



1992

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Recommended Citation

Theresa A. Amato, *Women at Work, Rights at Risk-Toward the Empowerment of Working Women*, 17 *YALE J. INT'L L.* (1992).
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Symposium: Women at Work, Rights at Risk—Toward the Empowerment of Working Women

The Ninth Annual Symposium of the

Allard K. Lowenstein

International Human Rights Law Project

Theresa A. Amato[†]

I. OVERVIEW

The International Labour Organisation (ILO) tells us that we live in a world where the concept of human rights, including labor rights, is widely accepted. We live in a world where governments are sensitive to international opinion. But we also live in a world where worker rights violations are more widespread than ever before.¹ The rights of working women must be assessed in this context. The proportion of women in the global workforce continues to increase. Further, the global community has begun to recognize as work categories of traditional women's activity that have not previously been included in definitions of productive enterprise.² It is essential, to achieve economic efficiency and to improve the social well-being of all workers and their families, for government policies and labor practices around the world to place greater emphasis on responding to the needs, pursuits, and rights of women.³

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1. AAMIR ALI, INTERNATIONAL LABOR OFFICE, WORK: A PHOTO PORTRAIT 1 (1989).

2. If current trends continue, by the turn of the century more than one billion women, one-third of the world's female population, will be part of the traditionally defined labor force. *Global Womanpower on the March*, ILO INFO., Oct. 1989, at 1 (U.S. ed.) [hereinafter ILO INFO., *Global Womanpower*]. Forecasts anticipate that women will constitute up to 47% of the U.S. labor force by the year 2000. JANET L. NORWOOD, UNITED STATES DEP'T OF LABOR, REPORT NO. 785, WORKING WOMEN: WHERE HAVE WE BEEN? WHERE ARE WE GOING? 4 (1990). Over seven hundred million will work in developing countries, and the shift of female employment from the agricultural sector to the industrial and service sectors will sustain the growing global economy. ILO INFO., *Global Womanpower*, *supra*, at 1; NORWOOD, *supra*, at 4.

3. The ILO estimates that "[t]he cost to business of child care related absenteeism is . . . \$3 billion annually in the United States." *More Child Care Services Needed*, ILO INFO., May 1989, at 8 (U.S. ed.); see also *The Changing Family in International Perspective*, 113 MONTHLY LAB. REV. 41, 53 (1990) (in developed countries, "[a]s women have entered the work force in increasing numbers, marriages have been postponed, the average size of the family has declined, and the divorce rate has risen").

The Lowenstein Symposium entitled "Women at Work, Rights at Risk: Toward the Empowerment of Working Women" addressed these issues.⁴

Though indicative of both a problem and a goal, the Symposium's title contains a misleading assumption. For rights to be at risk, they must first exist and be recognized. Think of the Zairian woman banished to a remote area because she protested government economic policies,⁵ or the Thai woman forced into prostitution,⁶ or the Mexican *maquiladora* worker making fifty-five cents an hour,⁷ or the Haitian *restavek* girl sold into a form of indentured servitude,⁸ and ask these women whether their rights are at risk. They could only respond: "What rights?"

Several weeks before the Symposium the U.S. Supreme Court unanimously ruled that Title VII forbids sex-specific fetal protection policies because a woman who is as capable of doing her work as a man should not have to choose between having a job and having a baby.⁹ This holding supports the view that a woman's reproductive and productive capacities are not incompatible and that if employers think differently, it is time to change the workplace, not the worker. Yet just six days after this ruling the Court held that the Civil Rights Act of 1964 does not protect U.S. citizens working for U.S. companies abroad from discriminatory employment practices.¹⁰ United States anti-discrimination laws, according to the Court, stop at the U.S. border. These decisions, so close temporally and yet so contrary in spirit, raised a troubling question: why must we still debate fundamental questions about the status, definition, and scope of women's rights in the workplace?

This debate continues because there has been a widespread societal failure, both in the United States and abroad, to produce creative solutions to the problems faced by female workers.¹¹ Countries around the globe have failed to take any comprehensive initiative. Instead, they have adopted an ad hoc approach, attempting to adjust piecemeal to the new roles women play in the

4. The Symposium was presented by the Allard K. Lowenstein International Human Rights Law Project at Yale Law School on April 13, 1991. Panelists at the Symposium included government officials, officers of nongovernmental organizations, and workers' rights activists. The papers that follow were selected by the Editorial Board of the *Yale Journal of International Law* to represent some of the basic themes addressed by the panelists.

5. AMNESTY INT'L, *WOMEN IN THE FRONT LINE: HUMAN RIGHTS VIOLATIONS AGAINST WOMEN* 8-9 (1991).

6. See Kristin Helmore & Sara Terry, *Children in Darkness, the Exploitation of Innocence*, CHRISTIAN SCI. MONITOR, Special Report 1987 (reprinting articles published June 30, July 1, 2, 7, 8, 1987).

7. Michael Satchell, *Poisoning the Border*, U.S. NEWS & WORLD REP., May 6, 1991, at 32.

8. MINNESOTA LAWYERS COMM., *RESTAVEK: CHILD DOMESTIC LABOR IN HAITI* (1990).

9. *United Auto Workers v. Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991).

10. *EEOC v. Arabian American Oil Co.*, 111 S. Ct. 1227 (1991).

11. See Heidi Hartmann, *Demographic and Economic Trends: Implications For Family Life and Public Policy* 2, 12 (unpublished paper, on file with author, prepared for the American Council on Education, Office of Women in Higher Education, Women Presidents' Summit, December 5-7, 1990, Washington, D.C.) (noting severity of women's problems, calling for "overhaul and creativity in [U.S.] public institutions" to address them).

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labor force and the nuclear family, as they are traditionally defined. Women need a major social initiative at the domestic and international level to correct policies and practices that leave female workers with low incomes, low education levels, limited job training, no access to management or ownership, little representation in local and national decisionmaking, and meager support systems.¹²

Current labor policies and practices remain ineffective because many of them are based on two fundamental misperceptions. First, the participation of women in the labor force is regarded as a recent phenomenon. This perception reveals part of the problem: most societies fail to include all women who work in the definition of "work."¹³ As a result, existing labor policies fail to address crucial issues affecting all women workers. Instead, governments gear economic and social policies to only a portion of the workforce, men and those women who have entered traditionally male workplaces such as the office or the shop floor. Policies generally ignore domains in which large numbers of women work, such as the home and the fields. This omission is compounded by a failure to readjust "male-centered norms" that continue to permeate the workplace.¹⁴ Policies addressed to the vast and hitherto unincluded, undervalued, and—in the case of sex workers—unaccepted portion of the female workforce have been virtually nonexistent. Governments need to create and enforce the rights of women in traditionally female domains and to ensure rights for women in traditionally male domains.

Second, policymakers continue to underestimate the implications of global interdependence, and they have failed to develop the international tools needed to protect laborers worldwide. Labor and trade policies traditionally have assumed a static, immobile labor force and a nationally based means of

12. "Support systems" for all workers include, but are not limited to: low-cost housing, adequate child care, enforcement of child support decrees, adequate health care, and flexible parental and sick leave policies.

13. "Work" is traditionally defined as jobs held primarily by men, "production" is defined as what men do in the labor force, and "gross national product" is computed according to these traditionally single-sex inputs. Reproducing, cooking, cleaning, sewing, nurturing, supervising, shopping, carrying, gathering—the tasks women have been assigned biologically and culturally—have not been defined or counted as "work." Although many would find the phrase "woman worker" redundant because most women have always spent their days in some form of production that yields a "work" product (e.g., a cleaned house, a fed child), the marketplace and policies based on the marketplace have neither accounted for nor addressed the contribution of these types of labor. *See, e.g.,* MARILYN WARING, *IF WOMEN COUNTED* 14-45 (1988) (concluding that basic definitions and concepts of production exclude large segments of female labor).

14. *See* Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 *VAND. L. REV.* 1183, 1189 (1989) (arguing that women's quest for equality in workplace has focused on removing exclusion, and then after gaining acceptance, conforming to prevailing male-centered or male-generated norms that also operate as barriers to or devalue work of women); *see also* Christine A. Littleton, *Reconstructing Sexual Equality*, 75 *CALIF. L. REV.* 1279, 1317-19 (1987) (explaining how sex differences devalue women in male power system).

production.¹⁵ These assumptions no longer hold true in the present world of multinational corporations, modern means of transportation, and advanced information technologies. The international system still does not include an enforcement mechanism to maintain rights and standards through which all workers can be empowered. Policymakers should promulgate a jurisprudence that can effectively protect female workers' rights, within an international system that seeks to advance global interdependence and preserve cultural and national sovereignty.

The Lowenstein Symposium effectively addressed these issues. Panelists and participants sought to reconceptualize "work" and discussed comparative and international solutions to defining, enforcing, and extending women's labor rights. Unlike traditional academic symposia, however, the contributions were not limited to scholastic papers, but included the work of many participants whose wide variety of insights and experiences are rarely heard in an academic forum. The next part of this overview therefore provides an overview of the contributions of the Symposium itself, while part III outlines the content of the papers presented herein.

II. THE SYMPOSIUM

The four Symposium panels shared a common theme: a wide variety of forces must work together to enable women to develop the tools that will help them define and protect their rights. This process involves confidence building, better education, higher pay, and adequate support services. The panelists also suggested ways to refine or redefine the means by which rights are gained and protected. Litigation and international conventions are not the only means available. Community organizing and legislative initiatives should also be pursued. Moreover, labor rights advocates need to be aware of and account for the cultural factors, local customs, and attitudinal biases against changing women's roles at work, within families, and in society.

A. *Access to Resources: Overcoming the Sexual Division of Labor*

Panel I participants were asked to examine why women, who are traditionally assigned primary responsibility for child care and household chores, are not considered "workers." What are the intellectual boundaries of what is considered productive in the economy? Why are women routinely excluded from the decision-making process even at local levels, when they account for

15. See Laird M. Street, *International Commercial and Labor Migration Requirements as a Bar to Discriminatory Employment Practices*, 31 HOWARD L.J. 497, 502-04 (1988).

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the vast majority of subsistence agricultural labor?¹⁶ Panel I sought answers to these questions by focusing on several interconnected issues: how law and culture define women's roles; what obstacles prevent improvement of women's working conditions; and what possible solutions might increase recognition of women's work and improve access to resources.

A consensus emerged on these issues: the international community must help women step forward on behalf of themselves. International actors will often be forced to bypass entrenched male-dominated bureaucracies to create women's development projects and to provide means for women to shape laws to empower themselves. To do so, those actors must, if necessary, inform women of their opportunities and rights. International and local organizations can also encourage national governments to correct existing deficiencies in policies that affect women's work.

Panel I concluded that women need to create a human infrastructure with knowledge of its rights and the skills necessary to promote those rights. We need to consider both ways to improve female-dominated low-paying positions, and ways to provide access to policymaking, management, and ownership positions. We need to shift attention from litigative remedies and create legislative mechanisms to restructure the workforce, and we need to change the traditional perspective on divisions of labor and management. In sum, Panel I agreed that we should explore ways to promote women's opportunities to move up and out of their current positions, and to improve their lives in traditionally female-dominated jobs as well.

B. *International Solutions to the Problems of Working Women*

The second Panel examined current efforts to strengthen trade laws and international conventions to protect the rights of working women. For more than a century, human rights advocates have sought to link trade with the protection of worker rights, with some success.¹⁷ Yet the United States still permits gross violators of fundamental labor rights to retain non-reciprocal beneficiary status under several trade laws.¹⁸ In addition, the majority of developing countries have opposed efforts to incorporate workers' rights standards into the General Agreement on Tariffs and Trade.¹⁹

16. See, e.g., THE AFRICAN WOMEN'S ASSEMBLY: WOMEN AND SUSTAINABLE DEVELOPMENT 3, 24 (undated pamphlet, on file with author, published by WorldWIDE in Washington, D.C.).

17. In the last decade, worker rights provisions have been inserted into several major U.S. trade laws. See Lance Compa, *International Labor Standards and Instruments of Recourse for Working Women*, 17 YALE J. INT'L L. 151, 158 n.36 (1992) (citing examples).

18. See Note, *Labor Rights Conditionality: United States Trade Legislation and the International Trade Order*, 65 N.Y.U. L. REV. 79, 115-19 (1990).

19. Ian Charles Ballon, *The Implications of Making the Denial of Internationally Recognized Worker Rights Actionable Under Section 301 of the Trade Act of 1974*, 28 VA. J. INT'L L. 73, 114 (1987); Note, *supra* note 18, at 92.

Various International Labour Organisation, United Nations (U.N.), and regional conventions also address issues important to working women,²⁰ yet these agreements are largely ineffectual. Panel II addressed the relationship between these international instruments and domestic legislation, the problems of enforcement, and the question whether international norms and macroeconomic trade policies can be strengthened to maximize protection for working women.

As a result, Panel II suggested that women must review existing international standards before seeking compliance, particularly when these standards are laden with paternalistic if not overtly discriminatory provisions. International norms should supply a minimum common denominator, not a ceiling or goal, and women must be able to participate in drafting these standards and in creating enforcement mechanisms. Trade laws must include specific statutory language to promote the rights of working *women*, and a prohibition against discrimination in all forms should become one of the "internationally recognized" worker rights included in all U.S. trade laws. The Panel concluded that workers' rights provisions in trade laws are underutilized because statutory language is ambiguous and enforcement is politically motivated.

C. The Garment Industry: A Case Study of Empowerment

I brought my grandmother to the Symposium because her experience in the garment industry typified conditions that still exist in the industry today. She immigrated to this country in 1938, with her son in her arms, and went to work as a seamstress in a men's clothing factory on the south side of Chicago. She made fourteen dollars a week and spent half of that on child care. She worked for thirty-two years, belonged to a union, and quit one and one-half months before she became eligible for her pension in order to take care of her grandchildren and to enable her daughter-in-law to go to work. No one in management or the union told her that the decision to quit prematurely would cost her thousands of dollars each year in pension benefits. Fifty years later, conditions in the industry are largely unchanged: in 1989, a fifteen-year-old in New York City's garment district hopes to make one dollar an hour "in

20. See Convention on the Political Rights of Women, Mar. 31, 1953, 27 U.S.T. 1909, 193 U.N.T.S. 135; Inter-American Convention on the Granting of Political Rights to Women, May 2, 1948, 27 U.S.T. 3301, 1 Pan-Am. T.S. 3; Convention Against Discrimination in Education, Dec. 14, 1960, 429 U.N.T.S. 93; Convention on the Elimination of all Forms of Discrimination Against Women, Dec. 18, 1979, 19 I.L.M. 33; Convention on the Nationality of Married Women, Feb. 20, 1957, 309 U.N.T.S. 65; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Mar. 21, 1950, 96 U.N.T.S. 271. See generally INTERNATIONAL LABOUR ORGANISATION, INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS (1982) (compilation of ILO conventions from 1919 to 1981).

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conditions considered barbaric half a century ago."²¹ Why do these conditions persist when garment manufacturers argue they are controlled more by government intervention than by market forces?²² What strategies are being pursued currently to improve the position of women garment workers? How do cultural notions of gender affect attempts to organize these workers?

Panel III focused on women in the garment industry in the United States, Mexico, and the Philippines. Tens of thousands of workers in the United States are employed today in sweatshops, which are concentrated in cities with large immigrant populations.²³ Panel III discussed how working conditions in the garment industry have been affected by the global restructuring of the industry and the relationship between immigration law, trade regulation, international labor protection, and shop-floor realities.

Panelists concluded that labor organizations in all countries must aim for solidarity among women garment workers (and, indeed, all workers) through the exchange of information and ideas. Panelists urged the reregulation, if not the abolition, of "homework" in these industries. They also asked why union leaders are still primarily men in traditionally female-dominated industries, and they sought to determine the effect of the virtual absence of women in union leadership positions on the achievement of women workers' goals.

D. *International Sexual Exploitation of Women*

Panel IV discussed the provision of commercial sexual services, specifically surrogacy, prostitution, and brides-for-sale. It asked how an overwhelming cultural conviction that "good" women do not use sexual services to generate income affects our evaluation of commercially available sexual services and the women who provide them.²⁴ Are the women who provide these services oppressed or liberated when their services and labor power are inseparably connected to their sexuality? Panel IV addressed issues such as whether the sale of women's sexuality feeds on poverty and powerlessness; to what extent the social manipulation of sexual arrangements relegates women to generally inferior status; whether there is a public interest justifying regulation of these arrangements; and how labor rights and human rights may be reconceived to

21. Michael Powell, *Illegal Labor Flourishes Again: Children Working in Many Sweatshops*, NEWSDAY, Jan. 8, 1989, at 3.

22. ALAN W. WOLFF ET AL., *THE REALITY OF WORLD TRADE IN TEXTILES AND APPAREL* 31 (undated pamphlet, on file with author, prepared for FFACT (Fiber, Fabric, & Apparel Coalition for Trade)).

23. INTERNATIONAL LADIES GARMENT WORKERS UNION, *CAMPAIGN FOR JUSTICE: RETURN OF THE SWEATSHOPS 1* (1990) (undated pamphlet, on file with author).

24. See EDWIN M. SCHUR, *LABELING WOMEN DEVIANT: GENDER, STIGMA, AND SOCIAL CONTROL* 164, 167-68 (1983).

apply to this form of work. Panelists profoundly disagreed on the answers to these questions.

Lacking a consensus, Panel IV suggested that governments should take a stronger interest in the international sale of women and the provision of sexual services against women's will. The Panel also discussed the need to educate people about sexual services while not banning those services provided of free will. It became clear that participants did not agree on the fundamental issues involved in the debate, much less the standards to apply to the regulation of sexual services and surrogacy. This lack of consensus reflects the chasm in feminist thought about the value, if any, of sex-work.²⁵

E. Omissions

The Symposium drew up a sizeable agenda that the participants concluded must be considered, if not necessarily implemented, to reduce the domestic and international exploitation of women. Still, the Symposium left many questions untouched, in part due to the inevitable lack of representation of many viewpoints.

For example, no Panel II participant argued against the use of international conventions that fail to consider developing countries' economic positions or (in some cases) cultural aversions to "internationally recognized" rights. No one presented the developing world's opposition to linking trade with the enforcement of worker rights, nor the opinion that such a mechanism is only a ploy by the developed world to maintain a competitive trade advantage. Panel III never addressed why, with the overall decline in union membership and the concurrent rise in women's participation in unions, women have neither attained leadership positions in unions²⁶ nor been able to use unions to promote widescale reform in day-care policies, flextime, and job training. No voice on Panel IV represented the anti-pornography viewpoint or examined whether the principles that sustain and organize the commercial sex industry are oppressive to women.²⁷ Nor did any panelist advocate the benefits of a woman's monopoly on surrogacy.

A Symposium of this breadth clearly provided only a starting point for discussion of some of the issues faced by working women—and the private and public initiatives required to empower them.

25. See Martha Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 SO. CAL. L. REV. 777, 826-30 (1988) (describing disagreements on meaning of prostitution in feminist theory).

26. ASSOCIATION FOR UNION DEMOCRACY, *LEGAL RIGHTS FOR UNION WOMEN* (undated pamphlet, on file with author).

27. See, e.g., Catharine A. MacKinnon, *Sexuality, Pornography, and Method: "Pleasure Under Patriarchy"*, in *FEMINISM AND POLITICAL THEORY* 207, 220-21 (Cass R. Sunstein ed., 1990) (anti-pornography viewpoint); Laurie Shrage, *Should Feminists Oppose Prostitution?*, in *FEMINISM AND POLITICAL THEORY*, *supra*, at 185, 198-99 (on commercial sex industry).

III. THE PAPERS

The following papers present particular aspects of the Symposium's central theme: the international and domestic exploitation of working women. The first paper, written by Lance Compa, Visiting Lecturer at Yale Law School and Legal Counsel to the Washington-Baltimore Newspaper Guild and United Electrical Workers Union, is entitled *International Labor Standards and Instruments of Recourse for Working Women*. Professor Compa, a long-time scholar of worker rights in international trade, suggests methods both within and beyond the ILO framework to change international labor standards originally enacted to protect women, but that actually operate to deprive women of equality. Professor Compa advocates promoting equality over protection in international labor standards concerning women. He argues that the application and enforcement of standards must first ensure that women sit at the bargaining table as equals; issues of protection can then be addressed in the context of equal negotiations. The author stresses the promotion of worker rights through a variety of means, including trade agreements, international conventions, union solidarity, voluntary codes of conduct, and litigation.

In the second paper, *Women in Global Production and Worker Rights Provisions in U.S. Trade Laws*, international labor economist Karen F. Travis describes how trade laws incorporating workers' rights standards can be used to protect fundamental workers' rights in developing countries' "export processing" or "free-trade" zones, which tend to be dominated by female workers. Ms. Travis argues that U.S. trade laws have the potential to affect positively the internal labor practices of other countries. She concludes that working women can indirectly benefit from statutory language conditioning U.S. trade benefits on meaningful labor reforms within the designated zones, even though several issues that have great impact on working women do not fall within current statutory language protecting workers' rights.

Dennis Hayashi, National Director of the Japanese American Citizens' League, argues in *Preventing Human Rights Abuses in the U.S. Garment Industry: A Proposed Amendment to the Fair Labor Standards Act* that the U.S. garment industry plays a significant part in the "global assembly line" and that manufacturers are beginning to return to the United States for a variety of reasons. Mr. Hayashi proposes that the best way to improve working conditions in the U.S. garment industry is to amend the Fair Labor Standards Act to impose liability upon "deep pocket" manufacturers for violations of the Act's provisions. The Act as currently structured effectively renders only "shallow pocket" contractors liable for violations. Mr. Hayashi concludes that statutory measures seeking to remedy systematic violations of wage and hour laws must provide an effective tort remedy against the ultimate profit-makers in the chain of production.

The labor force experiences of African-American women is the subject of the fourth paper, *African American Women and "Typically Female," Low-Wage Jobs: Is Litigation the Answer?*, by Charlotte Rutherford, staff attorney at the NAACP Legal Defense and Educational Fund, Inc. and Director of the Black Women's Employment Program. Ms. Rutherford argues that traditional employment discrimination litigation has failed to improve the economic status of African-American women who occupy low-wage jobs considered "typically female." She concludes that litigation is not the sole answer for women's rights advocates in other countries; rather, legislative reform is needed to improve wages and benefits for those women who occupy the most poorly paid jobs both in the United States and abroad.

Gwendolyn Mikell, Associate Professor of Anthropology at Georgetown University, addresses the struggle to improve women's access to resources in developing countries in *Culture, Law, and Social Policy: Changing the Economic Status of Ghanaian Women*. Professor Mikell examines the history of Akan women in Ghana as a case study of women in development. She argues that past efforts to improve Akan women's access to resources have failed principally because policymakers have ignored Akan culture and its effect on reform. Professor Mikell concludes that reform efforts must be sensitive to local culture and that the international community should not attempt to impose its norms on developing nations in order to increase women's access to resources. Instead, the international community could be far more effective in improving access by assisting in the development of local women's organizations.

The last paper is written by Heidi Tinsman, a graduate student in the Yale Department of History and an audience participant in the Symposium. Ms. Tinsman argues, in *Behind the Sexual Division of Labor: Connecting Sex to Capitalist Production*, that the distinction between sex-work and non-sex-work is artificial, and that the former is no more exploitative than the latter. Underlying her position is the premise that the marketplace exploits all working women because they are women. She concludes that sex workers' services must be legalized so that they can use traditional labor tools to challenge the exploitative nature of sex-work within the capitalist system.

IV. CONCLUSION

In 1898, Elizabeth Cady Stanton wrote in her autobiography that "woman's place in society marks the level of civilization."²⁸ Today, nearly one hundred years after Stanton's remark, it is telling that women's place in the workforce is still a topic for symposia when over one billion women will be in the

28. ELIZABETH CADY STANTON, *EIGHTY YEARS AND MORE* at iii (1971).

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traditionally-defined labor force within the next decade.²⁹ The infrastructure needed to empower women has clearly not developed sufficiently rapidly to keep pace with demographics, and it cannot hope to meet the current or future needs of working women. If we judge ourselves as a global community by our treatment of working women, by the way we value and define the work performed by women, and by the rights we accord them, then by all accounts, at the Symposium and in the papers that follow, the challenge remains substantial.

29. ILO INFO., *Global Womanpower*, *supra* note 2, at 1.

