

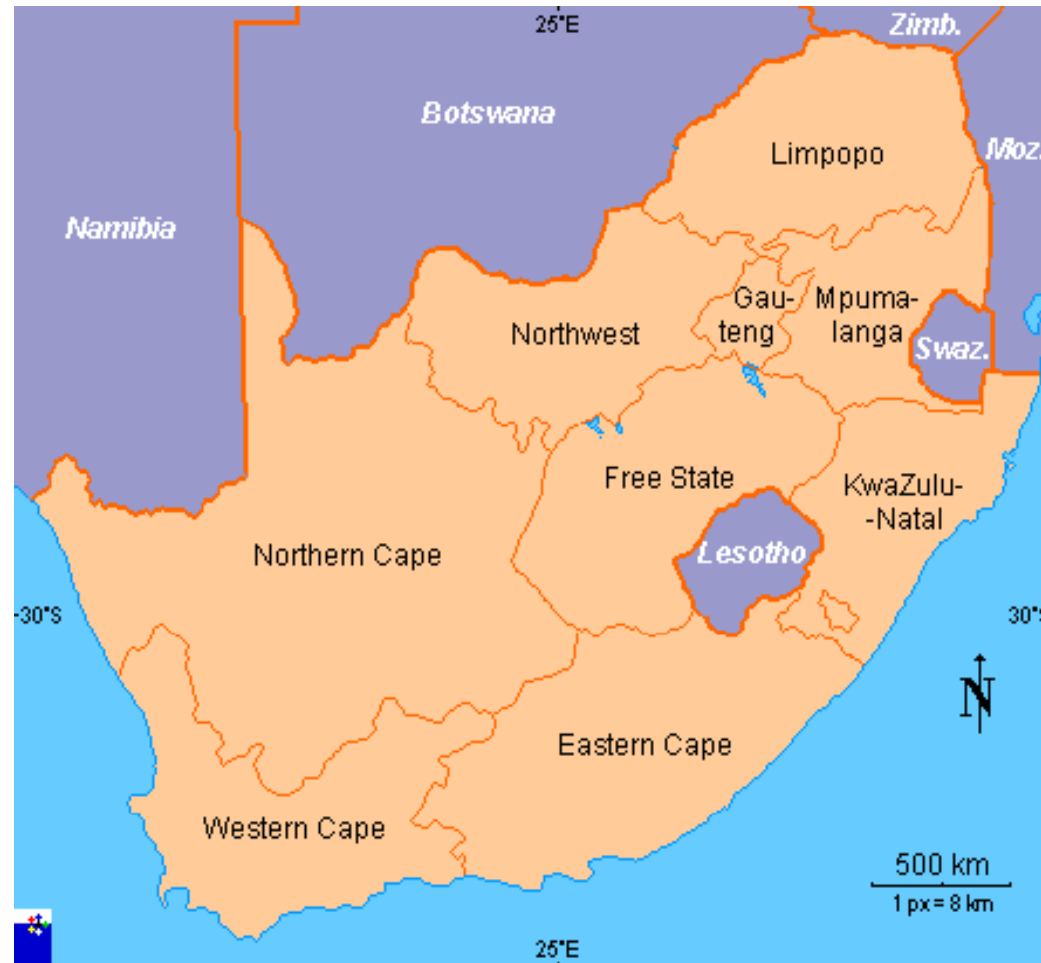
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## **Legislative Provisions for the Combination of Work and Care in South Africa.**

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# 9 Provinces



# Population: Facts and Figures:

- Population:
  - 2008 estimates (Statistics South Africa)
    - Total Population 48 687 000
- Population Groups:
  - African – 79,2%
  - Coloured – 9%
  - White – 9,2%
  - Asian – 2,6%

# Population: Ageing and Fertility

- An ageing population
- Fertility rates differ by population group: White and Asian fertility rates 1,4. African and Coloured fertility rates 2,7 and 2,3 respectively (Community Survey Stats SA, 2007).

## South African Differences:

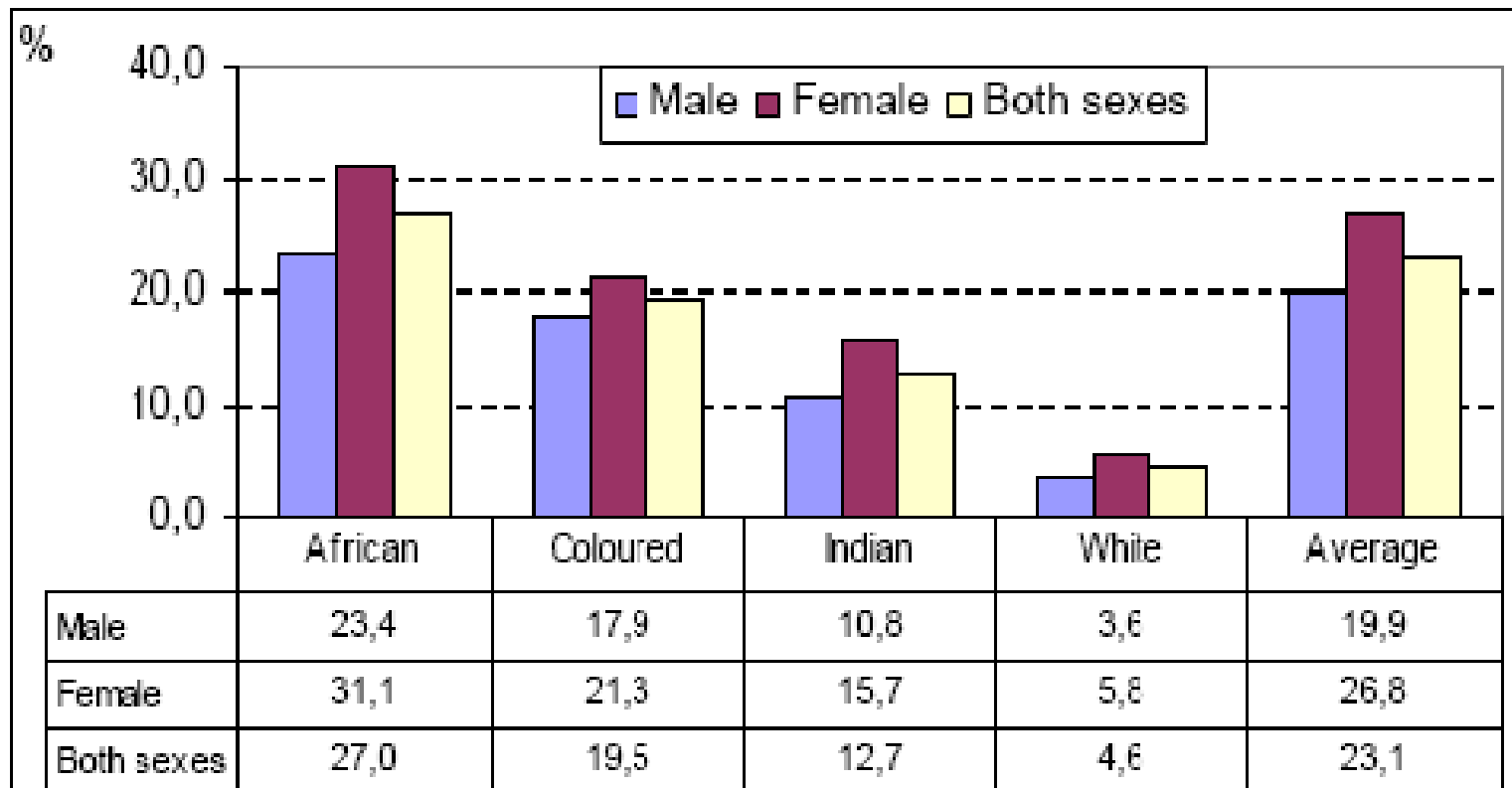
- Two areas in which the South African experience differs from the countries included in the current Network review:
  - Labour market characteristics and limitations of the reach of the law; and
  - Challenges to assumptions that traditionally exist about caregiving.

# Differences: Limitations of the Law

- Unemployment, informal sector employment, lack of adequate enforcement diminish the impact of the law.

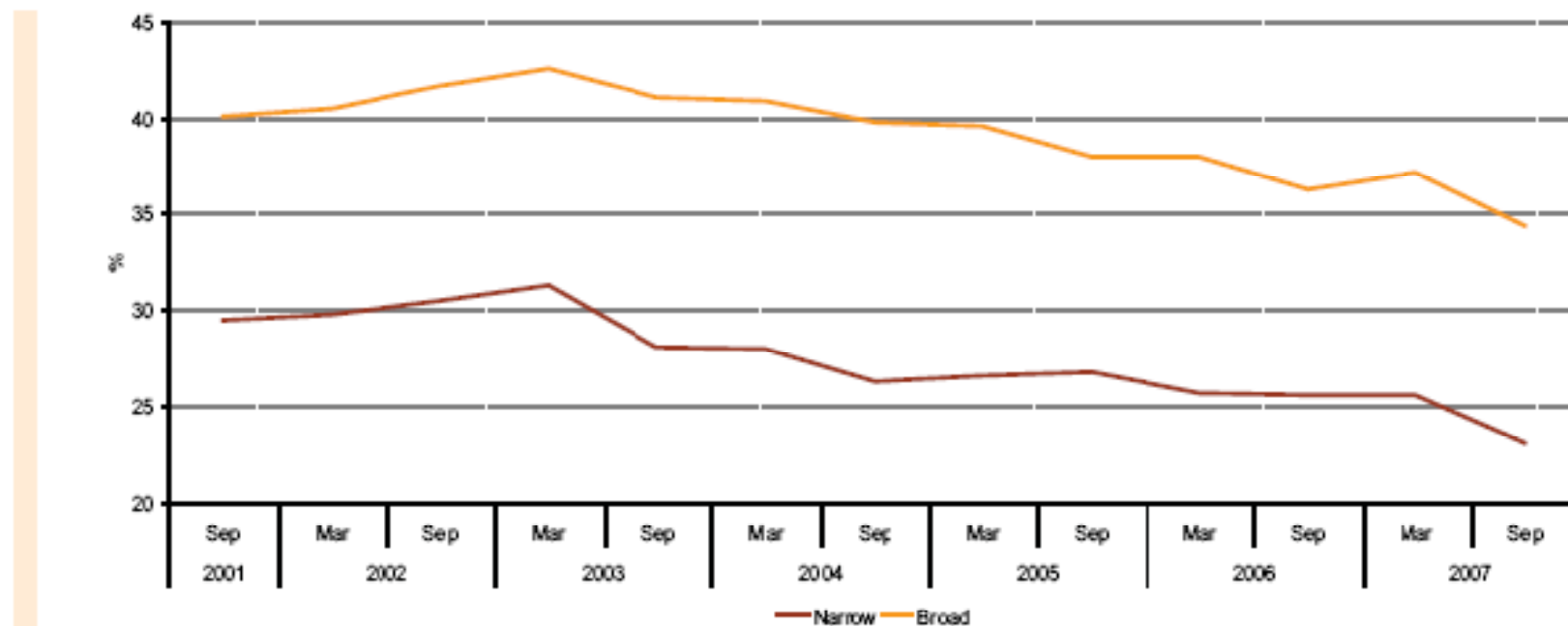
# Differences: Unemployment

- Source Stats SA, Labour Force Survey, 2008.



# Unemployment: Broad and Narrow Definitions

UNEMPLOYMENT (BROAD AND NARROW)



Definition

Narrow (official) - Number of people who have not been employed in the last two weeks, but have not taken active steps to look for work

Broad (unofficial) - Number of people seeking employment in the last two weeks plus people who have been discouraged from seeking work

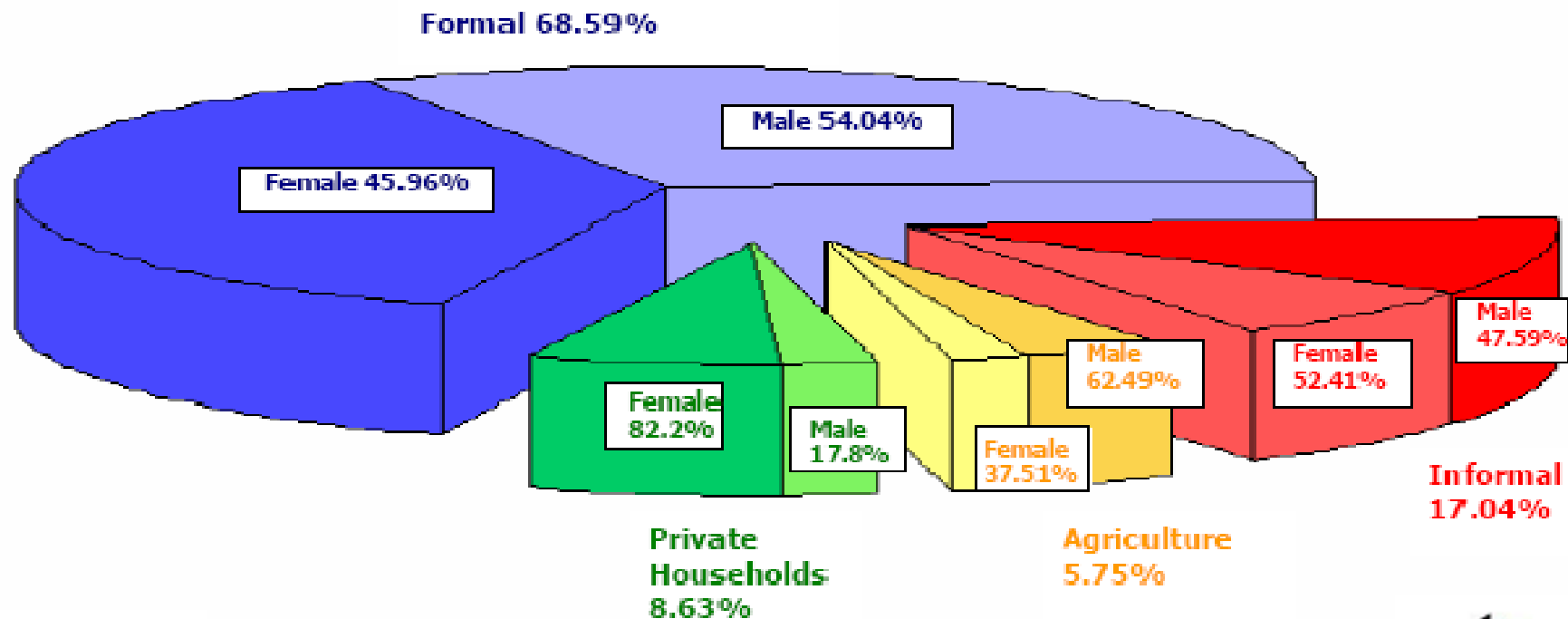
Data source

Statistics South Africa, Labour Force Surveys. March 2008 data will be released in September 2008.



# Labour Force Distribution by Sector and Gender

- Labour Force: 17 844 000 (2008 StatsSA)



# Informal Economy

## Characteristics: Sept 2008

**Portion of the labour force:** 17% (excludes 1 million domestic workers and around 400 000 involved in subsistence agriculture)

**Sector:** Just under 50% of SA informal enterprises are involved in trading

**Race:** 90% of those working in the informal economy are from the African population group;

**Sex:** There are a disproportionate number of women working informally. Women dominate segments of the informal economy where remuneration is low.

# Domestic Workers

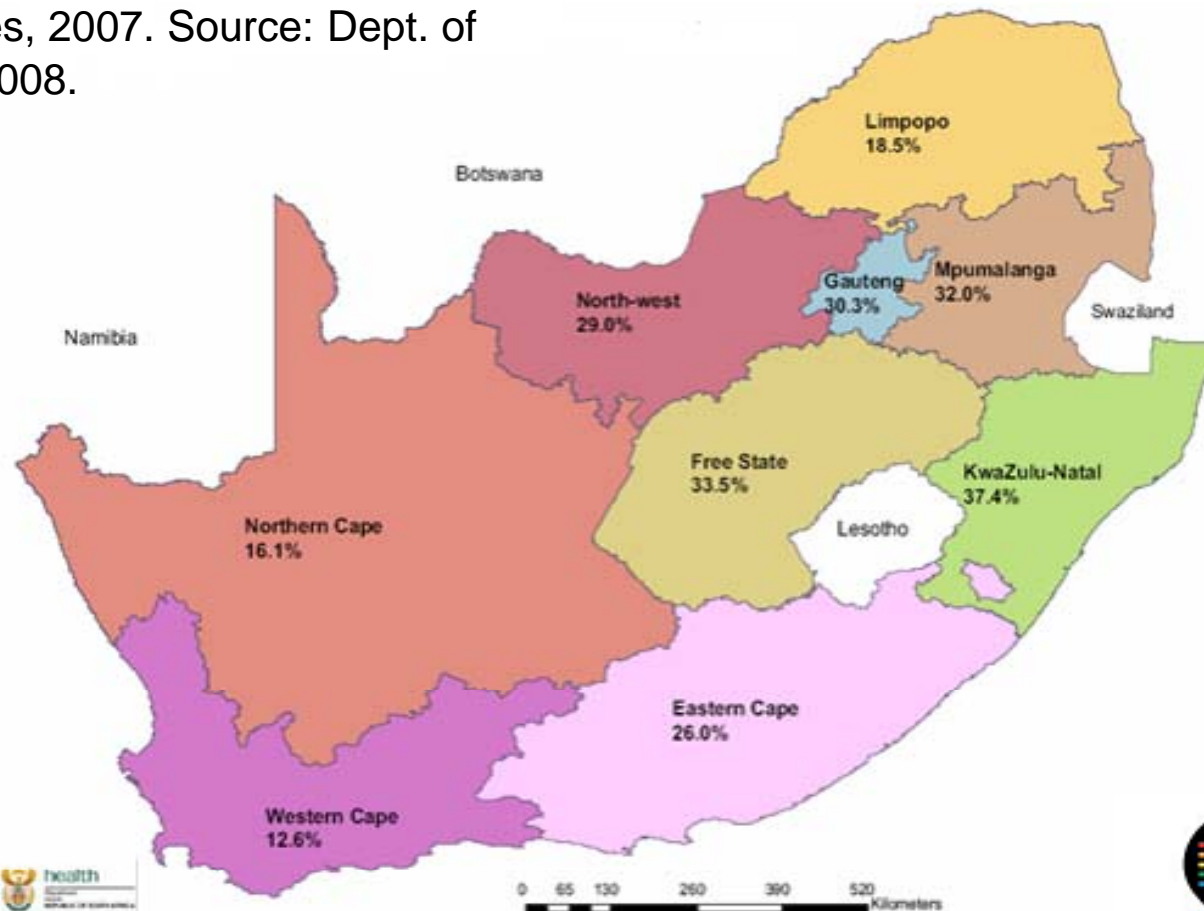
- Overwhelmingly female and African
- Minimum wages prescribed in legislation
- Covered by labour legislation regulating leave and by provisions regulating unemployment insurance.

# Challenging Assumptions about Caregiving in South Africa

- Budlender and Lund, 2007.
- 1. That the majority of children live with their mother and father.
- 2. That most children are born within marriage.
- 3. That younger and middle-aged adults are providers of financial, physical and emotional care (particularly for the young and aged), rather than recipients of care.
- 4. That men will assist in bearing the care burden associated with a crisis such as that caused by the AIDS pandemic.

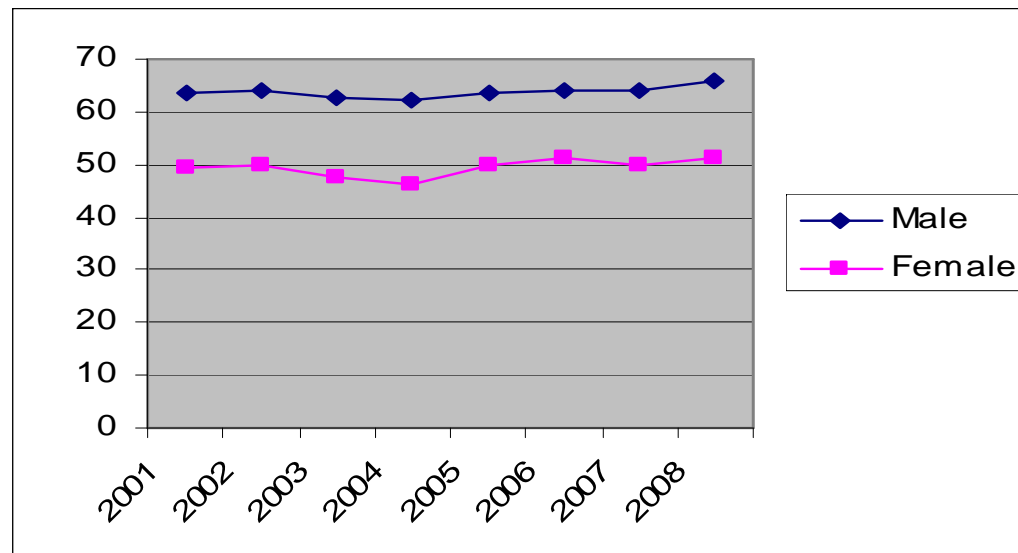
# HIV/AIDS

HIV prevalence estimates by province among ante-natal clinic attendees, 2007. Source: Dept. of Health 2008.



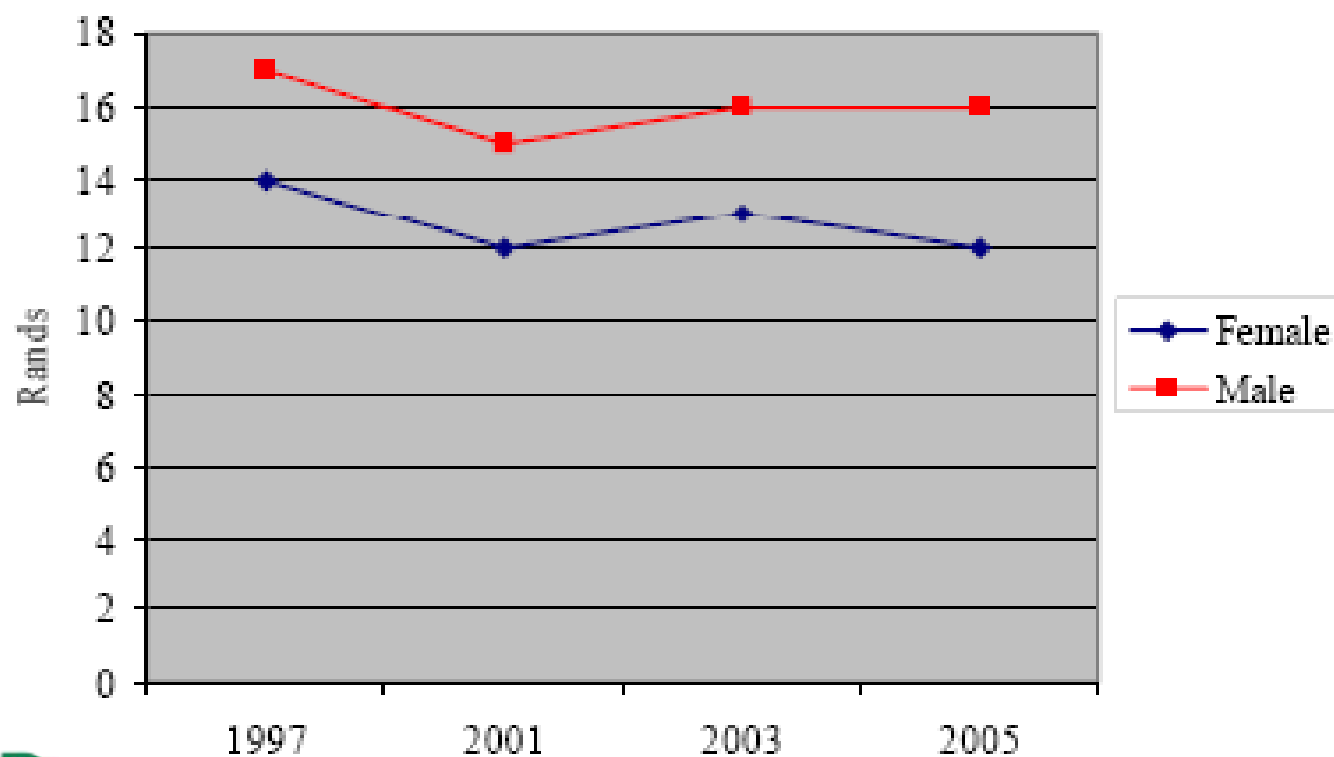
# Similarities: Female Labour Force Participation:

- Labour Force Participation Rates(2008):
  - Female: 38 % in 1995. 51,2% in 2008
  - Male: 58% in1995. 66% in 2008 . Source: StatsSA



# Gender Disparities in Earnings

- Gender Disparities in Earnings
- (Source: Posel:2008)
  - Average real hourly earnings (2000 prices) South Africa



# Similarities: Women and Part-Time Work:

- Women more likely to be found in part-time work
- 21% of women work less than 40 hours a week compared to 10,25% of men (StatsSA, 2008).



# International Obligations: ILO

- *South Africa's ratification of selected ILO Conventions relating to work- family integration.*

| Convention  | South Africa Ratified?<br>Yes/No | If Ratified by South Africa<br>– when? | Number of Countries Ratifying Convention as at Feb 2008 |
|---|----------------------------------|--|---|
| <i>Workers with Family Responsibilities Convention, 1981 (No 156).</i>      | No                               | n/a                                    | 40  |
| <i>Equal Remuneration Convention, 1951 (No 100)</i>                         | Yes                              | 2000                                   | 164   |
| <i>Discrimination (Employment and Occupation) Convention, 1958 (No 111)</i> | Yes                              | 1997                                   | 166   |
| <i>Maternity Protection Convention, 2000 (No 183)</i>                       | No                               | n/a                                    | 13  |
| <i>Convention on Part-Time Work, 1994 (No 175)</i>                          | No                               | n/a                                    | 11  |

# International Obligations:

- South Africa ratified CEDAW in 1995.
- Beijing Platform for Action (BPFA), which was adopted at the United Nations Fourth World Conference on Women in 1995.
- SADC Charter of Fundamental Social Rights of Workers, adopted in August 2003 which provides for equal treatment of workers and reconciliation of work and family obligations.
- The AU Solemn Declaration on Gender Equality in Africa in 2004. This Declaration is an African instrument for promoting gender equality and women's empowerment.

# Work-Family Legislative Provisions in South Africa

- Leave entitlement in South Africa is primarily governed by one main statute that applies to the whole country: the Basic Conditions of Employment Act (BCEA).
- It sets minimum standards that can be improved upon through collective bargaining, in forums called bargaining councils.

# Maternity Leave: Duration

- Basic Conditions of Employment Act provides for a minimum period of four consecutive months maternity leave with job security guaranteed through the provisions regulating automatically unfair dismissals in the Labour Relations Act.
- Maternity leave can be taken any time from four weeks before the expected date of birth. An employee cannot work for six weeks after the birth.

# Maternity Leave: Payment

- Employee's on maternity leave are able to claim up to 17,32 weeks payment from Unemployment Insurance with the percentage payment related to earnings. Sliding scale from 31% to 59% of earnings.
- Compulsory contributions to the UIF are made by employers and employees. Each contribute an amount of 1 per cent of the employee's remuneration.

# Maternity Leave: Exclusions

- Independent contractors and self-employed women are not eligible for statutory maternity leave.
- An employee is not eligible for statutory maternity leave if working for less than 24 hours a month for their employer.
- Public sector employees get 4 months paid leave in terms of a 2007 Determination in respect of leave in the public service. Public sector employees account for approximately 13 – 14% of formal employment in South Africa.

## Minimal Improvements on Legislated Maternity Leave in Collective Agreements:

- Survey of 361 enterprise level agreements and 31 bargaining council agreements found that only about 7 per cent of agreements specifically provided for additional unpaid maternity leave of about two months (Elsley, 2007).
- Only 4,9 per cent of the bargaining council agreements and 3 per cent of enterprise level agreements provide on average between 25 per cent and 33 per cent of payment towards maternity leave by employers (Benjamin, 2007).

# Adoption Leave and Pay:

- There is no statutory leave for adoption of a child. There is however a right to claim unemployment insurance benefits for time off work for adoption purposes.
- Only one parent can make application for adoption benefits and the child adopted must be under two years of age.
- Employees in the public service are entitled to 45 working days when adopting a child under the age of two years.



## Paternity Leave:

- South Africa has no separate legislative provision governing paternity leave.
- Father's who wish to take leave for the birth of a child have to utilize their family responsibility leave.

# Family Responsibility Leave:

- A minimum of three days paid leave per twelve month cycle to attend to the birth or illness of a child or death of a stipulated family member.
- Employee must have worked for his/her employer for longer than four months and work at least four days per week.

# Family Responsibility Leave:

- Public service employees: three days family responsibility leave for the birth of a child of a spouse or life partner, or in the event of the sickness of a child, spouse or life partner. Five days leave per annual leave cycle for the death of a spouse, life partner, child or immediate family member.
- Total family responsibility leave cannot exceed five days.

## Parental / Carers Leave:

- No statutory entitlement.
- No statutory entitlement to career breaks.
- Employees in the public service are entitled to extend their maternity leave by 184 day's unpaid leave.

# Flexible Work Arrangements:

- No legislated right for employees to request flexible working arrangements.
- ‘Family responsibility’ discrimination protected in the Employment Equity Act but no cases claiming FRD to date.

## Codes of Good Practice:

- Code of Good Practice on the Protection of Employees during Pregnancy and After the Birth of a Child.
- Code of Good Practice on the Integration of Employment Equity into Human Resource Policies and Practices.
- Code of Good Practice on Arrangement of Working Time

# Conclusion

- Collective bargaining appears to have achieved little in the way of improvements on legislated minima;
- The way forward: Revision of ‘family responsibility leave’. Introduce a separate legislative right to paternity leave and carers leave;
- Consider the introduction of the legislative right to request flexible working arrangements .