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The SABPP Women's Report 2017: Fairness in relation to women at work

Anita Bosch (Editor)
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The SABPP Women's Report 2017
Fairness in relation to women at work

Prof. Anita Bosch (Editor)

Contents

Acknowledgements

Foreword

It is a privilege to present this year's Women's Report to you. The theme of fairness in relation to women at work seemed like an obvious choice when a student of mine, Ms Masvinge, reported that male participants in her fieldwork commented that they felt that maternity leave was unfair. It struck me as interesting that something most employees would regard as important may not be seen as fair, if fairness is interpreted as treating everybody the same way. With this spark of intrigue, the theme of the 2017 Women's Report was set.

Themes on which previous years' Women's Reports have been based have predominantly focused on the visible and known differences between men and women, such as pregnancy and pay disparity. Fairness, however, is a more nebulous and debatable concept. We often hear children whine, 'But that is not fair!' when they don't get their way, which parents ignore as an attempt at achieving self-gratification. The same reasoning may be attributed to managers when employees make it known that they feel that they are being treated unfairly. It takes a thoughtful manager to stop and listen, for, often, in the perceived whine, is a little piece of truth, uncomfortable as it may be. This year's report explores that alternative truth, in order to influence HR practitioners and line managers to give fairness some consideration.

Chapter 1, written by Piet Naudé, considers how society leads itself to believe that our lived experience of gender relations is a given, and how we may start changing our thinking, so that gender relations in the workplace can improve. Amanda Gouws extends the theme by providing a glimpse of fairness in the private world of families. In Chapter 2, she calls us to consider how gender relations are political, and warns against the consequences of the exclusion of care in society. Chapter 3 considers how women have been included and excluded from paid work, and how power relationships have changed over time. This chapter, authored by me, provides a rationale for justice for women. The Women's Report provides a glimpse of the world of work through the eyes of women, and how this view often leads to improvements for both men and women. In this regard, Chapter 4, co-authored by Hugo Pienaar and Riola Kok, focuses on paternity leave and how employment law may not be fair towards men. Mariette Coetzee wrote the last chapter, presenting a HR management view on fairness towards women at work.

As with previous years, this year's report provides an opportunity for HR practitioners and line managers to stop and reflect on how they conduct themselves as managers and leaders. I thank you for taking the time to read this thought-provoking edition.

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CHAPTER ONE

Women in the workplace: *en route* to fairness?

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Introduction

Many of us have a story[1] to tell that goes something like this:

Mary and John both studied accounting. They both passed the qualifying examinations and, after a successful internship, became CAs. Mary is academically stronger than John – her marks were always in the top 5% of her class. She also has superb people skills, and quickly moved up the ladder to become co-leader of the tax division.

She then fell in love, married, and the couple had a first child. At this point, she reached a crossroads. She stepped out of the workplace to become a full-time mother for a while, but continued to read and keep up with CPD requirements.

Five years later, she returned to her old firm. There are no child-care facilities at her workplace, as these are considered an 'out-of-scope' staff benefit with 'complicated insurance risks.' John, in the meantime, had slowly made his way up the corporate ladder. Mary now reports to him. Unfortunately for her, HR cites "lack of up-to-date practical experience" as the reason for only offering her a contract position.

Mary starts to wonder whether her decision to have a family was a good one. To catch up, she has to over-perform, whilst juggling her roles as mother to two young children, being a good spouse, and delivering on her role as professional tax expert.

She starts to show signs of burnout. Men, and a few women, look at her and say, "What a pity. If you cannot take the heat of a man's world, stay out of the kitchen."

Is this fair?

To address the issue of fairness related to women in the workplace, one first has to understand the strengths of patriarchal thinking – the unseen but powerful spectacles through which we construct workplace realities as androcentric spaces.

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1   *The imaginary setting is deliberately white, sexist, and middle class.*

Socialisation

Young boys and girls are socialised into specific functional and emotional stereotypes, and they take their cue from parents and other socially significant people to understand themselves as 'cowboys who don't cry' or as 'sensitive, serving girls.' Like racism, sexism – the unequal awarding of power and privilege based on gender – is acquired behaviour. We are not born with '-isms.' We are socialised into these being 'normal.' To resist these established constructs meets with social sanction, because asking for equality or restorative action disturbs current privilege and threatens the stability of the socially constructed world where men (and women) have learnt to find stability and comfort.

Education

Our education system sends both implicit and explicit messages to girls and boys about subject- and career choices and what 'suits' better – music, languages, and home economics for girls, and science, maths, and woodwork for boys. This leads to occupations being 'genderised,' where the caring professions like social work, nursing, and primary school teaching are accepted as 'women's spaces.' The 'doing' professions, like engineering, agriculture, and artisanal jobs, are considered 'men's spaces.'

These occupations and the preceding educational path endorse and strengthen social stereotypes as the appropriate organisation of labour.

Religion

All three book religions – Judaism, Christianity, and Islam – are fundamentally patriarchal belief systems. God is a man. Metaphorical religious language describing the God-head in terms of familiar human settings like the family – "God is like a father" – becomes more than imagery. The interpretation changes to "God is a father," understood literally[2].

The social structure and power distribution of religious institutions are decidedly androcentric: the pope, chief rabbi, and chief imam are, and will always be, men.

The stance of "This is God's will" provides a powerful transcendent source for and endorsement of our social and educational gender ideology, and couches our gender beliefs as religious convictions in line with the nature of God.

Though powerful counter-currents are present in all these religions, and have been sources of gender justice, this paradigm remains entrenched.

Workplaces

The cultural, educational, and religious sentiments mentioned above shape public thinking to such an extent that it is not surprising that the workplace mirrors and indeed strengthens patriarchal beliefs. There is no reason why the workplace as a significant sphere in society would transcend the shadow of gender-biased thinking and practices.

Despite progress on a number of fronts, business is still largely a man's world. If this were not so, this annual HR report on the status of women in the workplace and the inclusion of women in South Africa's equity legislation, for example, would not be necessary.

How can we make the work environment a more gender-equitable place? Six broad strategies are proposed that, cumulatively and simultaneously, may make a difference. They must therefore not be read as sequential steps, but rather as different entry points into the issue of workplace fairness.

First strategy: Clarifying 'fairness'

The minimum requirements for fairness in the workplace are obvious. They are contained in the relevant equity legislation, including affirmative action, sector-based agreements on matters like black economic empowerment[3], and in conditions of employment that make provision for matters like equal pay for equal work, maternity- and paternity leave benefits, and so forth.

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2   *No wonder feminist theologians' first act is icon destruction: unless frozen metaphors are de- and re-constructed, nothing will change. For an excellent early example, read Sallie McFague's (1987) Models of God. Theology for an ecological, nuclear age. Minneapolis: Fortress Press.*

3   *In South Africa, there is a link between classism, racism, and sexism, and black women are often subjected to triple structures of oppression.*

These rules in service of greater fairness are important. They do help us to, outwardly at least, conform to minimum standards. But, unless these measures are preceded and accompanied by a shift in values, they remain exercises in compliance that will not change the patriarchal culture of a business. Sexism is not less hurtful if a woman is paid equally to her male counterparts. It is not merely about money, it is about being respected as a person worthy of dignity.

One view of fairness is that those who gain privileges and benefits legally under conditions of open and fair competition (procedural fairness) are entitled to their enjoyment. If 30 athletes start a 5 000m race and run according to the same rules, the winner has the moral right to enjoy the fruits of his or her effort. If men then end up winning more often, they are morally entitled to enjoy the benefits. In fact, it would unfair to men – and to women – to let them compete according to different or special rules[4].

Another view of fairness is that not everyone stands at the starting blocks from a background equal to that of the other competitors. Some athletes had fantastic exercise facilities and professional support teams. They had already obtained significant advantages before the race even started, and other athletes therefore cannot compete on an equal footing in any way.

This view of fairness takes into account that, in real life, not every person is competing under the same enabling or dis-enabling conditions. The outcome is therefore never really 'fair,' though the rules may seem to treat everyone procedurally the same. According to John Rawls, the principle of social justice that produces fairness holds that social and economic inequalities are to be arranged so that they are to the greatest benefit of the least advantaged. This is known as the Difference Principle, which stipulates that we should strive to maximise the minimum level of welfare.

In this view, fairness in the workplace does not focus on how well off the (mostly male) winners are, but on the question whether the workplace maximises opportunities and benefits for those often relegated to the lower end of the social and economic ladder[5].

A woman enters the business race with at least two handicaps: whilst running, she has to fight the invisible handicap of gender bias, and she has to assume social and parental caring roles in addition to her daily responsibilities. It is heartbreaking to watch this unequal race where the outcomes are endorsed over and over, as if it were the most normal and fair thing in the world, while the HR manager smiles: "All rules have been applied fairly."

Fairness does not mean equal outcomes. However, where inequalities do exist, the advancement of women over a particular reporting period is the moral yardstick by which the organisation should be measured.

Second strategy: Conscientization via open conversations

The long-term answer to perceived and real unfairness in the workplace lies in re-socializing, re-educating, re-believing, and, ultimately, re-conceptualising our workplaces.

These are no easy tasks, as they, in principle, require alignment among parents/families, educational institutions, religious belief systems (when and where they are held), and, ultimately, the structure of power in the workplace. Part of the problem is conflicting 'messages' that, in most cases, simply give more reason to hold on to sexist ideas and stereotypes: traditional gender-biased role models in the home and traditional religious views might, for example, stand in tension to the promotion of gender equity in an educational or constitutional context.

Men and women will not and cannot respond to a situation of unfairness they themselves cannot see. Conscientization is therefore a key first step. For this, open and courageous conversations are required. These types of conversations will not happen naturally. At the beginning of a culture-change process, safe and open spaces will have to be created and ably facilitated. This will enable people – particularly women – to speak up in a context where the normal gender-power asymmetry is not determining speaking turns, and where the normal business efficiency norms do not operate as principles of validation or non-validation.

One round will not be enough. Over time, all voices must be heard in a culture of trust where vulnerability does not open the potential of misuse, but rather one that engenders more trust. The use of storytelling is to

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4 In his book, Anarchy, state and utopia (1994, New York: Basic Books), Robert Nozick defends the notion of entitlement (justice in holdings) where an acquisition or transfer was legal and fair.

5 See the well-known A theory of justice (1971 Oxford: OUP) by John Rawls, as well as the proposal about differential treatment of poor nations in a global trade regime by Joseph Stiglitz (2006), Making globalization work (New York: WW Norton). For a historical and conceptual discussion of preferential or prioritarian justice, read Piet Naudé's (2007) In defence of partisan justice. An ethical reflection on "the preferential option for the poor," Verbum et Ecclesia, 28/1, 166-190.

be promoted: opening up about deeply held biases and hurtful experiences is not a rational process in the first place. The vehicle of personal or collective narratives is well suited to bringing across what arguments, laws, and HR policies cannot.

Courageous conversations would have limited value if we return to the 'normal' day-to-day workplace reality where bender bias still holds sway. More is required.

Third strategy: Defining institutional values and exercising leadership by commitment and example

Values are aspirational moral ideals that, in theory, shape conduct and direct policy. That is why it is important to articulate, communicate, and live these values in the business context. Unless we collectively commit to values like inclusivity, fairness, and non-discrimination – and hold one another accountable along the way – we will not change our ways.

We know from experience that leadership plays a key role in setting the tone for institutional values. Here we are talking about top leadership, who should make regular public values-commitments whilst embedding decisions and policies and – above all – personal conduct in the agreed-upon institutional values.

There rests a particular responsibility on men in leadership to display non-sexist attitudes and break the cycle of gender ideology and stereotypes. Further, it must be said: a higher number of women in leadership does not automatically translate into greater gender equality, exactly because women often have to assume patriarchal roles to reach such positions. Some of the worst enemies of fairness to women are women who either become 'like men' or simply play into the stereotype of an 'uniquely feminine leadership style' that, in fact, endorses discrimination whilst purporting to do the opposite.

Values are more caught than taught. There is nothing as powerful as exemplary leadership with a close coherence between 'talk' and 'walk.' There is nothing that erodes values as quickly as leaders paying lip-service and acting contrarily, conveying the impression to their followers that 'this is not serious.'

Fourth strategy: Active ethics management and performance reviews

The management of institutional ethics[6] has now progressed far enough for us to know that values management can make a huge difference in fostering behavioural change. The process starts with the narrowing down of core moral values appropriate to the business. This happens with wide consultation, followed by values clarification, so that the interpretation of values is crystallised to sufficient clarity and consensus to act as a guide for action.

These values should then be included in a code of conduct, together with action descriptors, and signed off by all staff. As part of a 360-degree evaluation, all staff members should undergo an annual review of their adherence to these values. One does not easily see one's own biases. Others are needed as a mirror in which we can see a more truthful reflection of ourselves.

If sexist attitudes and actions permeate a staff member's work life, corrective action should be proposed. The proof of the values pudding is in the eating. This comes down to positive affirmation for inclusive and fair conduct, and negative consequences and sanctions for persistent non-adherence.

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6   *For a good and accessible discussion on ethics management, read Deon Rossouw and Leon van Vuuren (Eds.): Business Ethics (5th edition, 2013, Cape Town: Oxford University Press), and, for training as an ethics officer, contact The Ethics Institute (TEI): https://www.tei.org.za/*

Fifth strategy: Designing creative HR policies and practices

Current HR interventions to ensure equality are simply (inadequate) attempts to ensure a sense of a level playing field. Child-care facilities, flexible work hours (where practically possible), and giving lower job grades and contract employees a higher pay increase than permanent staff should be seen as 'normal.' This is where creative thinking and amendments of sometimes very rigid HR rules are required.

To comment on the story with which this essay started, it seems patently unfair (in the second sense of fairness) to 'freeze' a woman's entire career because she does not contribute to the private good (profits) of a company whilst on maternity leave and extended 'motherhood absence' in which she (seen from a traditional perspective) performs a function that directly contributes to the public or common good. While it would be unrealistic to expect companies or the state to keep paying a salary beyond four months of legal maternity leave, nothing stops HR rules from making provision for amended terms of re-employment and promotion based on a reasonably agreed time of absence, coupled with minimum up-skilling requirements if a woman chooses to return to her last place of employment.

Sixth strategy: Continued and humble self-exploration

I am a middle-class, white man. I, too, was socialised into sexist attitudes and views. I later gained insight into my own biases, and could make an intellectual switch in my mind to commit to fairness and inclusivity. I have even written on feminist reinterpretations of society and religion. This, however, does not imply that my default reactions and implicit responses to situations do not often reveal my deeply held beliefs.

I therefore cannot write even this piece from a position of pride. Overcoming gender- and other social biases related to race, class, foreigners, and overweight people (for example) is a life-long project with successes and setbacks along the way.

All of us – specifically men – require constant self-evaluation and honest internal feedback.

In the end, the big question is whether the commitment to gender justice as envisaged in this chapter could remain steadfast. My hope is that it would, as this will enable us to progressively build workplaces marked by fairness and experienced as places of dignity and joy for all, with the organisation's success as the apex.

CHAPTER TWO

Fairness in the family

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Introduction

Gender equality in the workplace is regulated through, amongst other labour legislation, the Employment Equity Act (Act 55 of 1998) and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) (Act 4 of 2000). It is also Constitutionally protected through provisions preventing discrimination on certain grounds in the equality clause in the Bill of Rights. Of these grounds, five are important for gender equality: sex, gender, sexual orientation, marital status, and pregnancy. These are, however, only considered in the workplace, not in the private sphere of the home.

The divide between the public sphere (sphere of work and politics) and the private sphere (home/household) has always been problematic, because of the exclusion of issues related to discrimination in the private sphere – the state is reluctant to intervene in the private sphere to change conditions of inequality.

This chapter will attempt to show that there is a relationship between gender inequality in the home and gender inequality in the workplace. It will become clear that, unless we start to address issues in the private sphere with regard to the division of labour at home between women and men, the right to reproductive freedom, and freedom from gender-based violence, establishing gender equality in the workplace will be close to impossible.

Personal is political

The slogan 'The personal is political' was coined by feminists of the 'second wave' in the global North[1] to make the claim that gender inequality in the home contributes to gender inequality in the public sphere, in order to raise consciousness about the detrimental effects of, inter alia, family politics on gender equality.

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1   http://www.carolhanisch.org/CHwritings/PIP.html

While family forms have changed drastically since the end of the Second World War, when women increasingly entered the labour force, the Western understanding of the family remained that of the nuclear unit, consisting of a father, a mother, and children. Family forms, however, now include one-parent families (very often woman-headed households with children) and same-sex parents. Yet, the model of the male breadwinner dominates our understanding of the role division according to gender in the home, as well as the distribution of benefits in the workplace.

Studies have shown that, even when employed full time, wives spend more time doing housework than husbands; they perform the more tedious tasks, and are more likely than men to scale back their careers to make the family a priority[2]. Women scaling back their work activities or exiting the workplace for a while leads to lower earnings, with a knock-on effect into midlife. This lack of balance in the division of labour in the household also leads to a negative impact on a woman's health and well-being, which could lead to depression. Resentment about a partner's unequal share in housework leads to marital conflict and lower satisfaction with marital status[2]. With the birth of children, household labour division becomes even more inegalitarian.

Even when couples agree to negotiate the division of labour, taking into consideration personal preferences, these decisions are often undermined by relative resources, such as the homemaker's dependence on the breadwinner. Gender inequality in broader society further undermines women's bargaining position[2]. Even when men are not the breadwinners, they can assert their masculinity by not doing housework – this conforms to the construction of masculinity ideals.

Sayer's research[2] shows that men are actually doing more housework in Europe and North America, compared to their counterparts on other continents, but, even so, women continue to do the bulk of the work around the house in all nine countries surveyed. In liberal social welfare states like Scandinavia, marriage, parenthood, and employment have less of an impact on women's housework than in conservative countries with more demarcated gender roles.

A study done in South Africa by Statistics South Africa (Stats SA) in 2000, in all nine provinces, to determine how men and women spend their time showed similar trends[3]. The sample included 8 546 households and 14 306 respondents (6 616 men and 7 690 women). The results showed that men spent 73 minutes and women 173 minutes on household chores per day. On care work, men spent five minutes per day, while women spent 44 minutes. Even in cases where couple had employed a domestic worker, women still spent twice as much time as men on household work, while the domestic work of men decreased – women indicated an average of 148 minutes in relation to men's 47. Couples with children under the age of seven years indicated increased care work, with women spending 87 minutes on care per day, while men spent 12.

This study was repeated in 2010 by Stats SA, and the results again showed that women, on average, perform four hours more home- and care work than men, who, on average, do so for only two hours per day. In 2016, a study by the Organisation for Economic Co-operation and Development (OECD) confirmed that South African women spend, on average, 4.3 hours per day on home- and care work, and men only 1.5 hours[4]. What is clear is that women have to combine productive work with care work at home.

In South Africa, which can be considered a conservative country, given its patriarchal nature and strong adherence to cultural understandings of gender, it is difficult to change perceptions of women's and men's roles. In many sectors, the male-breadwinner role is still strongly adhered to and supported[5].

For women, pregnancy in the workplace may lead to very serious challenges that act as a drawback in their careers. For example, in South Africa, in the past, married teachers had to resign when they fell pregnant, and many public organisations and private companies refused to give women maternity leave or provide childcare facilities. Labour legislation now provides for maternity leave, but many companies still adhere only to the prescribed minimum paid maternity leave or make it difficult for women to take maternity leave[6].

Men hardly ever face the choices women have to make around reproduction, unless they are single parents, but they do not face the same problems as women, who can become pregnant. Women contribute to the core business of companies, but when employers do not want to provide childcare facilities, the message they

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2   Treas, J. 2010. Why study housework? In J. Treas and S. Drobnic (Eds.), Dividing the domestic (p. 4). Stanford: Stanford University Press.

3   Statistics South Africa 2001. A survey of time use: How South African men and women spend their time. Report released by Stats SA.

4   https://www.brandsouthafrica.com/governance/it-is-time-for-parity-in-unpaid-housework

5   ajol.info/index.wwwphp/saje/article/download/24919/20531

6   repository.up.ac.za/bitstream/handle/2263/52482/Motsiri_Sir_2015.pdf?...1...y

send to women is that childcare is not core business and will undermine profitability, yet, for female employees, it provides peace of mind so that they can focus on their work, contributing to their productivity, which is ultimately to the benefit of the organisation.

In the absence of maternity leave and childcare facilities, many South African middle-class women become complicit in systems of exploitation of other women, mostly black women, who care for and raise their children to enable them to return to work, while the black women's children have to forego their mother's care. These childminders help women to circumvent maternity- and childcare obstacles in the workplace, to the benefit of employers[7].

Care in the household

Susan Moller Okin, in her path-breaking book Justice, gender, and the family (1989), argued that, as long as families are not governed by justice in gender relations, gender inequality will persist[8]. The concept of the double burden/shift has been developed by feminists to indicate that women who work also have to do chores around the home, including childcare. Care work, is, however, not viewed by society as work, because it is unpaid. When institutional care is used (like childcare facilities etc.), families pay for the care, but care done at home is not considered work, and not remunerated.

Exactly how little consideration is given to care work is shown in the 'familialist' approach to care work, as expressed in the South African White Paper on Social Welfare (1996). The White Paper follows a familialist approach to the provision of welfare, assuming that care for children, the aged, and people with disabilities will take place in the family. The familialist approach is inadequate, because it assumes that women will do the caring, and also that women have the time to do it. Furthermore, this strategy does not correspond with the family structure of the majority of same-sex couples[9]. The nuclear family is not currently the norm in South Africa; single-parent and extended families outnumber nuclear families[10]. The White Paper ignores kinship patterns and caring practices of extended families, especially in conditions of migratory labour and economic conditions that demand that women enter the labour force.

The White Paper is silent on the position of men, but assumes the presence of a male breadwinner whose caring duties are limited to financial maintenance of the family, while care-giving is left to women[11]. In the global North, changes in the family structure have preceded changes in policies. Policies lag behind realities in families, yet policies form part of the information that men and women in households use to make choices[12]. Data show that women's behaviour in terms of the contributions they make to households has changed much more than that of men. Research has also shown that, if nothing is done to encourage a reduction in men's work hours so that they can do more care work, women will remain unable to choose to increase their work hours[12]. This is called the 'male veto,' which results in greater stress for women who have to do the bulk of unpaid care work while coping with work demands. Women often have to juggle paid and unpaid work, and often face the problem of 'women in the middle' – caring for children and ageing parents.

In the global North, work-family reconciliation policies have become more prominent in social welfare states. The failure or success of these policies often hinges on the incentives and disincentives they provide men and women to change their behaviour in regard to the amount of paid and unpaid work they do. Policies have to be multi-pronged to provide for fertility decisions of parents, promote educational and social development of children, decrease women's unemployment, eradicate poverty, and facilitate gender equality. It can also be the case that the reconciliation of work- and family responsibilities exacerbates gender inequality when it allows more selective participation for men in household tasks[12].

Next, we will consider the perspective of the 'ethic of care.'

What is an ethic of care?

Carol Gilligan[13] (1982) was one of the first feminists to distinguish between an ethic of justice and an ethic of care. Gilligan[14] argues that moral reasoning or moral judgments in difficult positions has been focused on thinking about justice that is rule-driven, but that it is also possible to make moral judgements based on relationality (the presence and consideration of relationships) inherent in care. Care is not a one-way

7   Cock, J. 1980. Maids and madams. Johannesburg: Ravan Press.

8   Okin, S. M. 1989. Justice, gender and the family. New York: Basic Books.

9   Sevenhuijsen, S., Bozalek, V., Gouws, A., & Minnaar-McDonald, M. 2003. South African social welfare policy: An analysis using the ethic of care. Critical Social Policy, 23(3): 213.

10 https://www.moneyweb.co.za/archive/fractured-families-a-crisis-for-south-africa/

11 Sevenhuijsen, S., Bozalek, V., Gouws, A., Minnaar-McDonald, M. 2003. South African social welfare policy: An analysis using the ethic of care. Critical Social Policy, 23(3): 311.

12 Lewis, J. 2006. Men, women, work, care and policies. Journal of European Social Policy, 16(4): 388-391.

13 Gilligan, C. 1982. In a different voice. Cambridge: Harvard University Press.

14 Gilligan, C. 1995. Moral orientation and moral development. In V. Held (Ed.), Justice and care (p. 32). Boulder: Westview Press.

engagement, but exists in the relationship between the caregiver and the care receiver(s). According to Gilligan, all human relationships can be viewed as characterised both by equality and attachment, and both inequality and detachment constitute grounds for moral concern.

When we switch to moral concerns based on relationality and how to deal with moral dilemmas from a caring perspective, moral choices often have a different outcome. Gilligan's research[13] showed that women more often reason from a perspective of care. This ethics-of-care perspective has far-reaching implications for how we think of care that needs to take place in the household and how it impacts on the workplace[15] [16].

An ethic of care can be viewed as a continuous social process rooted in relationality, in which we can distinguish four phases:

- *Caring about – which is the ability to recognise that care is necessary, which requires attentiveness to needs;*

- *The responsibility to meet these needs;*

- *Taking care of – which requires the ability to see what is needed and the competence to perform the care; and*

- *Care-receiving by those being cared for – implying responsiveness to the care that is given[17].*

Care can be related to individuals, but should also be part of social relations and political institutions, workplaces, and cultural values. What is important is that a care ethic moves us beyond liberal individualism to a greater focus on relationality, interdependence, and intersubjectivity, which is often lacking in the workplace[18] [19].

This ideal of justice as an ethic of care therefore means that the privacy of the family is not absolved from justice considerations. On the contrary, it demands that mothers and fathers – and other caregivers – take moral decisions from the perspective of relationality, and that they socialise their children from a justice perspective. As Okin[20] observed:

"The fairness of the distribution of labor, the equal respect, and the interdependence of ... parents would surely be a powerful first example to a child in a family with equally shared roles. ...having a sense of justice requires that we be able to empathize, to abstract from our own situations and to think about moral and political issues from the point of view of others."

Relationality requires that decisions about reproduction in the family be taken into account in the workplace – not the other way around, where workplace rules determine reproductive decisions, leading to the decision that to have a baby cannot be accommodated because of a lack of maternity leave or childcare provision. When workplaces start to view reproduction as an integral aspect of family life with two people involved in that decision, they will have to consider the idea that reproduction is not only a woman's choice, and that there is a direct relationship between reproduction and productive labour. Failure to do so places employers and husbands in positions of power over women.

Gender-based violence

Sadly, for many women, the home is not a safe haven. On the contrary, it may be one of the most dangerous places. The impact of violence on women in the workplace cannot be overestimated. Workplace absence due to gender-based violence contributes to women losing their jobs or being viewed as unreliable employees. While the Domestic Violence Act (Act 116 of 1998) makes it possible for women to obtain court interdicts against abusers, this is not always successful, because the interdicts are often not enforced by police, who often view the home as a private place where families should solve their own problems[21].

15 Sevenhuijsen, S. 1998. Citizenship and the ethics of care: Feminist considerations of justice, morality and politics. London and New York: Routledge.

16 Gouws, A. 2005. (Un)Thinking citizenship: Feminist debates in contemporary South Africa. Ashgate/UCT Press.

17 Sevenhuijsen, S., Bozalek, V., Gouws, A., & Minnaar-McDonald, M. 2003. South African social welfare policy: An analysis using the ethic of care. Critical Social Policy, 23(3): 299-321.

18 Sevenhuijsen, S., Bozalek, V., Gouws, A., & Minnaar-McDonald, M. 2003. South African social welfare policy: An analysis using the ethic of care. Critical Social Policy, 23(3): 299-321.

19 Bozalek, V. 2014. Integrating difference and care into social justice: Towards a normative framework for care, welfare and social cohesion. In V. Reddy, S. Meyer, T. Shefer, and T. Meyiwa (Eds.), Care in context. Cape Town: HSRC Press.

20 Okin, S. M. 1989. Justice, gender and the family. New York: Basic Books.

21 https://theses.ncl.ac.uk/dspace/bitstream/10443/294/1/Taylor98.pdf

A February 2014 unpublished report released by the Research Unit of the South African parliament, titled Financial year estimates for spending on gender based violence by the South African government, calculated the costs for the Department of Justice and Constitutional Development for 2013/14 at R106 855 823.00. Costs of the South African Police Service in this respect were calculated at R40 604 988. The cost of forensic medical services at four hospitals in the Western Cape alone was R14 895 068.00. The estimated cost of issuing protection orders was R70 122 556.00[22]. If all the costs for all the provinces are calculated, these would add up to more than R1 billion.

In 2014, KPMG, an international financial services consulting firm, calculated the costs of gender-based violence in South Africa. The loss to the state was estimated at between R28.4 billion and R42.2 billion in 2012 – 2013[23]. This, however, did not include the loss of production in the workplace due to gender-based violence.

Justice as an issue of citizenship

Through linking work to citizenship based on the assumption that the citizen and the worker is male and unencumbered by family relationships, liberal democratic citizenship reinforces the public-private divide to the exclusion of care work. This has perpetuated and encouraged what Tronto[24] calls the 'privilege irresponsibility' of those who can afford childminders, making care a 'private service.' It is ironic that equality and freedom are considered integral aspects of democratic citizenship, while care is not. Without care, there cannot be equality or freedom in the home or in the workplace.

Conclusion: What employers need to understand

Employers need to understand that both the workplace and the home are gendered. There is no such a thing as a gender-neutral space (where gender plays no role). Sometimes it is necessary to treat women and men differently to achieve equality.

Employers need to step away from the neo-liberal idea that individual workers take decisions in vacuums, in other words, that their family circumstances do not influence the decisions they take about work and reproduction. Secondly, they need to understand that families have children, not only women. They need to understand that care work is work, and that maternity leave is taken to do care work, not to lounge around the house, and that fathers should also be involved in care work. Therefore, paternity leave should be taken seriously, so that both parents can exercise an ethic of care.

Childcare facilities are not a luxury for women, but contribute to mothers and fathers being more productive, because they have peace of mind about who looks after their children. The investment in childcare facilities to create loyal, productive employees is well worth it. Flexible work arrangements in terms of both time and place to accommodate parents' needs will thus be to the benefit of the company, and will contribute to gender justice in the workplace, as well as in the family. From the above, it is clear that fairness in the family is as important as fairness in the workplace, and that the two are inextricably intertwined.

22   http://www.ghjru.uct.ac.za/sites/default/files/image_tool/images/242/documents/
     gender-based-violence-budget.pdf]

23   KPMG Report 2014.

24   Tronto, J. 2006. Vicious circles of privatized caring. In M. Hamington and D. C.
     Miller (Eds.), Socializing care: Feminist ethics and public issues. Lanham: Rowan
     and Littlefield.

CHAPTER THREE

Rethinking women's workplace outcomes: Structural inequality

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Gender fairness in the workplace has been an issue since the advent of formalised paid work[1], and remains a key feature of leadership-, management-, and employee endeavours. Unfair behaviour is experienced first through a woman's lived experience, and is often played out, identified, and named, when she retreats into herself in order to make sense of the discomfort that accompanies such treatment. Orgad[2] asks how "feminist researchers can help develop strategies to **encourage protest**" to heed Radway's call "in such a way that it will be delivered in the area of actual social relations rather than acted out in the imagination"[3].

This chapter aims to encourage such protest amongst women and men by highlighting structural factors and their consequences that give rise to unequal treatment of women at work and in relation to paid work in general. I believe that, though these structural factors exist and are experienced mostly by women, the correction of these factors ultimately leads to improved work-life arrangements for both women and men.

Fairness or impartiality and just treatment[4] as perceived by women in the workplace remain elusive. Some may argue that the topic of fairness in relation to women is reaching maturity, but that "behaviour without favouritism or discrimination"[5] is yet to become the norm. Orgad[6] states that "an emphasis on women's professional performance and satisfaction as depending largely on their individual self-confidence and ability to 'lean in,' [is] marginalising the impact of structural issues on women's success and workplace equality." It is therefore important to understand the origins and effect of these structural issues.

1   Edgell, S. (2012). *The sociology of work: Continuity and change in paid and unpaid work.* Los Angeles, USA: Sage.

2   Orgad, S. (2017). *The cruel optimism of The Good Wife: The fantastic working mother on the fantastical treadmill. Television & New Media, 18(2):* 180.

3   Radway, J. (1984). *Reading the romance: Women, patriarchy and popular literature.* Chapel Hill: University of North Carolina Press.

4   Google dictionary

5   Google dictionary

6   Orgad, S. (2017). *The cruel optimism of The Good Wife: The fantastic working mother on the fantastical treadmill. Television & New Media, 18(2):* 165-183.

Social norms and power

The perception of fairness at work depends on a delicate interplay of religious convictions, socialised norms, cultural values, psychological predisposition, and educational exposure. This interplay is couched in power relations. Power relations are covert and subtle. They manifest in inequitable practices that are passed-off as 'reality' or 'the way things work,' and are defended in terms of religion, culture, and norms. In most instances, power relations are not visible, and, although women might feel their impact and voice dissatisfaction, the status quo remains, as the power-behaviour is either not conscious, or altering the balance may result in a perceived loss of power to those people or institutions that are manifesting the behaviour.

Women are caught up in the power play, as they cannot always articulate a different way of being and acting. It may seem inevitable to them that they are treated in a specific way, and, although a woman may resist the behaviour, she may not be able to articulate an alternative way of acting; she may be stuck in merely voicing her dissatisfaction or bearing it.

Socialised norms are greatly influenced by repeated behaviour that reinforces the expectations of the particular society or group to which one belongs[7]. In line with this thinking, girls and boys are socialised at an early age to act in particular ways that are commensurate with acceptable behaviour for their parents. Parental choices about the reinforcement of specified behaviour for their children are largely based on history and are often coloured by myths, which remain unexamined and remain unchanged over generations.

Women's menses, for instance, was termed "terrible," and it was advocated that "all forms of taboos should be instituted to prevent contact with it"[8]. In as far as Durkheim and other proponents' thoughts remain influential, most men – and many women – in modern-day society remain uncomfortable to ask men to procure sanitary products for them. Subtle and often regarded as of no consequence, these social myths penetrate workplace interactions.

For example, male managers may feel uncomfortable to probe sick notes that women present for absences from work, and some women may abuse this situation. Or, women may be asked to remain at home when menstruating, to keep them separate from other

workers – Nepalese women are banished to cow sheds[9] in agricultural settings. Both are examples of differential treatment based on a myth.

Good mothers, good wives

The socialisation of girls to be good mothers and good wives is probably the most influential of all activities that lead to structural impediments for women. Whilst being a good mother is very important in creating well-balanced children and families that are well-adjusted, resulting in positive societal benefits, it is vital to highlight the significance of good fathers in raising well-balanced children[10]. Morrell et al.[11] state that South African fathers are both "present and absent" for their children. In their study, men who were "heads of household, and who experienced their own mothers as kind" were likely to be involved with their children. However, parenting is often placed solely at the feet of women, as it is an accepted norm that men will be "present and absent."

Therefore, the criteria for being regarded as a good mother are often in conflict with workplace requirements. The good mother norm for South African society is measured by devotion to children's needs, high time availability to address these needs, and providing stability to a family through a clean and well-nourished household. Williams[12] states that, "the 'good mother' norm expects mothers to have all the time and love in the world to devote to their children, and outsourcing childcare allegedly makes one a 'bad' mother." The good mother norm also fuels a sense of urgency amongst women to seek a partner in order to have children. Voluntary and involuntary childless women are often ostracised by other women and men, as they are seen to be leading an 'unnatural' life that is not in line with social conventions[13].

The concept of the good wife constitutes a combination of dutifulness and devotion to her husband's needs, including boosting her husband's status, often through

7   http://anthro.palomar.edu/social/soc_1.htm

8   Durkheim, 1963 [1897]: 83 in Power, C., Finnegan, M., & Callan, H. (2016). In: Human origins: Contributions from social anthropology. New York: Berghahn Books.

9   https://www.theguardian.com/global-development/2016/apr/01/nepal-bleeding-shame-menstruating-women-banished-cattle-sheds

10 Harris, K. M., Furstenberg, F. F., & Marmer, J. K. (1998). Paternal involvement with adolescents in intact families: The influence of fathers over the life course. Demography, 35(2): 201-206. Cited in Morrell, R., Dunkle, K., Ibragimov, U., & Jewkes, R. (2016), Fathers who care and those that don't: Men and childcare in South Africa. South African Review of Sociology, 47(4): 80-105, doi: 10.1080/21528586.2016.1204240

11 Morrell, R., Dunkle, K., Ibragimov, U., & Jewkes, R. (2016). Fathers who care and those that don't: Men and childcare in South Africa, South African Review of Sociology, 47(4): 80-105, doi: 10.1080/21528586.2016.1204240

12 Williams, J. (2000), on p. 130 in Mikkola, M. (2016). The wrong of injustice: Dehumanization and its role in feminist philosophy. Oxford University Press.

13 De Janasz, S., Forret, M., Haack, D. & Jonsen, K. (2013). Family status and work attitudes: An investigation in a professional services firm. British Journal of Management, 24: 191-210.

her beauty and industriousness at home. Illustrations of being a good wife include that "a good wife brings her husband bath water"[14] in Nampula, Mozambique, and in Rwanda she has to "cook, iron, mend and clean"[15]. While the preceding examples may seem far removed from middle- or upper-class South African experiences, aspects of expectations of Rwandan women as good wives underpin gender relations in current-day South African households.

In contrast to the good mother and/or the good wife, the ideal worker is a person who is available 24/7, disembodied, and without any obligations outside of work[16]. Even though mothers may opt to outsource childcare and homecare, in order to address workplace needs regarding availability, the responsibility of organising and maintaining oversight of outsourced care usually remains with women.

Women may therefore experience cognitive dissonance, where conflicting priorities lead to mental discomfort and, ultimately, increased levels of psychological stress[17]. The spill-over of stress into work- and family domains may create feelings of unfair treatment, as the lived experience of women, specifically in terms of time available to devote to work and family, results in an evaluation against the both the criteria of the workplace and the good mother/good wife norms.

A woman, with or without children, is therefore measured as either a good mother/ wife or an ideal worker – seldom both.

Long work hours and overwork

Corporate workplaces have come to satisfy both economic and emotional needs, but, in return, workers are spending more and more time doing paid work. Due to "intensive work conditions and a demanding competitive culture,"[18] overwork has become virtuous. Corporate employees engage in overwork to achieve exorbitant performance targets or to exceed these targets, in order to qualify for rewards, recognition, and promotion. The computerisation of work, which is said to simplify our lives, has instead resulted in work norms shifting to come in line with machine-like effort.

Whilst organisations and their shareholders may reap the financial benefits from overwork cultures, the employees are often caught on a treadmill of ever-increasing demands that eventually consume their lives.

As women carry the burden of unequal distribution of home- and child care, keeping up with the overwork culture becomes exhausting, and may eventually lead to them opting out of paid work altogether. The argument that they willingly choose to leave is therefore a half-truth – they are often forced out.

Distance between work and home

Time scarcity and the fact that workplaces are removed from homes where care, including the care of households and elderly family members, takes place may create the false perception that women are not as committed to their work as their male counterparts are, and that they are not as productive either.

Research has found that time spent with children outside of work time has increased the most for working mothers and fathers who are the most educated[19]. Chesley and Flood[20] found that, "although breadwinner fathers' involvement in child care is higher on non-workdays, they do not increase it with the same intensity breadwinner mothers do, particularly in the areas of children's physical care or educational and other tasks."

Although work-from-home arrangements do bring relief to women in dealing with their multiple demands, research has shown that "working solely from home encourages remote workers to overwork and to allow their work to infringe on their family role"[21].

In addition, results from a study show that "commuting has an important detrimental effect on the psychological health of women, but not men.[22]" The researchers concluded that the difference is because women are frustrated and often anxious by time 'wasted' on commuting that could have been spent dealing

14 Van Houweling, E. (2016) "A good wife brings her husband bath water": Gender roles and water practices in Nampula, Mozambique. Society & Natural Resources, 29(9): 1065-1078, doi: 10.1080/08941920.2015.1095377

15 Buscaglia, I. & Randell, S. (2012). Legacy of colonialism in the empowerment of women in Rwanda. Cosmopolitan Civil Societies Journal, 4(1): 69.

16 Williams, J. (2000). Unbending gender: Why family and work conflict and what to do about it. Oxford: Oxford University Press.

17 http://www.simplypsychology.org/cognitive-dissonance.html

18 Orgad, S. (2017). The cruel optimism of The Good Wife: The fantastic working mother on the fantastical treadmill. Television & New Media, 18(2): 171.

19 Chesley, N. & Flood, S. (2017). Signs of change? At-home and breadwinner parents' housework and child-care time. Journal of Marriage and Family, 79, doi:10.1111/jomf.12376; England, P. & Srivastava, A. (2013). Educational differences in US parents' time spent in child care: The role of culture and cross-spouse influence. Social Science Research, 42: 971-986; Sullivan, O. (2013). What do we learn about gender by analyzing housework separately from child care? Some considerations from time use evidence. Journal of Family Theory & Review, 5: 72-84, doi:10.1111/jftr.12007

20 Chesley, N. & Flood, S. (2017). Signs of change? At-home and breadwinner parents' housework and child-care time. Journal of Marriage and Family, 79, doi:10.1111/jomf.12376

21 Eddleston, K. A., Mulki, J., & Clair, J. (2017). Toward understanding remote workers' management of work-family boundaries: The complexity of workplace embeddedness. Group & Organization Management, 42(3): 346-387.

22 Roberts, J., Hodgson, R., & Dolan, P. (2011). "It's driving her mad": Gender differences in the effects of commuting on psychological health. Journal of Health Economics, 30(5): 1064-1076.

with a myriad pressing household tasks and care work, knowing that they will be held responsible for neglect thereof[23].

Women often turn to parents and other family members to assist in shouldering their care responsibilities. Many South African women migrate from rural areas to seek job opportunities in cities, and children are left with grandmothers in the rural areas to care for them[24]. The psychological effect of this separation has not been well researched yet, but one can infer tremendous distress for all involved.

The centrality of a husband's job

When considering married dual-career couples, the husband's job is often regarded as more important when work relocation decisions are made. In the USA, McKinnish found that, "for couples in which the husband has a college degree (regardless of the wife's educational level), a husband's mobility has a large, significant negative effect on his wife's earnings, whereas a wife's mobility has no effect on her husband's earnings. This negative effect does not exist for college-educated wives married to non-college-educated husbands"[25]. Trailing wives (women who trail men when the men migrate due to work) may therefore become poorer, with lower contributions to their pension funds and, therefore, less income during retirement than when husbands take on the trailing role.

Some women who trail their spouses become stay-at-home mothers with no income and no retirement provisioning. Yet, women are asked more often than men to trail and relocate. We have also already established that, when a woman decides or is asked to commute instead of relocating, even though the relocation may not reduce her husband's income, she may experience greater detrimental psychological effects in comparison to that which her husband would experience if he were commuting[26].

Notions of meritocracy

Castilla and Benard state that "advocates of meritocracy stress that in true meritocratic systems everyone has

an equal chance to advance and obtain rewards based on their individual merits and efforts, regardless of their gender, race, class, or other non-merit factors"[27]. While this definition sounds plausible and useful, the aforementioned structural impediments that women may experience already indicate that their efforts are differently constrained to those of men. Therefore, it could be argued that merit is not neutral, it is gendered[28]. To merely ask women to look deeper into themselves, to negotiate differently with men to get what they want, and to push against an unjust system, seems to overly simplify the dynamics that occur for paid work and careers. Forging ahead by pressing against resistance that is created by age-old norms inevitably leads to conflict, and may even cause relational breakdown.

Since many women do not want to fragment their families or put their personal relationships at risk, they may stop pursuing their careers with the vigour that men do. These 'choices' are hard ones to make, and leave women feeling disillusioned and weak. To add insult to injury, the inequality between men and women with similar credentials, education, and abilities, is attributed to a lack of "talent, education, effort, or desire"[29] on the part of women.

To explain the actions that women take without understanding the pressure of societal norms and unequal power relations usually leads to the incorrect conclusion that women prioritise their care role over their work commitments and educational advancement, and therefore do not display a desire to perform as well as men. In other words, it is erroneously believed that women inhibit their own workplace progression by making certain choices.

For women who remain resolute about their careers or have little economic choice, the workplace becomes a place of push-back, and some may decide to limit negative energy by becoming like the system in which they did not automatically feel welcome. Even in meritocratic systems, there are signs that performance

23 Roberts, J., Hodgson, R., & Dolan, P. (2011). "It's driving her mad": Gender differences in the effects of commuting on psychological health, Journal of Health Economics, 30(5): 1064-1076.

24 Gladwin Mtshali, M. N. (2016). Role reversal of rural black grandparents in South Africa. Journal of Comparative Family Studies, 47(3): 369-377.

25 McKinnish, T. (2008). Spousal mobility and earnings. Demography, 45(4): 829-849.

26 Roberts, J., Hodgson, R., & Dolan, P. (2011). "It's driving her mad": Gender differences in the effects of commuting on psychological health. Journal of Health Economics, 30(5): 1064-1076.

27 Castilla, E. J. & Benard, S. (2010). The paradox of meritocracy in organizations. Administrative Science Quarterly, 55: 543-576.

28 Santos, M. H., Amâncio, L., & Alves, H. (2013). Gender and politics: The relevance of gender on judgements about the merit of candidates and the fairness of quotas. Portuguese Journal of Social Science, 12(2).

29 Harvard Law Association (2008). "Trading action for access": The myth of meritocracy and the failure to remedy structural discrimination. Harvard Law Review, 121(8): 2156-2177.

management decisions are not without bias. When examining the outcomes of performance management on rewards for women, Castilla and Benard[30] found that "an organizational culture that prides itself on meritocracy may encourage bias by convincing managers that they themselves are unbiased (as they are meritorious), which, in turn, may discourage them from closely examining their own behaviours for signs of prejudice."

Under these conditions, stereotypes about women flourish, and may lead to lower bonus participation and general negative mental models about women at work.

What HR is doing and should consider doing

Organisations have been grappling with ways to manifest fairness, mostly family-friendly arrangements. Studies by Ng and Chiu[31] indicate that flexitime, training, and development for women, sexual discrimination policies, family-friendly benefits, positive equal opportunities (mostly through gender mainstreaming), maternity- and paternity benefits, and formalised HRM are the mechanisms that aid organisations in manifesting fairness.

Organisational culture and climate interventions such as management support of women with family needs, as well as interventions to initiate and cement a culture of inclusion[32], reflect further initiatives that organisations utilise to foster change. What is evident, though, is that social norms prevail, and these norms penetrate workplace logic.

- *The manner in which workplaces structure and execute recruitment, selection, performance management, and promotion should be re-examined to exclude covert forms of bias.*

- *Women should be coached on how to negotiate improved sharing of house- and childcare with their partners.*

- *Women should continue to voice their concerns about fairness, and should perhaps be invited to be brave, to openly discuss their lived experiences with their managers. These discussions may lead to altered notions of work and performance.*

- *Managers should understand the full life context of their employees, and be realistic about performance targets and workplace outputs. Overworking has become the norm for star performers in corporate South Africa. These performance standards should be investigated in light of inequitable gender practices, burnout, and general health concerns.*

Places of work may need to be located in areas with low levels of traffic congestion, and commuting and arrangements to work from home should be carefully monitored to uncover overwork and eliminate psychological distress.

When employees are requested to relocate, equal consideration should be given to both partners' work arrangements. Specialist support, including psychological and relationship counselling and financial planning should be provided during relocation. Financial planning should not only focus on the person taking on the new position, but also be given to the person who may take a reduction in income or who may become a stay-at-home parent.

It is very important to note that women are eager to work, they take their education as seriously as men do, and have as much aspiration as men to advance at work. Women are as talented, diligent, hardworking, and committed as men. It therefore seems strange that organisations are so stubborn to adapt in order to recognise the patterns of unequal power relations and to acknowledge the societal impediments that women face. Once organisations take the realities of women seriously, women and men will be able to participate differently at work, bringing their full selves and talents to bear.

Note: a very interesting read about gendered structural inequality is the following article:

Orgad, S. (2017). The cruel optimism of The Good Wife: The fantastic working mother on the fantastical treadmill. Television & New Media, 18(2): 165-183.

30 Castilla, E. J. & Benard, S. (2010). The paradox of meritocracy in organizations. Administrative Science Quarterly, 55: 543-576.

31 Ng, C. W. & Chiu, W. C. K. (2001). Managing equal opportunities for women: Sorting the friends from the foes. Human Resource Management Journal, 11(1): 75-88.

32 Mor Barak, M. (2015). Inclusion is the key to diversity management, but what is Inclusion? Human Service Organizations Management, Leadership & Governance, 39(2): 83-88.

CHAPTER FOUR

Paternity leave and the archaic gender roles entrenched in employment law

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Patriarchy and historical disadvantages faced by women remain a barrier to creating gender equality in the workplace, and labour law is no exception when it comes to assumptions regarding gender roles.

The purpose of this chapter is to investigate the discriminatory effects of the failure of labour law and, in particular, the Basic Conditions of Employment Act (BCEA)[1] to properly provide for paternity or parental leave. Historical reasons for maternity leave remain based on a number of gendered assumptions that are problematic and have the effect of discriminating against both men and women, as well as those who are transgender.

Historical reasons for maternity leave

Employee leave benefits for the purposes of childcare are provided for in Sections 25 and 27 of the BCEA, which are provisions for maternity leave and family responsibility leave respectively[2].

Maternity leave refers to the period before and after childbirth, and was implemented to help women cope with the physiological and psychological demands of childbirth, to ensure the safety of the child[3] and to allow for breastfeeding and postnatal recovery[4]. Maternity leave has proven to have a positive effect on the health of both women and children, decreasing infant mortality and encouraging women's participation in the labour force[5].

Despite international conventions, such as the Maternity Protection Convention[6], which recommends a period of at least 14 weeks' maternity leave, studies have shown that approximately 830 million women around the world do not have access to adequate maternity leave protection, and that 80% of these women live in Africa and Asia[7].

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1   *Act 75 of 1997.*

2   *Act 75 of 1997, Sections 25 and 27.*

3   *Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 2.*

4   *Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 2.*

5   *Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 2.*

6   *183 of 2000.*

7   *Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 5.*

Some of the reasons behind inadequate maternity leave in Africa and Asia are that, by and large, maternity leave benefits rely on employer-funded schemes, and that women in these regions are more often than not engaged in informal employment. This, in turn, contributes to higher infant and child mortality rates in Africa and Asia, and less participation by women in the formal economy[8].

Restricting maternity leave benefits and childcare policies to the physiological and psychological effects of pregnancy and childbirth assumes that a child is born to the same woman who will be responsible for the care of that child. Secondly, there is an underlying assumption in such policies that the child is born to a couple where the one partner is a woman who will require postnatal recovery, implicitly excluding homosexual and transgender men from such leave benefits. Lastly, the assumption is that the primary responsibility of childcare rests with women. Such policies do not cater for children born through surrogacy or to male same-sex couples, who will neither breastfeed nor require a period for postnatal recovery.

This rationale directly and indirectly discriminates against individuals who do not form part of the heteronormative family structure, and relies on patriarchal conceptions of gender roles and childrearing. Further, it does not cater for a rotation system in female same-sex couples, neither does it cater for children born to people who are transgender.

Paternity- and parental leave

Paternity leave refers to a leave entitlement granted to fathers after the birth of a child[9]. The purpose of paternity leave is to allow a father an opportunity to bond with the child and to assist the mother[10].

More than a third of SADC countries offer no paternity leave, and only 20% offer limited paid paternity leave[11]. Sweden, in 1974, was the first to enact paternity leave legislation. Fathers were given ten days paid paternity leave within the first month following the birth of their child[12].

In the lead-up to the adoption of laws that made provision for paternity leave, the Swedish government, in 1968, stated:

A policy which attempts to give women an equal place with men in economic life while at the same time confirming women's traditional gender responsibility for the care of the home and children has no prospects of fulfilling the first of these aims. This can only be realised if the man is also educated and encouraged to take an active part in parenthood and is given the same rights and duties as the women in his parental capacity[13].

Parental leave is a form of leave available to both men and women following the end of the maternity- or paternity leave period, and is a longer leave entitlement[14]. The purpose of such leave is to focus on the early development of a child and to encourage parental involvement[15]. However, parental leave remains largely inaccessible and impractical, because it is often unpaid, and, where paid, is unsustainable.

Parental leave is only provided in a few countries, most of which are developed countries, predominantly in Europe and Central Asia[16]. In Africa, only Burkina Faso, Chad, Egypt, Guinea, and Morocco have provisions for long-term parental leave, which is unpaid[17]. Of the 66 countries included in a study on leave policies conducted by the International Labour Organisation (ILO), only half of the countries who made provision for parental leave provide monetary compensation. Where parental leave is paid, it is generally funded as a social security grant by the government[18].

Studies have shown that women remain the most likely to make use of parental leave[19]. Where parental leave is unpaid, men are not likely to make use of it, which may be due to the societal notion that the man's role is to provide[20]. Therefore, parental leave does little to address the gender stereotypes associated with childcare.

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8   Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 5.

9   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2474-2476.

10   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2474-2476.

11   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2487.

12   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2476.

13   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2476.

14   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2476.

15   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2476.

16   Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 7.

17   Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 8.

18   Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 8.

19   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2489.

20   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2489.

The current South African legal framework

Section 25 (1) of the BCEA states that employees are entitled to a minimum period of four consecutive months' maternity leave[21]. Maternity leave may commence any time from four weeks before the expected date of birth, or on the date prescribed by a medical practitioner or a midwife on the basis that it is necessary for the employee's or her unborn child's health.[22] The BCEA makes no provision for maternity leave for parents of children who are adopted or born through surrogacy, neither does it make provision for leave benefits for same-sex parents[23].

The Act is equally silent on paternity leave. Per Section 27, a male employee is only entitled to family responsibility leave of three days per annum[24]. This discourages men from taking a long period of leave at the time of the birth of a child, and places the responsibility of childcare solely on women.

Equality before the law and children's rights

Section 9 (1) of the Constitution states that everyone is equal before the law and has an equal right to its protection. In terms of Section 9 (3), no person may be unfairly discriminated against, directly or indirectly, on one or more grounds, which include gender and sexual orientation. This must be read together with Section 23 (1) of the Constitution, which states that all employees have a right to fair labour practices. Section 6 of the Employment Equity Act (EEA) has a similar prohibition on unfair discrimination.

The Labour Relations Act (LRA)[25], in Section 186 (1) (c), provides that, where an employer refuses to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement, or her contract of employment, such a refusal will be regarded as a dismissal. Further, in terms of Section 187 (1) (e), a dismissal is automatically unfair if the reason for the dismissal is the employee's pregnancy, intended pregnancy, or any reason related to her pregnancy[26].

The Children's Act places the best interests of the child as the overarching and paramount consideration when making decisions regarding children[27]. Furthermore, the Children's Act recognises both adoption and surrogacy agreements entered into in line with the provisions of said Act[28]. In terms of the Children's Act, Section 242 (3), adoptive children have the same rights as biological children, and, accordingly, they too have a right to childcare.

The discriminatory effects of legislation

The failure to provide for paternity- or parental leave discriminates against men, women, and children, especially in those families who do not to conform to the heteronormative structure.

Heterosexual couples

Studies have shown that paid maternity leave discourages the hiring of women of a child-bearing age[29]. Secondly, the absence of paternity leave implies that childrearing is 'women's work,' further entrenching archaic gender stereotypes, both in the workplace and at home. The absence of paid paternity leave and the framing of maternity leave in terms of childbirth discriminates against women who cannot conceive, as it is unclear whether maternity leave as set out in Section 25 of the BCEA applies to them.

Professor Tamara Cohen noted that 50 000 women in the UK who take maternity leave every year are unable to return to their former jobs, or are forced into jobs that have less responsibility[30]. A study conducted in the UK found that 14% of all women who took maternity leave said they were either discriminated against when they returned to work, or constructively dismissed[31].

Part-time and informal employment is predominantly occupied by women, as a result of their primary role in childcare and household responsibilities[32]. Pascall, Gillian, and Lewis argue that women remaining the primary caregivers while having to work[33] is attributable

21 Act 75 of 1997, Section 25 (1).
22 Act 75 of 1997, Section 25 (2).
23 Act 75 of 1997.
24 Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 4.
25 Act 66 of 1995.
26 Act 66 of 1995.

27 Act 66 of 1995.
28 Act 66 of 1995.
29 Rider G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 4.
30 Cohen, T. (2008). 50 000 forced out of their jobs after maternity leave. Daily Mail https://www.pressreader.com/uk/daily-mail/20130827/281775626817017
31 Pascall, G. & Lewis, J. (2004). Emerging gender regimes and policies for gender equality in wider Europe. Journal of Social Policy, 373: 383.
32 Miller, K. C. (2014). An evaluation of 'work-life' legislation in South Africa. MPhil Labour Law Dissertation. https://open.uct.ac.za/bitstream/item/4378/thesis_law_2012_miller_k.pdf?sequence=1https://open.uct.ac.za/bitstream/item/4378/thesis_law_2012_miller_k.pdf?sequence=1
33 Pascall, G. & Lewis, J. (2004). Emerging gender regimes and policies for gender equality in wider Europe. Journal of Social Policy, 373: 378.

to the failure of the state to support women and the untransformed nature of the domestic division of labour[34].

The absence of legislative measures in South Africa to provide for paternity leave also discriminates against men who would like to spend longer than three days with their newborn in the absence of remaining annual leave. It implicitly dictates to men that their role is not childrearing. Men who wish to take an active role in the earlier years of their children's lives are potentially also financially disadvantaged for doing so.

This is contrary to the best interests of the child, as studies have shown that the involvement of both parents has a positive effect on the development of children[35]. The failure by government to provide financial assistance to allow parents time off for childcare makes shared parenting financially impossible, and is contrary to constitutional obligations on the state to promote the right of children to parental or alternative care.

The extent to which women have joined the labour market has not been matched by men's sharing of responsibilities within the home[36], and a failure to provide for paternity leave only exacerbates the pressure on women to play a dominant role in childcare, further isolating them from the formal economy.

The White Paper on Families in South Africa lists encouraging fathers to play an active role in the raising of their children as one of its key objectives, and acknowledges the problem of absent fathers – only 35% of children under the age of 17 live with their biological parents, and a disproportionate number of children grow up without fathers[37].

In order to encourage the active participation of men in the lives of their children, it is essential that policy measures be taken to ensure that paid paternity leave and, later, parental leave is provided to men. This is vital to engendering joint parenthood, without placing financial pressure on either parent[38].

Same-sex couples

In the case of male same-sex couples, neither employee would be the birthmother of the child, and both would therefore be excluded from maternity leave benefits. The only recourse is the three days' family responsibility leave provided by the BCEA. Further, female same-sex couples should be allowed to implement some form of rotation of parental leave, in order for both parents to play an active role in the childcare process. There is no provision in the BCEA for this.

The failure to provide paternity- or maternity leave for these couples creates the perception that same-sex relationships are of lesser value, and are not deserving of the full protection of the law. This implication is contrary to Section 9 of the Constitution and Section 6 of the EEA.

Adoption and surrogacy

The case of couples who have children through surrogacy or adoption highlights the fact that the historic reasons underlying maternity leave – postnatal recovery and breastfeeding – are myopic.

Employers, through policies, must be sensitive to the changes in the nuclear family structure and the reality that children are not always born to heterosexual couples. As Advocate Kaiel Grober writes, "the legislature must reform maternity leave policies to adapt to changing social norms and to place the decision of who will be responsible for primary childcare in the hands of parents, in light of the best interests of the child"[39].

The decision of the Labour Court in MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015) D 312/2012 (unreported) is a progressive step by the Court to recognise both the best interests of the child and the rights of same-sex parents[40].

In this case, a male employee had entered into a civil union with his male spouse, under the auspices of the Civil Union Act[41]. The couple also entered into a surrogacy agreement, in line with Section 292 of the Children's Act[42]. Per said agreement, the commissioning parents would be the legal parents of the child, and the child had to be handed over to the commissioning parents at birth.

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34   Act 17 of 2006, as amended.

35   Sin-Sze Cheung, C. & Pomerantz, Eva. (2012). Why does parents' involvement enhance children's achievement? The role of parent-oriented motivation. Journal of Educational Psychology, 104(3), 820: 832.

36   Pascall, G. & Lewis, J. (2004). Emerging gender regimes and policies for gender equality in wider Europe. Journal of Social Policy, 373: 383.

37   Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2488.

38   MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 2.

39   Grober, K. (2015). A dad can mother too: Are South African employment laws discriminatory to the core? https://www.lawforall.co.za/tag/paternity-leave/

40   MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported).

41   Act 17 of 2006, as amended.

42   Act 38 of 2005, as amended.

The employee in question was to perform the role historically performed by the birth mother. Prior to the birth of the child, the employee made an application for paid maternity leave for a period of four months, in line with the employer's maternity leave policy. The employer denied the employee's application on the basis that its policies and the BCEA cater only for female employees, and that there is no express provision, either in its policy or the Act, for surrogate parents[43].

The employer relied on historic reasons for maternity leave, arguing that maternity leave only applied to women by virtue of their childbearing capacity[44].

The employee approached the Labour Court, claiming that the policies of his employer unfairly discriminated against him on the basis of gender and sexual orientation[45]. The court held that the right to maternity leave as set out in the BCEA is not only based on the welfare of the birth mother, but also encompasses the best interests of the child[46]. On the employer's argument, Honourable Justice Gush held the following:

This approach ignores the fact that the right to maternity leave as created in the Basic Conditions of Employment Act in the current circumstances is an entitlement not linked solely to the welfare and health of the child's mother, but must of necessity be interpreted to and take into account the best interests of the child. Not to do so would be to ignore the Bill of Rights in the Constitution of the Republic of South Africa and the Children's Act[47].

On whether the employee was entitled to maternity leave, the court held as follows[48]:

Given these circumstances, there is no reason why an employee in the position of the applicant should not be entitled to 'maternity' leave, and equally no reason why such maternity leave should not be for the same duration as the maternity leave to which a natural mother is entitled.

The Court further re-iterated that our law recognises same-sex marriages and surrogacy agreements, and, thus, employers' policies must be amended or interpreted to give effect to such rights[49]. The Court found that the employer had unfairly discriminated against the employee, and ordered that the employee be granted maternity leave for a period of four months[50].

The court, however, failed to go further to highlight the policy gap in making specific provision for men to participate in childcare. The extension of maternity leave benefits to men does not take into account that, while exclusive reliance on historical reasons for maternity leave that isolate men and some women is outdated, it remains important to recognise the physiological effects of childbirth that remain true for many women[51].

Maternity leave is still recognised internationally as a leave provision exclusively for female employees, and continues to rely on the physiological demands of childbirth to justify the exclusion of non-birth parents. The ILO's Maternity Leave Convention[52] expressly states that maternity leave applies to all "employed women," and that the objective of such leave is to promote gender equality and to promote the health and safety of women and children[53].

International case law holds that maternity leave policies that are based on the historic reasons for maternity leave and, by implication, exclude men and individuals who have children through surrogacy agreements, are not discriminatory. The European Court of Justice, in the cases of CD v ST [2014] EUECJ C-167/12 and Z v A Governing Department and Board of Management of a Community School [2014] EUECJ, held that it was not discriminatory to exclude primary caregivers, male or female, from maternity leave where the individuals are not the birth parent[54].

In Australia, the court dismissed the claim of a male employee who alleged discrimination on the basis that he was excluded from maternity leave[55]. The court held that maternity leave was not for childcare, but to "protect female employees and to allow for the realities of advanced pregnancies and childbirth"[56].

In Cahill v State of Tasmania [2004] TASADT, the Court found that giving leave to a biological mother on the basis of the trauma associated with childbirth is a valid

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43   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 2.*

44   *Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2492.*

45   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 10.*

46   *183 of 2000.*

47   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 13.*

48   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 17.*

49   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported), par. 10.*

50   *Supra Note 48, par. 20.*

51   *Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2491.*

52   *183 of 2000.*

53   *Labour Law Amendment Bill, PMB 5 – 2015.*

54   *C-363/12.*

55   *MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported)*

56   *Cahill v State of Tasmania [2004] TASADT.*

reason separate from gender, and is therefore not discriminatory[57]. The Court stated, however, that, where maternity leave is provided to enable a mother to bond with the new-born child, there is no reason why men should be excluded from this benefit[58].

While there is a need to recognise that historic reasons for maternity leave remain applicable, it is important to ensure that there are reforms to cater for wider circumstances where a child is born. We are of the opinion that, while the physiological and psychological needs of a woman after childbirth are important, it remains discriminatory to structure childcare leave benefits exclusively on this basis. Childcare leave policies must be structured wide enough to cater for historic reasons and other circumstances of childbirth.

The problematic nature of structuring maternity leave policies around women on the basis of their childbearing capacity is further emphasised by transgender individuals. Lisa Dancaster and Tamara Cohen argue that the Court in MIA v State Information Technology Agency (Pty) Ltd LC[59] failed to adequately distinguish between a gender-specific type of leave catering for the protection of women before and after childbirth and gender-neutral leave designed for joint parenting and childcare[60]. They further argue that it is important to distinguish between leave benefits that cater for the physiological effects of pregnancy and childbirth and leave benefits aimed at childcare and nurturing, which should be shared by men and women, irrespective of gender re-assignment[61]. They propose that a gender-neutral childcare policy will cater for varying circumstances of childbirth and for same-sex and transgender couples in the workplace.

The Labour Law Amendment Bill

The legislature has also begun to recognise the deficiency of the maternity leave provisions of the BCEA. The Labour Law Amendment Bill[62] seeks to provide leave benefits that encompass the varying circumstances in which a child may be born. In terms of the proposed amendments to Section 25 of the BCEA, Sub-sections 25 A-C will make allowance for parental leave, adoption leave, as well as commissioning parent leave.

In terms of the proposed Subsection 25 A (1), any employee, male or female, who is a parent of a child will be entitled to ten consecutive days' leave from birth of the child or the day on which the adoption order is granted[63].

In terms of the proposed Sub-section 25 B (1), an adoptive parent of a child under the age of two will be entitled to at least ten consecutive weeks' parental leave in terms Subsection 25 A. This is subject to the provisions of Subsection 6, which caters for an adoption order made with respect to two adoptive parents[64].

The proposed Section 25 C (1) states that an employee who is a commissioning parent in terms of a surrogacy agreement is entitled to at least ten consecutive weeks' parental leave in terms Subsection 25 A. This is subject to Subsection 6, which provides for a surrogacy agreement that recognises two commissioning parents[65].

In terms of the proposed Sections 25 A (5), 25 B (5), and 25 C (5), financial assistance during such leave will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act[66].

The legislature recognising that childcare is not only a woman's responsibility and that the modern family does not always conform to the traditional heteronormative structure is a welcome step. However, whether separate leave categories should be provided for specific circumstances of childbirth is unclear. Lisa Dancaster and Tamara Cohen propose the removal of the maternity leave provision in the BCEA. They propose the enactment of a gender-neutral parental leave benefit that specifies a period of leave for recovery from childbirth, while still catering for leave for either parent in the case of adoption or surrogacy. They argue that this would eliminate unfair discrimination, and would allow men the opportunity to participate fully in childcare[67].

57 Act 63 of 2001.

58 Act 63 of 2001.

59 MIA v State Information Technology Agency (Pty) Ltd LC (26 March 2015), case no. D 312/2012 (unreported)

60 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2492.

61 Pascall, G. & Lewis, J. (2004). Emerging gender regimes and policies for gender equality in wider Europe. Journal of Social Policy, 373: 378.

62 Labour Law Amendment Bill, PMB 5 – 2015.

63 Labour Law Amendment Bill, PMB 5 – 2015, Section 25A.

64 Labour Law Amendment Bill, PMB 5 – 2015, Section 25B.

65 Labour Law Amendment Bill, PMB 5 – 2015, Section 25C.

66 Act 63 of 2001.

67 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2492-2493.

Employer policies and practices must lean towards what is called the 'universal caregiver' approach, which assumes that all employees, regardless of gender, have childcare responsibilities[68]. Fatherhood cannot be assumed to be a role of financial provision only, and childcare must be more negotiated than it has historically been. Gornich and Meyers argue that children ought to be seen as a social good that needs to be supported through systems of parental leave policies, the structuring of working hours, and quality social care[69].

Funding maternity and paternity leave

One of the major concerns with the implementation of parental leave is funding, as well as the impact that such leave benefits may have on an employer's business.

In the aforementioned study conducted by the ILO, in the countries that were studied, only 25% of the cash benefits paid out in terms of maternity leave policies were funded by employers[70]. National social schemes accounted for 58% of the funding for maternity leave benefits, while 16% of the countries studied had a mixed system, where cash benefits were funded by both employers and government[71].

In developed nations, specifically Eastern Europe and Central Asia, social security grants funded by government account for most, if not all, of the funding of maternity leave benefits. This is in contrast to Africa, Asia, and the Middle East, who rely heavily on employer-funded schemes[72]. Parental leave is found mostly in developed countries, and the funding for paternity leave follows much the same pattern as that of maternity leave[73]. While African countries rank the lowest in the provision of parental leave benefits, 86% use state funds, compared to developed countries, where only 17% of all paternity leave benefits are state-funded[74].

In order to effectively implement paternity- and parental leave policies, political will and government intervention are of paramount importance. In the absence of state support, paternity leave will remain a 'paper right' available only to men of means.

The benefit of paid paternity and parental leave

The introduction of paternity leave has multiple benefits for both the employer and the economy at large. As explained below, paternity leave and other family leave provisions not only contribute to productivity in the workplace, they also increase the quality of a country's human capital, which ultimately benefits every business, and have a positive effect regarding gender stereotypes and outdated gender roles that dictate that childcare is to be exclusively performed by women.

A study conducted in 2012 by the Rutgers Centre for Women and Work found that 93% of women who took maternity leave were more likely to return to work after the maternity leave period than women who did not. Further, 99% of employers studied in the survey found that there was an increase in employee morale, and some employers even reported that they experienced a cost saving due to high levels of morale as employees did not make use of sick leave or vacation days for the purposes of child care[75].

A study conducted in 2001 showed that firms who offered paid parental leave had 2.5% higher profits than firms who did not, and that parental leave had an overall positive result on productivity and the profitability of the businesses[76]. The study also found that provisions for paid parental leave meant that women worked two to three hours more per week than in instances where such family leave was absent[77]. An increase in women's participation in the formal economy is found to have a substantial increase in a country's GDP where parental leave is expressly provided. Parental leave policies are found to correlate with a higher employment-to-population ratio and decreased unemployment.

68 Pascall, G. & Lewis, J. (2004). Emerging gender regimes and policies for gender equality in wider Europe. Journal of Social Policy, 373: 378.

69 Rossin-Slater, M., Ruhm, C. J., & Waldfogel, J. (2011). The effects of California's paid family leave programme on mothers' leave-taking and subsequent labour market outcomes. National Bureau of Economic Research.

70 Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 3.

71 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2474.

72 Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 4.

73 Rider, G. (2004). Maternity and paternity at work: Law and practice around the world. International Labour Organisation Policy Brief: 7-8.

74 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. International Labour Journal, 36: 2487.

75 Houser, L. & Vartanian, T. P. (2012). Pay matters: The positive economic impacts of paid family leave for families, businesses and the public. New: Brunswick: The Centre for Women and Work.

76 Burud, S. & Tumulo, M. (2004). Leveraging the new human capital: Adaptive strategies, results achieved and stories of transformation. Boston: Nicholas Brealey America.

77 Rossin-Slater, M., Ruhm, C. J., & Waldfogel, J. (2011). The effects of California's paid family leave programme on mothers' leave-taking and subsequent labour market outcomes. National Bureau of Economic Research.

Paternity- and parental leave increase men's participation in childcare, and encourage time off work to participate in the lives of their children[78]. Paternity leave has shown to make a lasting impact on the involvement of fathers in the lives of their children, and would assist in addressing the social problem of absent fathers in South Africa[79].

Possible mechanisms of implementation

The aforementioned Labour Law Amendment Bill makes provision for paternity leave, but does not place a burden on the employer to fund same. The Bill states that the funding of paternity leave, commissioning parent leave, and adoptive parent leave is to be determined by the Minister with reference to the Unemployment Insurance Fund[80].

We are of the view that this is the first step in the right direction. As Dancaster and Cohen wrote, it is neither desirable nor feasible for long periods of parental leave to be funded by employers[81]. While it is important that employers ensure that their policies and practices do not discriminate against any employees, the legislature must strike a balance between prohibiting unfair discrimination and protecting the interests of the employer – the core function of any business remains profit.

While there is no objection to an employer making a contribution towards paternity leave, family responsibility leave, etc., an employer cannot be expected to incur all costs in addition to the temporary replacement of the employee who takes maternity leave.

In developing nations, such as ours, and with unemployment statistics as high as those in South Africa, the state has to intervene to assist employers in implementing policies that cater for the best interests of the child, as well as ensure that there is fairness to both men and women in the manner in which leave policies are structured. This will ensure that entry into the formal economy will be easier for women, and that men are provided with the opportunity to participate in childcare.

Legislative changes, however, are but one step in the right direction towards ensuring that men are more actively involved in the lives of their children, and that stereotypes that exclude women from the workforce are addressed.

Social campaigns, trade union involvement, and government participation are necessary to change attitudes around childcare, as well as to provide positive public representations of fatherhood, which are key to men's use of paternity- and parental leave[82].

Conclusion

In an effort to create a fair work environment that is conducive to the inclusion of women, employers have to revise policies and practices that continue to have discriminatory effects on women.

Policies to promote men's share of care work is but one mechanism to ensure gender equality at home and in the workplace. This must be combined with social schemes, trade union involvement, and support that value care work and promote paid work being shared more equally between men and women.

Further, paid paternity- and parental leave benefits are essential to ensuring that Constitutional rights are more than mere paper rights inaccessible to those who do not have the required financial and social security. Without political will and intervention, paternity leave will remain a luxury only available to those in formal employment and those of means. Such benefits would also go a long way in men better understanding the demands of childcare, with an envisioned enhancement of gender equality at home, which will spill over into the workplace through managers having experienced the realities of childcare.

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78 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. *International Labour Journal*, 36: 2474.

79 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. *International Labour Journal*, 36: 2488-2489.

80 Labour Law Amendment Bill, PMB 5 – 2015, Section 25 A-C.

81 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. *International Labour Journal*, 36: 2490.

82 Dancaster, L. & Cohen, T. (2015). Leave for working fathers in the SADC region. *International Labour Journal*, 36: 2489.

CHAPTER FIVE

Fairness as it relates to employment equity for women

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Introduction

One of the most prominent social transformations globally has been the representation of women in the labour force. Worldwide, there is consensus that respecting gender differences and treating women fairly in the workplace have become a necessity to accomplish social equity and justice for women. Despite various efforts to redress imbalances with regard to employment equity, gender equality at work is still a myth. Gender equality is about women's status relative to that of men, but of even more importance is the empowerment of women. Women's empowerment should challenge and transform existing power relations in society, so that women are afforded the opportunity to exercise control, power, and choice over operational and strategic decisions[1].

Equality appears to be the predominant issue in South Africa. However, if affirmative action and, thus, diversity are managed from a strategic and people-centred point of view, demographic issues should not dictate how employees should be treated. People should always be treated as dignified human beings, irrespective of ethnicity, gender, age, or any other characteristic that makes them unique. Bangura and Thomas[2] support this belief, and state that the issue of gender equality must be perceived as a fundamental human right.

It seems as if little has changed in HRM diversity practices. Organisations find it hard to facilitate change in culture and combat prejudices based on ethnicity and gender. Because it is easier to manage hard issues such as compliance with employment equity targets, the majority of organisations neglect to appreciate the challenges of managing a diverse workforce. Despite a strong business case for diversity, there has been limited progress towards equality at work for women in professional and managerial positions.

1   Dwivedi, S. S. 2014. *Empowering women in Asia and Africa: A comparison. Rajagiri Journal of Social Development,* 6(1): 12-20.

2   Bangura, A. K. & Thomas, A. K. 2015. *The nexus between good governance and gender equality as a human right in Africa: A correlation statistical analysis. Journal of Third World Studies,* XXXII(1): 45-58.

This chapter will take a look at the fairness of employment equity as it relates to women. The fairness of employment equity from a distributive and procedural point of view focuses on hard issues such as numbers and clear procedures. The aim of this chapter is, however, to take a closer look at softer issues with regard to the fairness of employment equity, focusing on interactional justice. The treatment of women in the workplace will be discussed, with the aim to outline HRM practices that could assist organisations to not only promote gender equality, but to enhance the empowerment of women.

Importance of the topic

The importance of women in the corporate world and in the development of the South African economy as a whole is indisputable. It is for this reason that gender quotas continue to top the agenda of various employment equity endeavours and will become law in South Africa in the foreseeable future[3]. According to the 2016 Employment Equity Report, men occupy 69.4% of top-management positions in the public sector and 79.9% of top-management positions in the private sector[4]. Despite efforts to recognise women as valuable contributors to the labour force, women are still being treated in a manner that favours men, resulting in women experiencing inequality in the workplace[5].

According to Onley[6], studies show that organisations with more women in senior positions are more successful in terms of decision-making quality, turnover of the business, productivity, and prevention of fraud. Organisations therefore need to move beyond playing the numbers game and give serious attention to the equal treatment and empowerment of women.

For most women, their careers are not the only responsibility they carry. In addition to their work, women are also traditionally the primary caregivers at home. Women continue to carry the greater share of the responsibility of looking after the family, cooking, cleaning, and the general maintenance of the household, in comparison to their male counterparts[7]. Bianchi and

Milkie[8] add that caring for children remains more within the scope of a mother's duties than a father's. This means that women are likely to become both high-earning breadwinners and primary caregivers[9]. The question then arises whether women are capable of performing well in both roles. Harcar[10] came to the conclusion that dysfunctional behaviours (tardiness, absenteeism, etc.) and employee burnout could result from high levels of interference of one role with the other. Women struggle with feelings of guilt about leaving their children and managing home demands while also having to cope with the persistent stresses of their work life. For many women, this stress can become a serious threat to their mental well-being[11].

Perhaps of greater concern to the field of HRM are the high numbers of women leaving organisations today. More women than men are leaving their organisations, especially at senior levels[12].

Jo supports this view, and notes that women are more likely to leave their jobs for non-economic reasons[13]. In line with the problems women encounter, as stated above, Deery[14] reports that emotional exhaustion has been identified as a major cause of employee turnover. Research in South Africa has shown that organisations are failing to retain their female talent, due to their inability to accommodate women's needs[15].

3   Hills, J. 2015. Addressing gender quotas in South Africa: Women empowerment and gender equality legislation. Journal of Deakin Law Review, 20(1): 153-184.

4   Commission for Employment Equity. 2016. Commission for Employment Equity Annual Report 2015-2016, Report number 124/2016, Department of Labour, South Africa.

5   Khuzwayo, Z. 2016. Separate space: An approach to addressing gender inequality in the workplace. Journal of International Women's Studies, 17(4): 91-101.

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South Africa is experiencing a state of crisis with regard to the availability of skilled or 'knowledge' workers[16]. This fuels the problem of organisations having to replace talented employees. Organisations are not only losing a critical resource, they also have to foot the bill of replacement costs.

One way in which organisations can retain the services of women is to pay attention to how women are treated in the workplace. Various studies have confirmed that individuals' relationships with their managers play a significant role in the way they perceive their treatment. High-quality treatment by a manager signals that a staff member has status and is held in high esteem in the workplace[17]. Quality treatment is of particular significance if one considers the findings of various studies that have confirmed that workplace treatment has far-reaching consequences for both employees and the organisation in respect of the following: civility[18], job satisfaction[19], organisational citizenship behaviours[20], quality of work life[21], turnover[22], work behaviours[23], and interpersonal and organisational deviance[24].

The concept of workplace treatment is closely related to interactional justice. According to Bies and Moag[25], interactional justice denotes individuals' concerns about the quality of the interpersonal treatment they receive. Muzumdar[26] defines interactional justice as the degree to which people are treated with dignity and respect. Because interactional justice refers to the way employees are treated, it should be clear that managers have a direct influence on employees' quality of work life, organisational commitment, and their retention.

Good corporate governance requires not only appointing women, but also managing women in a way that adheres to principles of fairness and equality. The question that should be answered by HR practitioners is thus: How should women be treated in the workplace so that they remain a valuable asset to the business?

Good governance and gender equality

According to Bangura and Thomas[27], there is a direct relationship between governance and gender equality. The significant increase in the number of women in the workplace has not translated into an increase in the representation of women's interests in decision-making. True equality depends on the willingness of public administrators to acknowledge the virtues of inclusion of women. The results of the study by Bangura and Thomas indicated that poor governance results in gender discrimination, unequal representation of genders, different career structures for men and women, and discriminatory practices that favour men.

In an attempt to achieve gender equality, South Africa has adopted the National Policy Framework for Women's Empowerment and Gender Equality. Currently, South Africa is party to a number of international conventions and agreements relating to gender equality and equity. These conventions contain clear goals and measures to end discrimination against women in the workplace and to incorporate the principle of equality of men and women.

In terms of closing the gender gap, South Africa is one of the top 20 countries. South Africa scores 9th in terms of the political empowerment of women and 43rd in educational attainment. Considering the ranking of 55th with regard to the economic participation of women, South Africa still has a long way to go in closing the gap[28].

Achieving quotas in South Africa

The increased participation of women in the labour market and economy is likely to build a strong skills base for the economy. The extent of this base, however, will depend on the extent to which women are sufficiently

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28 Hills, J. 2015. Addressing gender quotas in South Africa: Women empowerment and gender equality legislation. Journal of Deakin Law Review, 20(1): 153-184.

represented in the workforce. Legault[29] outlined two issues related to responsible employment practices: (1) the presence of formalised equity programmes characterised by goals, timetables, audits, and a custodian and (2) actions to remove discriminatory barriers and systemic obstacles. According to Hills[30], actions to ensure economic participation include:

- *implementing policies that enhance gender equality;*

- *implementing policies that address equal pay for work of equal value;*

- *offering women educational support;*

- *providing women with necessary resources and opportunities; and*

- *mentoring and training women to take up managerial roles.*

Reasons why women are not fully participating in the economy

Despite various attempts by government and organisations to provide women with opportunities to play an active role in the economy, adverse external factors hamper the participation of women. Hills[31] and Choi and Park[32] identified the following as the main factors holding back women:

- *a lack of educational opportunities (poor school attendance in rural areas, poorly resourced schools, domestic duties, and pregnancy);*

- *traditional and religious practices (tribal communities impeding women's access to rights);*

- *types of employment available to men and women;*

- *women's lack of skills;*

- *a lack of financial resources;*

- *the stereotyping of women as wives and mothers in a caring and supportive role; and*

- *organisational cultures that exclude women from power, resources, and opportunities.*

Reasons why women are not advancing to managerial levels

Although organisations attempt to meet employment equity targets, the representation of women at managerial level remains a challenge. Women often opt not to take up managerial positions due to having to take care of family responsibilities. Often, however, customs and practices deeply rooted in beliefs and value systems are the root cause of women not advancing to managerial levels. Women in top positions in male-dominated groups are viewed as tokens. According to Hills[33], the most common barriers to the advancement of women include the following:

- *women not taking ownership (women neglect to display assertiveness in negotiating for positions);*

- *internal barriers (lack of confidence in overcoming obstacles in their advancement);*

- *complexity of diversity (diversity might improve organisational performance, but it is difficult to manage, and could increase conflict and reduce workplace trust);*

- *gender bias in hiring;*

- *occupational and cultural jealousy (women do not want to see other women advance, and people from different race groups compete);*

- *inflexible work conditions;*

- *a patriarchal society;*

- *the glass ceiling (organisations making it difficult for women to advance); and*

- *perceptions of women not being equal to men.*

Practical application for HR practitioners

In the majority of cases, HR managers and organisations are fully aware of the challenges faced by women as employees. It is, however, disappointing to note how little is done by organisations to commit to providing women with a supportive and conducive work environment.

29 Legault, M. 2010. Are less-educated women in the blind spot of pay equity? *Journal of Workplace Rights,* 14(2): 222-228.

30 Hills, J. 2015. Addressing gender quotas in South Africa: Women empowerment and gender equality legislation. *Journal of Deakin Law Review,* 20(1): 153-184.

31 Hills, J. 2015. Addressing gender quotas in South Africa: Women empowerment and gender equality legislation. *Journal of Deakin Law Review,* 20(1): 153-184.

32 Choi, S. & Park, C. 2014. Glass ceiling in Korean Civil Service: Analyzing barriers to women's career advancement in the Korean Government. *Journal of Personnel Management,* 43(1): 118-139.

33 Hills, J. 2015. Addressing gender quotas in South Africa: Women empowerment and gender equality legislation. *Journal of Deakin Law Review,* 20(1): 153-184.

Leadership qualities required

A study by Moosa[34] investigated the influence of leadership on the retention of women. The study identified four leadership attributes that are of critical importance in the retention of women: a relationship orientation, acting with integrity, being involved, and displaying a balanced approach to task orientation.

A leader who has a high relationship orientation involves employees in the decision-making process and encourages input from all. This type of leader helps to develop people skills, and motivates women by including them as a crucial part of the team[35]. Relationship orientation could also be linked to transformational leadership, which is a person-centred approach to leadership, where the needs of the employees are aligned to those of the organisation[36].

The attribute of **integrity** could be linked to authentic leadership, in which the ethical principles and morals of a leader are valued above all else. Integrity refers to the need to do what is right, without prejudice or preferences influencing decisions. Given the history of discrimination, female employees regard integrity of leaders as extremely important.

Involvement refers to leaders who do not purposefully dodge their responsibilities, and who do not only consider themselves and their own advancement within the organisation.

Task-oriented leaders focus more on the job than on relationships or people. Although it is expected of leaders to provide structure and guidance, it should not be done at the expense of sound relationships and support of women. Women regard mentoring and autonomy as important to their retention.

Retention strategies

Moosa[37] identified six factors critical to the retention of women: accommodating women's unique needs, providing women with growth opportunities, giving recognition, providing enabling work conditions, building sound relationships, and providing support.
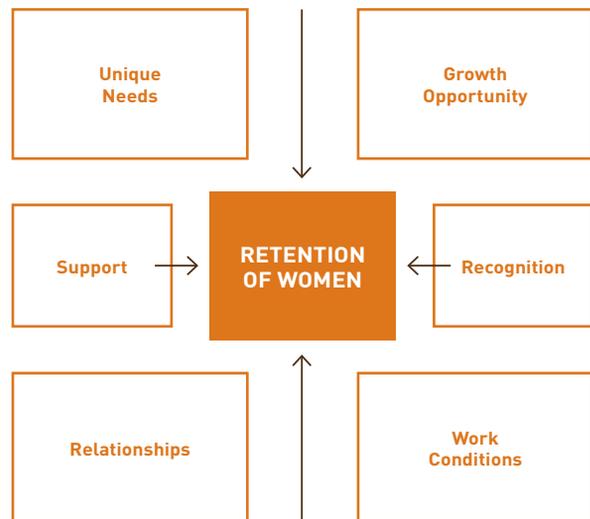

Figure 1: Retention of Women (Source: Moosa, 2017)

Organisations can consider the unique needs of women in the form of flexibility, work-life balance, family responsibilities, and employee benefits. Work-life balance initiatives encompass flexible work arrangements[38], family-friendly practices[39], and supportive employee benefits.

According to Onley[40], feedback from more than 15 000 women indicated that they wanted sufficient paid leave, satisfactory remuneration, and supportive co-workers. When asked to rate organisations, the women highlighted flexible work hours, maternity- and adoptive leave, a fair salary, mentoring, management opportunities, and representation of women in leadership positions as important. In an attempt to fulfil their dual roles as working mothers, the issue of time and personal support are clearly very important factors in retaining the services of women. Favourable working conditions such as time off and flexible work arrangements would contribute significantly towards assisting women to cope with work- and family demands.

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Recommendations for the field of HR

When developing organisational strategies aimed at empowering and treating women in an equal manner, the following recommendations should be considered:

- The *leadership style of supervisors* should be managed by the organisation. Leaders/supervisors should display a relationship-oriented style of leadership through which they create meaningful relationships with their subordinates. Supervisors should attend training to develop their relationship-, interpersonal, communication, and conflict-handling skills. Much more emphasis should be placed on selection criteria such as people skills and integrity when appointing supervisors or managers.

- *Leadership opportunities* must be provided to qualified and experienced women. Organisations should offer women the chance to develop within the organisation. Capable women face barriers and other challenges, such as balancing their work- and life roles and gaining acceptance from their male counterparts. These barriers must be addressed by the organisation, which must provide the necessary support and resources to help women advance.

- Organisations must cater specifically for the *unique needs of women.* It is evident that the needs of women differ significantly from those of men and, as such, a one-size-fits-all approach will not be effective. Attitude surveys could inform the organisation of what women need to cope with in their dual roles.

- Women should be provided with *stimulating tasks and opportunities to develop* their skills. By enabling women to excel in their careers, organisations can reap the rewards of a workforce that is both skilled and satisfied.

- *Award practices and **reward systems** should be implemented to recognise and encourage women to excel in the workplace. Achievement awards, such as a worker-of-the-month award, and special perks, such as time off, should be considered by organisations.*

- *Relationships between supervisors and female employees should be monitored, to ensure that women are **empowered** and given a fair chance to achieve their career goals.*

Conclusion

The fairness of employment equity to women can be viewed from various perspectives. Focusing on numbers paints a more colourful picture than considering softer issues such as equality and empowerment does. As long as organisations view compliance with employment equity targets as the goal, they will miss out on the opportunity to tap into the skills that women offer. Chasing targets will render women mere tokens. Women are not asking for favouritism or preferential treatment. Women are asking to be treated fairly but differently, because they are different.

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The Future Reimagined

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