

# Women Workers' Rights –

## Who is responsible?

*Gender perspectives in workers' rights in Central America*

by Julie Porter





The **Movimiento de Mujeres Trabajadoras y Desempleadas "María Elena Cuadra" – MEC** – (Movement of Working and Unemployed

Women), founded in 1994, is an autonomous women's movement that aims for the inclusion and full participation of women in the Nicaraguan society. To achieve these goals MEC works from a gender perspective on the organisation, education and training of women. They address a wide set of issues affecting women such as domestic violence as well as social, labour and economic rights. Apart from their direct work with women, MEC also engages in advocacy initiatives to promote changes in public policy and legislation in order to improve the living standards of working and unemployed women.

**Movimiento de Mujeres Trabajadoras y Desempleadas "María Elena Cuadra" – MEC**

Semaforos de la Asamblea Nacional  
1c abajo  
Managua

Telefax: 00 505 222 2601  
Email: [mec@ibw.com.ni](mailto:mec@ibw.com.ni)



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**One World Action**

Bradley's Close  
White Lion Street  
London  
N1 9PF

Tel: +44 (0)20 7833 4075  
Fax: +44 (0)20 7833 4102  
Email: [owa@oneworldaction.org](mailto:owa@oneworldaction.org)  
Web: [www.oneworldaction.org](http://www.oneworldaction.org)

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# ***Women Workers' Rights – Who is responsible?***

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***Gender perspectives in workers' rights in  
Central America with reference to labour  
rights instruments***

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Report of seminar organised by One World Action and  
SOLIDAR in cooperation with MEC (Movimiento de Mujeres  
Trabajadoras y Desempleadas "María Elena Cuadra")

*Supported by DFID, SOLIDAR and UNISON*

**by Julie Porter**

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# Introduction

The International Labour Organisation (ILO), the Organisation for Economic Cooperation and Development (OECD), national governments, the European Union and some Multi-National Enterprises (MNEs) have established standards and developed instruments or legislation to protect labour rights and promote Corporate Social Responsibility (CSR). These rights and standards apply in theory to all workers, however the different experiences and specific concerns of women workers have been largely absent from their elaboration and implementation.

The voice of women needs to be given space in organisations working on labour rights, such as trade unions, NGOs (Non-governmental Organisations) and the OECD (Organisation for Economic Cooperation and Development). Unfortunately, women tend to be under-represented, especially at higher levels, and decision-making processes themselves allow little opportunity for a gender perspective to be incorporated. Unless women's concerns are fully represented, legislation and other mechanisms for promoting their rights will continue to be inadequate with respect to issues specifically affecting women, such as maternity rights, sexual harassment, child care and working time arrangements. Similarly, women workers themselves need to be well informed about what instruments are available and have the capacity to become active participants in any debate about them.

The implementation and monitoring of labour rights instruments in the informal sector, such as the domestic and homeworking sectors, where women are particularly subject to exploitation and isolation, needs to be addressed.

To this end, One World Action held a two day seminar 'Women Workers' Rights—Who is responsible?' in May 2002 with support from the Department for International Development, SOLIDAR and UNISON. The aim was to bring the voice of labour rights promoters from One World Action's Nicaraguan partner organisation, *Movimiento de Mujeres Trabajadoras y Desempleadas "María Elena Cuadra"* (MEC, Movement of Women Workers and Unemployed Women "María Elena Cuadra") to the labour rights and corporate social responsibility debate in Europe.

During the seminar the particular needs of women workers in Central America and how these are met by current instruments were identified. The degree to which the instruments themselves and the manner in which they are implemented are gender sensitive was also examined. Finally, strategies and advocacy entry points for strengthening women workers' rights were developed.

# The instruments

## Labour rights instruments available

The four ILO fundamental principles underpin many of the main labour rights instruments available; these are:

- ▶ Freedom of association and the right to collective bargaining
- ▶ Freedom from forced labour
- ▶ Freedom from discrimination in employment and occupation
- ▶ Freedom from the worst forms of child labour

The ILO standards and conventions based on these principles are applicable to all sectors of employment, and can be used by the 175 ILO member states to encourage legislative reform and raise awareness of violations at the national, international and, where relevant, company level. The supervisory mechanism is based on: the annual International Labour Conference (ILC) where governments can be called to question, a triennial committee on freedom of association and the Annual Report on Fundamental Freedoms and Rights at Work.

The OECD Guidelines for Multinational Enterprises (MNEs) are recommendations from member governments and other adhering countries<sup>1</sup> to MNEs operating in, or from, those countries. The Guidelines aim to promote corporate social responsibility (CSR) throughout the supply chain, and as such are only relevant to workers linked through their labour to MNEs. The implementation procedures of the OECD Guidelines were strengthened in 2000 with each adhering country being legally required to set up a National Contact Point (NCP) responsible for

promoting and enforcing the Guidelines. In non-adhering countries abuses can be brought to the NCP of the country where the MNE is headquartered (for example, abuse by a US owned company in Nicaragua could be raised at the US NCP). See Annex 2 for further details on the ILO labour standards and conventions and OECD Guidelines.

Since the early 1990s, an increasing number of company codes of conduct setting down standards for socially and environmentally responsible behaviour have been drawn up by MNEs. A few framework agreements between MNEs and international trade union federations also exist. The value of these voluntary initiatives varies greatly. Many are drawn up without reference to ILO standards and do not apply to contractors in the supply chain. Any mechanism for monitoring compliance with the codes or procedure for registering complaints is arbitrary.

## The legal vacuum

Labour rights instruments too rarely result in concrete improvements in the rights and conditions of workers due to the lack of an international legal framework to enforce compliance. Although the ILO fundamental principles and ratified conventions are binding to member states, and companies are expected by governments to observe the OECD Guidelines, neither are legally enforceable. For example, there is no timeframe for cases brought to OECD NCPs, and although the TUAC (Trade Union Advisory Committee) can apply pressure, ultimate responsibility for resolution lies with adhering governments whose commitment or capacity can vary. In some countries there are special exemptions

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1. OECD countries: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, Japan, Finland, Australia, New Zealand, Mexico, the Czech Republic, Hungary, Poland, Korea, the Slovak Republic.  
Other adhering countries at May 2002: Argentina, Brazil, Chile, Estonia, Lithuania, Slovenia

### **“It is very difficult for me to work, be a mother and at the same time study”**

—Yerling Armas, tobacco for export worker & MEC promoter

Yerling described her average day: she gets up at 5.30am and prepares breakfast and lunch for her family, at 7am she arrives at the tobacco processing plant and begins her work rolling cigars, and at 12.30 she has half an hour for lunch (she has no other breaks). Yerling leaves at 4.30pm after a nine hour working day, unless the plant has received a big contract when she will often be requested to work until 6pm. Because Yerling is a fast worker she receives a monthly wage of around 1,300 Córdobas (approx. £65); the Central Bank of Nicaragua estimates basic living costs to be C\$1,967 (approx. £98)<sup>2</sup>. After finishing work, Yerling collects her son and prepares dinner for the family. Then, if she can find the energy, she studies. She is determined to get a qualification in accountancy to “better myself, improve my situation, be someone more in life than just a tobacco worker”.

to national labour laws in export processing zones (EPZs), which constitute a violation of the ILO fundamental principles.

The International Confederation of Free Trade Unions (ICFTU) and SOLIDAR are campaigning for a ‘social clause’ to be included in the framework and treaties of the World Trade Organisation (WTO) so that governments not respecting minimum labour rights standards can be penalised in international trade. However, there is opposition from some governments and NGOs in the South who argue that trade sanctions resulting from non-compliance with the social clause would further hamper their export chances and constitute another Northern protectionist measure. TUAC and the OECD have developed another strategy for enforcing the Guidelines which focuses on MNEs rather than governments. For example, in the Netherlands, companies are now required to state that they observe the Guidelines in order to be eligible for export subsidies from the government.

The recent green paper on Promoting a European Framework for Corporate Social Responsibility published in 2001 attempts to make companies in the EU more accountable

to workers both in the EU and in the South. It addresses the lack of a legally binding mechanism for making companies uphold internationally recognized labour rights. The paper proposes:

- ▶ New legislation to require companies to publicly report on their social and environmental performance.
- ▶ New corporate governance laws extending liability of Board members to the social and environmental impact of company performance.
- ▶ The establishment of legal jurisdiction for European companies’ abuses in developing countries.
- ▶ The setting up of a multi-stakeholder European CSR Forum to verify companies’ social and environmental reports and codes of conduct against ILO core labour standards and OECD Guidelines.
- ▶ Making all EU financial assistance to business subject to compliance with basic standards.

In June 2002, two weeks after the Women Workers’ Rights seminar took place, the European Parliament voted to pass the green paper.

<sup>2</sup> In August 2001 the Central Bank of Nicaragua, using figures from the National Institute of Statistics and Censuses, estimated the basket of basic supplies to be C\$1,967 a month (approximately £98). Exchange rate used: £1 = C\$20.1366

## The gender focus of labour rights instruments

The instruments and mechanisms for promoting labour rights and corporate social responsibility (CSR) apply to *all* workers. However, to treat men and women workers as the same ignores the different realities faced by women. This came through clearly in the presentations of the women workers from Nicaragua at the seminar. These women are trained by MEC in labour rights and act as promoters in their workplaces, providing advice to colleagues and referring them to MEC's legal service where necessary.

Maternity rights is an area where women workers have needs not shared by their male colleagues. For example, Luz Erenia Alemán, an EPZ worker told seminar participants how on returning to work after giving birth to her daughter she was refused her old job back. In the plant where Yerling Armas works it is common for women to work up until the day before giving birth, and since maternity pay is based on production during the last week, pregnant woman often over-exert themselves at this time. Women workers are also more vulnerable to verbal and physical abuse and sexual harassment than men. Research published by MEC in 2002, indicated that 12% of women domestic workers had suffered physical or verbal violence at work.

The sectors where women workers make up the majority of the workforce are characterised by low pay, long hours, weak to non-existent regulation and resistance to association and collective bargaining. Employment in both the EPZ factories and the agriculture for export sector fit this description, and in the case of domestic work this is compounded by a lack of visibility. Women's economic contribution to society through domestic roles remains unrecognized and unvalued even when this work is paid. The consequence of this feminization of labour is that women workers disproportionately face the practical problems

experienced by all workers in these sectors. At its root is the conscious and unconscious exploitation of gender inequality.

As Helen O'Connell from One World Action put it, "Governments and employers and trade unions all know that they regard women as less than full citizens, workers and members, with partial rights. They know the pressures on women's time due to the multiple roles women shoulder. They know that women have less or little time for organising to demand their full human rights and they are willing to take full advantage of this."

So, with this understanding of the different realities and particular needs of women workers, the seminar posed the question: to what extent are current labour rights instruments gender sensitive and how effective can they be in protecting and promoting women workers' rights? The answers were disappointing.

**"It is difficult to try to view the Guidelines from a gender perspective as they are general recommendations to companies and do not distinguish between men and women workers. There are not any specific provisions relating to women workers except for the paragraph on non-discrimination in employment"**

*Veronica Nilsson, OECD TUAC*

The view expressed by seminar participants familiar with the ILO and the UK Ethical Trading Initiative was that gender equality is often reduced to a clause or convention against discrimination. Research presented by Marina Prieto on women workers' experiences of codes of conduct in Nicaragua found that aside from a generic clause on discrimination, codes for EPZ factories and banana plantations lacked a gender dimension and failed to address the specific concerns of women.

One very clear shortcoming of the available instruments is their failure to help safeguard the rights of women domestic workers. The ILO is in a position to promote improved working conditions for these women, since in theory the four fundamental principles extend to domestic work. However, there is no ILO convention which specifically addresses this sector (the convention on homeworkers does not apply to domestic workers).

Although the general lack of a gender dimension in the different instruments is disappointing, there have been positive initiatives. Over the past ten years the ILO has turned its attention to 'atypical' workers, those in non regular and non permanent employment in the semi- and informal economy, who make up the majority of the

world's working people and where women workers are concentrated. Currently, the ILO is drawing up a convention on contract labour. The European framework on CSR has potential to meet the needs of women workers if the gender dimension of the green paper is translated into reality. For example, within the proposed framework explicit guidance on what codes of conduct should include goes beyond the issue of discrimination to cover quality of work, reintegration of women after career breaks and specific measures against sexual harassment and domestic violence. Veronica Nilsson from OECD TUAC stated that she hoped that the current lack of a gender dimension in the Guidelines could be addressed in their next revision, due to take place in 2005 or 2006.

## Conclusions

- ▶ Women live different realities and have specific needs not shared by men. These can not simply be addressed by a generic clause in labour rights or CSR instruments against gender discrimination.
- ▶ The gender dimension of ILO and OECD instruments and corporate codes of conduct needs strengthening.
- ▶ The ILO labour rights instruments fail to safeguard the rights and welfare of women domestic workers.

## Recommendations

- ▶ Use the 2003 ILO Report on Discrimination to raise women worker and gender issues with the ILO, trade union movement and member governments.
- ▶ Use the 2004 International Labour Conference on migrant workers to raise issues around domestic work with the ILO, trade union movement and member governments.
- ▶ Lobby individual EU governments to link export credits and other support to MNEs to compliance with the OECD Guidelines.
- ▶ As the EU framework for CSR moves forward, lobby to ensure that the framework remains legally binding and that women workers are central.
- ▶ Lobby the OECD for gender and women workers' rights to be discussed in the next revision of the Guidelines for MNEs, due in 2005 or 2006.

## Implementation (the theory/reality gap)

The ILO core labour standards and conventions and the OECD Guidelines for MNEs make many strong provisions for protecting and promoting the rights of women and men workers on paper. This is also true of some voluntary MNE codes of conduct. However the experiences shared at the seminar show that there is a gap between the theory of the standards and their implementation in reality.

This gap exists at two levels. In some cases, national governments have made no commitment to respect the conventions and standards. Nicaragua has ratified 59 of the 183 ILO conventions, including the eight key conventions covering the four fundamental human rights principles which are reflected to some extent in Nicaragua's political constitution and *código laboral* (labour code). However, although the constitution also enshrines some rights around maternity, neither convention 183 on maternity protection nor other conventions of specific

relevance to women workers, such as convention 156 relating to workers with family responsibilities, have been ratified. Nicaragua is not an OECD country and has not opted to adhere to the OECD Guidelines for MNEs.

Because of the widespread failure to recognise domestic work as 'real' work, employment legislation often fails to protect workers in this sector. In the UK, domestic work is excluded from employment legislation in the areas of discrimination and health & safety since the home is not recognised as a workplace. Domestic work is virtually absent from Nicaragua's labour code:

**"The labour code in our country does not protect workers in domestic service; there is not even a minimum wage for domestic workers"**

*Esperanza Cárdenas, MEC*

### The local reality

**"Three years ago there was a union in one of the factories, the employers said it went against the employers and so couldn't exist. All the people involved were fired and they told all the other factory owners that these workers were bad, they caused problems, that they shouldn't work."**

—Yerling Armas Briones, tobacco for export worker & MEC promoter

**"There was a pass system to use the toilets. The workers, we were humiliated and harassed by the supervisors if we wanted to go to the bathroom during the working day."**

—Luz Erenia Alemán, EPZ worker & MEC promoter

**"Some 70% of the 1,700 domestic workers who participated in the study worked more than an eight hour day; of those, 16% were required to work into the night on a daily basis."**

*Finding of MEC research into the Social & Labour conditions of women domestic workers, 2001*

Although, the Nicaraguan labour code states that contracts for domestic work can be written or verbal:

**“When she is dismissed, the domestic worker has no document which legally supports her claim to have worked in that place. Experience has showed us that when a woman calls her former employer to ask for her social insurance to be paid [in line with Nicaraguan law], the employer claims ‘I don’t know her. No, she hasn’t worked for me’. And because she doesn’t have a document, she can’t prove the truth”**

*Mabel Aguirre Peña, MEC*

Weakness in implementation and enforcement of labour standards and conventions to which national governments have committed is the other aspect of the theory/reality gap. Research funded by DFID and carried out by the Procuraduría para la Defensa de los Derechos Humanos Nicaragüense (the Human Rights Ombudsman of Nicaragua) with support from the FNT (Frente Nacional de Trabajadores, a national trade union confederation) and FETSALUD (a union of health workers) analysed the level of coherence between national legislation and ILO conventions, government policies on the protection and promotion of labour rights and the degree to which national legislation and the ILO conventions are applied in reality. A main finding of the research was that the Nicaraguan Ministry of Labour (MITRAB) has a particularly weak position on ensuring compliance with labour laws and lacks the coercive power to put them into practice. In particular, there has been very little progress in the implementation of legislation relating to people with disabilities, children and youth.

MEC has established a collaborative working relationship with MITRAB which demonstrates the value of civil society organisations as a force

for demanding improvement in government services—the movement has been successful in lobbying for the ministry to set up a permanent office in Managua’s biggest EPZ and in calling for workplace inspections when problems in conditions are reported by promoters.

Where responsibility is with MNEs rather than national governments to implement and enforce the rights and welfare of workers the theory/reality gap is also apparent. MNEs fail to meet the recommendations made to them by OECD and other Guideline-adhering governments. Where MNEs have made the positive step of drawing up a code of conduct to set standards for the social and environmental impact of their operations, concrete improvements in the pay and conditions of their workers in the supply chain too rarely result<sup>3</sup>. The research presented by Marina Prieto at the seminar about how women workers in the EPZs and Banana plantations have experienced CSR and corporate codes of conduct found that so far these codes have been of little or no benefit to workers in Nicaragua.

### **Macro economics vs workers’ rights**

Since the 1980s, governments in the South wishing to secure loans, foreign investment and debt relief through Highly Indebted Poor Countries Initiative (HIPC), have little choice but to accept the neoliberal ideology and policies of the International Monetary Fund based on the tenets of fiscal austerity, privatisation, market liberalisation and export promotion. Membership of the WTO, without which countries can hope to gain little from international trade, has further enforced the liberalisation and deregulation of economies and labour markets. This has led governments in part to put the interests of private business above that of legislation and enforcement protecting the labour rights of their citizens.

The fundamental obstacle that current policies of economic liberalisation and unregulated

<sup>3</sup> Those codes of conduct not recognizing responsibility for operations throughout the supply chain are not discussed in this report due to their failure to observe the internationally agreed standard of the OECD Guidelines.

free trade pose to minimum labour standards needs to be openly recognised at international policy level. Both the UK government and the EC harbour an inherent contradiction while their trade and industry departments are in practice working against those departments with responsibility for employment and development. On another level, organisations seeking to protect and promote the rights of workers face the challenge of learning to engage in these macro economic issues. MEC has recently been successful in securing participation in the Consejo Nacional de Planificación Socio Económica (CONPES, the National Council for Socio-Economic Planning), one of the main vehicles for consultation between the Nicaraguan government and civil society which analyses and discusses socio-economic policies, including issues around negotiations with the World Bank and International Monetary Fund. MEC aims to use its extensive experience of the EPZ sector to influence the Nicaraguan Government's thinking on using EPZs for employment creation and the type of foreign investment the Government seeks to attract.

While on a macro level policies of liberalisation and deregulation create a race to the bottom in labour standards, the contribution made directly by private business to this process must not be overlooked. Many MNEs propel the liberalisation and deregulation pressures facing national governments through their lobbying activities. The tax breaks foreign investors benefit from are a factor in the lack of resources available for labour ministries to uphold government commitments to protect the labour rights of citizens. These 'behind the scenes' factors which contribute to derailing the most effective mechanism for protecting workers' rights must be at the heart of any discussion of CSR. The race to the bottom in prices is another key cause in the race to the bottom in labour standards. While market liberalisation reduces the value of products in local markets, individual companies continually seek to reduce production costs. As buyers in Europe and the US—whether big fashion and sportswear names, brands for agricultural produce or supermarkets and other retailers—squeeze the profit margins of their suppliers in

### **Export Processing Zones in Nicaragua—employment creation or worker exploitation?**

Since the beginning of the 1990s, successive governments in Nicaragua have promoted IMF endorsed structural adjustment programmes. Fiscal austerity in government spending has led to a dramatic decrease in public sector employment, and despite the programmes, national industry is at a stand-still, growing 0% in 1999 and unemployment has long been at chronic levels. The establishment of EPZs is the government's only employment creation strategy:

**“Employment creation is entirely dependent on foreign capital... for women workers the EPZ factories have become a salvation from the growing unemployment and lack of opportunities for work”**

—Esperanza Cárdenaz, MEC

Efforts over this period to attract foreign direct investment have included a relaxing of laws relating to terms of employment and obligations relating to labour standards. Recent acceptance into HIPIC has given Nicaragua competitive advantage in the regional EPZ race by permitting the state to offer more favourable tax breaks and other incentives to private business than neighbouring non-HIPIC countries. Two years ago, the foreign investment laws governing EPZs were extended to the tobacco processing industry located outside of the EPZs following lobbying on the grounds that the Cuban-American owners were also foreign investors:

**“They are able to make those conditions for export that were supposed to be exceptional, the norm. And the reality of that norm is that the best protector of workers, the TUs, are pushed out the door”**

—Giampi Alhadef, SOLIDAR

the South, pay and working conditions are the first things to suffer.

**“It is neither acceptable, nor consistent, for companies to make demands on a supplier in the South to improve its labour conditions and then the next week to say this year we are going to pay you 20% less than last year. This is a common problem.”**

*Conclusion of Agriculture  
for Export discussion group*

## **Strengthening the implementation of labour rights mechanisms**

While the macro economic and political picture must remain central, the seminar identified practical ways to strengthen the implementation of the available labour rights and CSR instruments. One fundamental reason for the gap between the theory of the instruments and the reality of their implementation is a lack of knowledge and capacity at the bottom to push for the standards, guidelines and codes to be respected. Workers need to know their rights before they can have a role in defending them but, for example, in a recent study by MEC into the situation of domestic workers only 15% of the 1,700 women interviewed felt they knew their rights.

Language is an important factor. Frequently, codes of conduct are not translated into the language of the employees, Luz Erenia Alemán, an EPZ worker and MEC promoter, described how often the codes on display in her factory are written in English or a language ‘like’ Chinese:

“We want to see this code in our own language, we want to read it and understand it so that we can say I know this code and yes, I’m going to defend it”

The ILO core labour standards and conventions and the OECD Guidelines have

been translated into many languages.

However, there was general agreement at the seminar that the legalistic way these important instruments are written is an obstacle to effective worker education, and also to supervisor/management training. Leaflets, posters and other materials addressed to workers explaining what the ILO and OECD labour rights and CSR instruments should mean to them in clear, accessible language would be valuable in supporting workers and their organisations to use these tools to defend their rights. In particular, the suggestion was made for the ILO to produce an International Women Workers’ Charter addressed to women workers telling them in clear, accessible language what international standards exist for protecting their rights. The Charter would be both a tool for worker education and awareness raising and a way of drawing together those conventions addressing specific gender issues which need to be put much higher up the agenda for all–governments, employers and trade unions. Simon Steyne from the TUC hoped that this suggestion could be acted on by the ILO in collaboration with ICFTU.

Closely linked to the issue of language is the issue of interpretation of the different instruments—how the clauses and conventions are understood by governments, employers and workers organisations. It is often in the interpretation of the tools that the applicability of the different provisions to the particular experiences of women workers is lost and women’s concerns and needs are marginalised. Developing guidelines for a gender aware interpretation of the key ILO conventions, the anti discrimination clause of the OECD Guidelines for MNEs, and for other labour rights tools would be of real value in ensuring that the relevance and meaning of the instruments to women workers is fully understood in their implementation. Jane Turner from the Central America Women’s Network (CAWN) explained how the UK Ethical Trade Initiative, which has developed a base code for the companies involved, is considering producing guidelines for gender sensitive implementation of this

code. Similar initiatives which put women workers at the centre of implementation need to be considered by the other institutions working on labour rights and CSR.

Where trade unions and workers organisations exist, they are the most effective vehicle for disseminating information about labour rights and working conditions to workers. MEC, for example, runs well attended workshops every Sunday on human and labour rights, negotiation and mediation skills, health and safety in the workplace and gender and self esteem, and these workshops form the basis of training for the promoters—women worker volunteers who provide advice to their colleagues in the workplace and raise awareness of the support MEC can provide when a worker experiences a problem.

MNEs and the companies in their supply chain have a responsibility to ensure that employees are aware of employment standards and working conditions. Where codes of conduct have been developed these tools provide an obvious focus for company efforts:

**“Many brand name MNEs dedicate substantial efforts and resources to raising awareness of codes of conduct in consumer countries; this needs to be matched by equal effort and resources to raising awareness of the codes in countries where the goods are produced and with the workers who produce them.”**

*Conclusion from EPZ working group*

Dissemination is not just about worker education—it is also about providing training to management and awareness raising with the general public. The women workers in the research presented by Marina Prieto described lack of awareness and interest by employers of labour standards and codes as a problem and felt that the client company at the other end of the production chain needed to pressure their employer for these standards to

be met. These women also felt that running public campaigns about labour standards and codes of conduct would be empowering for workers because their employers could no longer claim ignorance of the standards they were supposed to observe.

## **Monitoring compliance and implementation**

The central conclusion of discussions regarding supervising and monitoring compliance with the international labour rights standards of the ILO and OECD and with national employment legislation was the need for involvement of women and men workers and their organisations. It was also felt by some participants that trade unions must give priority and direct resources to better representing the concerns of women workers, and that monitoring processes must be gender aware if they are to fully incorporate the experiences of women workers.

The supervisory mechanisms of the ILO instruments and the OECD guidelines were outlined in the section “Instruments”. Monitoring of MNE codes of conduct in export producing sectors takes a different form and is more narrowly focused on a series of individual workplaces. Although inspection by government labour ministries in these sectors is important for ensuring that workers’ rights are respected in line with national legislation, labour ministries cannot be expected to monitor a variety of different codes in a multitude of work places. MNEs must take responsibility for ensuring that the commitments made in their codes of conduct are respected. MNE monitoring of codes is normally conducted by internal auditors or by a contracted private social auditing company, that is, usually by ‘experts’ from overseas with little or no understanding of the local context and who are not known or trusted by workers. The women banana and EPZ workers in the codes research identified three main problems with the monitoring practices of these experts. Management are

forewarned of visits, those visiting the factories and plantations rarely talk to workers, and complaint processes are ineffective.

Research undertaken by Marina Prieto made four recommendations for making monitoring work:

- ▶ Assessments should be unannounced, with monitors having free entry to the workplace at any time.
- ▶ Monitoring should be ongoing.
- ▶ Trust is essential in interviewing—workers wanted their organisations to be involved in the monitoring process.
- ▶ Worker interviews should be conducted off-site.

## Conclusions

- ▶ There is a gap between the theory of available labour rights instruments and the reality of their implementation. No binding legal mechanism exists to close this gap.
- ▶ The pressures of current policies of economic liberalisation and unregulated free trade act against national governments enforcing compliance with minimum labour standards for their citizens.
- ▶ Tools for promoting labour rights and CSR need to be actively used by workers to be effective.
- ▶ Public awareness raising campaigns are important strategies for strengthening the ability of workers to use the labour rights and CSR tools.
- ▶ The potential of the different labour rights instruments to meet the specific needs of women workers is often lost in the interpretation.
- ▶ The involvement of women and men workers and their organisations in monitoring of MNE codes of conduct is essential for that monitoring to be effective. Local independent monitoring groups, where they exist, offer examples of best practice.

A final question is who is to conduct monitoring of MNE codes of conduct. MEC recently helped to establish the first local independent monitoring group in Nicaragua—*Profesionales para la Auditoría Social Empresarial*—PASE (Professionals in Corporate Social Auditing) made up of unions and experts in the fields of labour, health and safety at work, social research and gender. PASE aims to verify compliance with company codes of conduct and internationally recognised labour rights standards<sup>4</sup>. Such groups provide an example of best practice for MNEs committed to translating codes of conduct into concrete improvements for workers.

## Recommendations

- ▶ Lobby for improved coherence between policies emanating from trade and employment & development ministries within European governments and the EC.
- ▶ Institutions acting to fund or promote labour rights and CSR should consider ways of strengthening national government labour inspectorates.
- ▶ Lobby for the ILO, International TU movement, OECD, MNEs and national governments to increase efforts to take labour rights and CSR instruments and standards to workers in the South.
- ▶ Lobby for the ILO, International TU movement, OECD, MNEs and national governments to produce materials addressed to workers in clear, accessible language to aid worker education.
- ▶ The ILO could produce an International Women Workers' Charter addressed to women workers about the conventions and international standards that exist for protecting their rights.
- ▶ Lobby for the ILO, trade union movement, OECD, MNEs and governments to develop guidelines for gender sensitive implementation of labour rights instruments and standards. The UK Ethical Trade Initiative is considering developing a set of guidelines for gender sensitive implementation of the ETI base code.

4 REDMAQ, (Red Centroamericana de Mujeres en Solidaridad con las Trabajadoras de las Maquilas, Central American Network of Women in Solidarity with Women EPZ Workers), of which MEC is a member, has played an important role in establishing independent monitoring groups to verify compliance with company codes of conduct and internationally recognised labour rights standards in EPZ factories across Central America.

# The institutions

## Decision makers and legal agents

The voice of women in organisations responsible for developing and monitoring labour rights instruments needs to be strengthened. However, some progress is being made. The ILO now has two units dedicated to gender and are currently conducting a gender audit of their headquarters and field offices, and the TUAC openly recognises the need to strengthen the gender sensitivity and dimension of their work.

In addition to the internal structure and functioning of the international institutions and European organisations working to promote workers rights and CSR, the question of who informs their decision making is key. Discussion and debate on labour standards and CSR is frequently top-down:

**“The CSR debate in Europe has been very much focused in the EU... with very little from the direct experiences of workers in the South and how CSR is affecting them.”**

*Suzy Sumner, SOLIDAR*

## Women and the trade union movement

The trade union movement plays an essential role in bringing the voice of workers to the decision making table. A tripartite negotiation structure, where government, trade unions and employers' organisations each have a voice and a vote, forms the basis for debate concerning labour rights and working conditions in the ILO, OECD, European Union and national governments. However, in many tripartite discussions the voice and concerns of women workers are marginalised.

Although the trade unions have made a great contribution to the advancement of workers' rights, the representation of women in some unions remains weak. However, at an international level there have been recent initiatives to improve gender parity within the union movement, such as the International Confederation of Free Trade Unions (ICFTU) campaign 'Women for Unions, Unions for Women'.

Part of the reason for the marginalisation of women in some trade unions is that historically, the FTUs have been set up to protect the rights of workers in regular and permanent employment. In the South these workers have been found in the state and para-state sectors. However, with changes in the global employment market many workers, and especially women workers, are now 'atypical workers' often outside the formal sector in non-regular and non-permanent work. It is difficult for trade unions to organise in such sectors; likewise they also face difficulties in organising in the EPZ sector due to strong employer resistance. In Nicaragua only three of the country's 13 unions have a presence in the EPZs and this in only five of the 45 EPZ factories. Many trade unions acknowledge that they need to prioritise organising in those sectors where the majority of the workforce are women and where the worst working conditions are often found:

**“The trade union movement has a duty to organise wherever workers are and we have to develop a new innovative bargaining agenda and recruitment strategy to do precisely that.”**

*Simon Steyne, Trades Union Congress*

## Organising domestic workers in Nicaragua

In 1979, Mabel Aguirre, MEC Domestic Worker Coordinator, helped found a union for domestic workers in Nicaragua. The union soon disappeared due to lack of support from the wider union movement, and it wasn't until MEC decided to start working in the domestic sector that domestic workers in Nicaragua again had any organisation. Organising workers in domestic service is difficult for various reasons: workers are dispersed with no natural meeting place, employers are frequently resistant to workers learning about their rights, and domestic workers often have low levels of education and self-esteem. Additionally, the existence of complex relations between employee and employer where the domestic worker is intimately involved in family care, and where in some cases workers are treated as "second status" daughters, makes it difficult for a worker to take issue with pay and conditions.

However, by using local radio and "word-of-mouth", MEC's domestic workers network now involves some 1,800 women. Of these, 700 are promoters trained in labour rights, negotiation and conflict resolution. One of MEC's first achievements in the domestic sector was its campaign to establish a 'National Day for Domestic Workers' (10 December) to visibilise the contribution made to society by domestic workers. MEC has also drawn up proposals for reforms to the labour code to include domestic workers in minimum salary legislation and for an eight hour working day.

Many participants at the seminar felt that alliance building and collaboration between the union movement and NGOs would improve the representation of women. One example of such collaboration was that between Kalayaan and the TGWU (Transport and General Workers Union) in the UK. The migrant domestic workers with whom Kalayaan work received union cards which were, for many, the first legal documentation they had received in the UK and which for a long time were used as proof of identification.

## Conclusions

- ▶ The ILO, OECD, European and national level institutions working to protect workers' rights should work towards gender parity in their structures and functioning.
- ▶ It is often difficult for trade unions to organise women workers outside the formal sector and in EPZs.
- ▶ Alliance building and collaboration between the union movement and NGOs can improve the representation of women.

## Recommendations

- ▶ Lobby for trade unions to give priority to improving representation of women workers.
- ▶ Lobby for improved representation of women in tripartite negotiating structures.
- ▶ Ensure that women workers from the South participate in European debates on labour rights.

# Annex 1 – List of speakers and participants

## Speakers

**Mabel Aguirre**, MEC, (Movimiento de Mujeres Trabajadoras y Desempleadas “María Elena Cuadra”, Movement of Women Workers and Unemployed Women “María Elena Cuadra”), Nicaragua  
*“Rights and wrongs: Domestic workers in Nicaragua”*

**Luz Alemán**, MEC promoter, Nicaragua  
*“Rights and wrongs: Working in Nicaraguan EPZs”*

**Yerling Armas**, MEC promoter, Nicaragua  
*“Rights and wrongs: Processing tobacco for export in Nicaragua”*

**Peter Brannen**, International Labour Organisation, UK  
*“ILO core conventions as they relate to EPZs and codes of conduct, with reference to gender issues”*

**Esperanza Cárdenas**, MEC, Nicaragua  
*“Righting the wrongs: Improving the lot of women workers in Nicaragua”*

**Richard Howitt**, MEP (Member of European Parliament)  
*“The European Code of Conduct and Monitoring Platform: What do they mean for women workers in EPZs?”*

**Felicity Manson**, One World Action (OWA), UK  
*“National legislation, workers’ rights and the trade union perspective in Nicaragua: A presentation of research by the Procuraduría para la Defensa de los Derechos Humanos Nicaragüense (Human Rights Ombudsman of Nicaragua)”*

**Veronica Nilsson**, Trades Unions Advisory Committee to the OECD (Organisation for Economic Cooperation and Development), France  
*“OECD Guidelines for multinational enterprises and women workers’ rights”*

**Marina Prieto**, University of Bristol, UK  
*“Bananas, company codes of conduct and women workers’ rights”*

**Suzy Sumner**, SOLIDAR, Belgium  
*“EC trade policy and women workers’ rights: SOLIDAR’s advocacy work”*

## List of participants

**Giampiero Alhadeff**, SOLIDAR

**Helen Appleton**, DFID (Department for International Development)

**Graham Bennett**, OWA

**Sumant Bhatia**, Radio 4 (BBC)

**Deena Bosch**, Women on Farms Project, South Africa

**Emily Brown**, Womankind Worldwide

**Maureen Byre**, Transport and General Workers Union (TGWU)

**Denise Damon**, Women on Farms Project, South Africa

**Jenny Davidson**, CAFOD

**Emily Farrow**, Red Pepper

**Olivia Harland**, DFID

**George Jaksch**, Chiquita, The Netherlands

**Sarah Jonstone**, Womankind Worldwide

**Thalia Kidder**, OXFAM GB

**Jacqui MacDonald**, Verité

**Mandy MacDonald**, ILO

**Jane McKay**, TGWU

**Rowan Mellor**, TGWU

**Jess Mock**, Women Working Worldwide

**Helen O’Connell**, OWA

**Moira O’Shaughnessy**, TGWU

**Julie Porter** (Conference Organiser), OWA

**Lucy Rix**, Kalayaan

**Guillermo Rogel**, War on Want

**Andy Rutherford**, OWA

**Simon Steyne**, Trades Union Congress

**Annie Street**, Catholic Institute for International Relations

**James Treasure-Evans**, War on Want

**Jane Turner**, Central America Women’s Network

Interpreters:

**Maureen Ivens, Anna Keene**

## Annex 2 – ILO instruments and the OECD Guidelines

- › ILO conventions and the OECD Guidelines
- › Conventions of special concern to women workers
- › Codes of conduct in relation to the ILO labour standards and OECD Guidelines

### ILO conventions and the OECD Guidelines

There are a growing number of instruments designed to protect and promote the rights of women and men workers. At the heart of these are the core labour standards of the ILO, which take as their starting point four fundamental human rights principles:

- › Freedom of association and the right to collective bargaining
- › Freedom from forced labour
- › Freedom from discrimination in employment and occupation
- › Freedom from the worst forms of child labour

These principles are enshrined in the ILO constitution, by which all 175 ILO member states are bound, and apply in theory to all forms and sectors of employment. The raft of ILO conventions, which deal with particular workers' rights and employment issues and are often sector specific, must be ratified by a country before they are binding. Ratification is voluntary. The ILO principles and conventions are effective through the law and appropriate enforcement mechanisms of the member states.

Since the 1970s, trade liberalisation and deregulation and the increasingly global

nature of business operations have led to growing awareness and concern about the power and lack of accountability of Multinational Enterprises (MNEs). The OECD Guidelines, first adopted in 1976, are recommendations from governments of OECD and other adhering countries<sup>5</sup> to MNEs operating in or from those countries and are the only multilaterally endorsed 'code of conduct' for MNEs. A key improvement made in the last revision of the Guidelines by governments in 2000 is the possibility to use them in relation to abuses in the supply chain. Fundamentally, the OECD Guidelines are addressed to companies aiming to make MNEs accountable to governments for the social and environmental impact of their operations.

Monitoring of compliance with labour standards and how they are implemented is key to promoting and protecting workers' rights. Together, the ILO core labour standards and 1999 Declaration of Fundamental Principles and Rights at Work, by which all member states are bound, form a basis for raising violations at the international and national levels and for putting pressure on companies at the level of the international parent company or top end of the supply chain. The ratification rates of the eight key conventions based on the four fundamental human rights principles have increased over the past five years due to an ILO drive for their universal ratification and the passing of the Declaration. However there is no obligation for ratification and the ratification rates of the more recent conventions, several of which address the specific situations of women workers, is slow. Member states exert pressure on others to ratify conventions motivated both by positive reasons and by the

5 OECD countries: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, the United States, Japan, Finland, Australia, New Zealand, Mexico, the Czech Republic, Hungary, Poland, Korea, the Slovak Republic.  
Other adhering countries at May 2002: Argentina, Brazil, Chile, Estonia, Lithuania, Slovenia

desire for a level playing field in global economic competition. When a convention has not been ratified, its text—as an internationally recognised standard—can be used by unions, workers organisations and other civil society groups to push for legislative reform. Once a convention has been ratified the country is required to bring law and enforcement into compliance.

The ILO supervisory mechanism, which was strengthened with the 1999 Declaration, attempts to ensure compliance with both the fundamental principles of the ILO constitution and with conventions that have been ratified by member states. It has several components:

- ▶ Governments can be called to answer questions about compliance by the tripartite committee at the annual International Labour Conference (ILC), from which public statements can be issued as a way of mobilising pressure. There are special procedures for trade unions to make presentations to the ILC.
- ▶ A grievance-based committee on Freedom of Association meets three times a year which can send a direct contact mission to a country or demand a fact finding committee as a way of mobilising pressure on governments.

- ▶ An annual public report is produced on the compliance of a range of governments with a range of conventions to which input from TUs and employer organisations is invited.
- ▶ The Annual Report on Fundamental Freedoms and Rights at Work each year has a specific theme—for example, the 2003 report is on Discrimination—and can be used as a wider platform for campaigning on relevant issues.

The implementation procedures of the OECD Guidelines were strengthened in the 2000 revision. Governments adhering to the Guidelines must set up National Contact Points (NCPs) within their administration which are responsible for promoting and enforcing the Guidelines. NCPs can take various forms—in some countries they are based on a tripartite structure but in others they are an individual within a single government ministry. Trade Unions, workers' organisations or other parties can raise cases of alleged company violations of the Guidelines with the NCP in their country. However, in non-adhering countries where there is no NCP (for example in Nicaragua), the union or organisation can take the case to the NCP of the country where the company has its headquarters. Some 80–90% of MNEs worldwide are covered by this mechanism; only those based in non-adhering

### The eight key ILO conventions

- ▶ Convention 87 Freedom of Association and Protection and the Right to Organise (1948)
- ▶ Convention 98 The right to organise and collective bargaining (1949)
- ▶ Convention 29 Forced Labour (1930)
- ▶ Convention 105 Abolition of Forced Labour (1957)
- ▶ Convention 100 Equal Remuneration (1951)
- ▶ Convention 111 Discrimination (Employment and Occupation) (1958)
- ▶ Convention 138 Minimum Age (1973)
- ▶ Convention 182 Child Labour (1999)

countries such as China or Taiwan fall outside. The procedural guidelines for NCP resolution of cases require the NCP to issue a public statement on the case if mediation and negotiation fail.

Since the early 1990s, an increasing number of 'codes of conduct' setting down standards for socially and environmentally responsible behaviour have been drawn up by individual MNEs, sometimes by industry and trade associations, and in a minority of cases by stakeholder partnerships, as in the case of framework agreements between MNEs and international trade union federations.

### **Conventions of special concern to women workers**

#### *Basic human rights:*

- › Equality of opportunity and treatment (C.100\*, C.111\*)
- › Freedom of association and right to organise (C.87\*, C98\*)
- › Freedom from forced labour (C.29\*, C.105\*)
- › Freedom from child labour (C.138\*, C182\*)

#### *Family responsibilities and Maternity protection:*

- › Workers with family responsibilities (C.156)
- › Maternity protection (C.103, C.183)

#### *Employment and Social Policy:*

- › Employment policy (C.122\*)
- › Human resources development (C.142\*)
- › Termination of employment (C.158)
- › Social policy (basic aims and standards) (C.117\*)

\* *conventions ratified by Nicaragua*

### **Codes of conduct in relation to the ILO labour standards and OECD Guidelines**

Codes of conduct are voluntary commitments, but their proliferation is in response to wider pressures: growing consumer awareness and in some instances targeted boycott campaigns, and a gradually progressing legislative and policy agenda. These initiatives are encouraging indications of intention by MNEs to address negative social and environmental practice in their operations, however there is considerable debate as to the value of voluntary codes, many of which are drawn up in isolation of the ILO core labour standards and OECD Guidelines, frequently failing to ensure the right to collective bargaining and to extend social and environmental responsibility to contractors in the supply chain. Like the codes themselves, any mechanism for monitoring compliance is arbitrary.



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**SOLIDAR**

Rue de Commerce 22, B-1000,  
Brussels  
Belgium

Tel: ++ 322 500 1020

Fax: ++ 322 500 1030

Web: [www.solidar.org](http://www.solidar.org)



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General Secretary is Dave Prentis. President is Nancy Coull.

**UNISON**

1 Mabledon Place  
London WC1H 9AJ

Tel: 0845 355 0845

Web: [www.unison.org.uk](http://www.unison.org.uk)



**One World Action**

Bradley's Close  
White Lion Street  
London  
N1 9PF

Tel: +44 (0)20 7833 4075

Fax: +44 (0)20 7833 4102

Email: [owa@oneworldaction.org](mailto:owa@oneworldaction.org)

Web: [www.oneworldaction.org](http://www.oneworldaction.org)

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