disadvantaged and marginalized groups such as women and racial minorities, continue to face unequal opportunities in the labour market, whether at entry level, or more commonly, at the managerial and executive levels.

The data demonstrates that “the educational infrastructure in those areas where the residing population is mostly Afro-descendant is not sufficient, illiteracy is higher, indexes of schooling are lower, and the children and youths have fewer years of education. These circumstances result in only a very small percentage of the Afro-descendant population being able to enter and/or complete higher education or university studies. . . also. . . the economic difficulties in affording education costs and the gap in incomes between Afro descendant and non Afro descendant people as the education level increases.”¹⁵

Overt discrimination was also thought to ‘absorb’ the gains in education.

Similarly with respect to women, the LERW Report notes: ” The Commission also identifies in said report a number of barriers which impede women and girls’ access to education in equal footing with men, such as poverty; an inadequate school infrastructure; the geographic and distant location of schools; the lack of adequate

¹⁵ SAD Report, para 53.

transportation; the cost of school books and textbooks; forms of violence and harassment by both teachers and students;”

“The increased opportunities that women are seeing in education and training are not translating into equal job opportunities, promotions, the rise to management or executive positions, and equal pay for work of equal value. During the project’s implementation, the IACHR received abundant information about the horizontal and vertical segregation that women still encounter in the labor market.”

Challenges to Access to Labour in Political Processes

A pertinent observation is the fact that issues relating to women, Afro-descendants and other ethnic minorities are still not adequately represented in formal political processes. This has significant and negative implications for the capacity of those political processes to address enduring patterns of vulnerability and discrimination in the society. Creating spaces for such vulnerable groups to engage in these political processes may thus provide a viable strategy for achieving equity.

Negative Political Paradigms

However, the patterns in the political process can hinder as well as help marginalized groups. A very controversial issue, but one that needs to be addressed honestly, is the extent to which political partisanship that is structured along the lines of ethnicity and race, can impact on access to the labour market.

Many of our political parties have pronounced ethnic bases, or class lines which are themselves identifiable by race. In some countries, it may be political parties that are

more representative of indigenous peoples, or non indigenous peoples. In others, such as in the Commonwealth Caribbean, political parties may be divided along lines of Afro ethnicity versus Indo-ethnicity. These divisions have implications for labour access, given that political partisanship may translate into vulnerabilities of ethnic minorities, where one party or the other controls access to the labour market – competing for political spoils, many of which are located in employment. Such deeply rooted questions, which are really questions of indirect discrimination and structural disadvantages, cannot be ignored if we are committed to examining vulnerability and discrimination at the deepest levels.

It is acknowledged that in such scenarios, it may be acceptable to correct historical inequities, for example, where a particular ethnic group has been ‘out of power’ for long periods and therefore disadvantaged, but exclusionary political representation is a danger. This is a serious dilemma which must be confronted.

In sum, it is not sufficient to pay attention to a particular vulnerability or head of discrimination in a direct, vertical way, e.g. simply to outlaw gender discrimination or race discrimination, as the case may be. Rather, we must look further to see the contextual situations that place persons in such vulnerable contexts.

Role of Employer versus Role of the State

We must consider too, how responsibilities for creating justice are to be shared as we deconstruct Human Rights. How much of a burden should be placed on individual employers viz a viz the state?

Strategies

I have, as requested, focused on the situation of vulnerable groups in the labour market and presented the challenges that we face within the context of discrimination. In this discussion, I have already addressed some strategies, such as seeking to reveal and address the interconnections and hidden relationships between waves of discrimination and seemingly neutral situations that are indirectly discriminatory.

There are other mechanisms to consider and I list some immediately following, although this is but a starting point for the larger debate and policy formation that must commence.

Trade Unions must not be Insular

One important tool is the role of the union in this process of creating equity and justice. This is a pet peeve of mine. I contend that unions have been oblivious in large measure to pressing social issues such as discrimination on grounds of race, sexual orientation and the like and even the quiet revolution in gender equality. They have allowed NGO's to displace them as change agents of society, embracing a much different to that of yesteryear, when unions were involved in deep-seated issues of social justice, including the acquisition of the franchise.

The SAD Report takes the bold step and “[c]alls upon States and encourages representative trade unions and the business sector to advance non-discriminatory practices in the workplace and protect the rights of workers, including, in particular, the

victims of racism, racial procedures and other remedial action to victims of racism, racial discrimination, xenophobia and related intolerance in the workplace; discrimination, xenophobia and related intolerance.”¹⁶

Another strategy is the creation of community development banks and finance vehicles to address discriminatory attitudes toward access to capital and credit which impact on access to the labour market.

In addition, legal frameworks and in particular, the contract model of employment, should also be upgraded to be able to address the more sophisticated and modern forms of exploitation, such as ‘contracting out’ practices which we know, disproportionately affect already vulnerable groups such as women and ethnic minorities.

Further, labour policies should be sensitive to women’s roles in the family, not merely having maternity leave, but to ensure that such roles do not become an exclusionary and discriminatory variable but are embraced in the labour sphere.

Affirmative action programs also have a place in this discussion, especially in decision making and the formation of policies.

So too, is the controversial issue of reparations, albeit in concrete terms, such as funding for education and health programs for marginalized and vulnerable groups so as to increase their access to the labour market.

¹⁶ Para 107.

In conclusion, I can say that I had the easy part – to discuss mainly the problems that confront us as we attempt to improve the situation of vulnerable groups as they seek meaningful access to the labour market. Now it is left to you to find the answers!

Professor Rose-Marie Belle Antoine

April, 2013.