



International  
Labour  
Office

Working Paper 2 / 2012

# Good practices and challenges on the Maternity Protection Convention, 2000 (No. 183) and the Workers with Family Responsibilities Convention, 1981 (No. 156): A comparative study

by Adrienne Cruz



Bureau for  
Gender  
Equality



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*ILO Cataloguing in Publication Data*

Comparative study on promoting decent work through providing maternity protection and supporting workers with family responsibilities: ratifying and applying Conventions Nos 183 and 156 / International Labour Office. – Geneva: ILO, 2012

ISBN 978-92-2-126582-5 (print)

ISBN 978-92-2-126583-2 (web)

International Labour Office

maternity protection / family responsibilities / gender equality / women's empowerment / ILO Convention / ILO Recommendation / ratification / application / supervisory machinery / role of ILO / good practices / Australia / Benin / Chile / Macedonia, former Yugoslav Republic / Moldova, Republic / Morocco / Niger / Paraguay / Sri Lanka / Ukraine

13.03.1

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## Preface

The success of national and workplace strategies to promote women's equal opportunities and treatment in labour markets and gender equality at work are dependent on adequate and accessible maternity protection and family-friendly services and measures. Supporting workers with family responsibilities also helps fathers to be more involved in care of their children and more equally share in responsibilities in the home.

This working paper was produced by the Bureau for Gender Equality with the collaboration of the International Labour Standards Department (NORMES) and in consultation with the Conditions of Work and Employment Programme (TRAVAIL). The working paper comprises ten country studies that examine good practices and challenges related to the ratification and application of the Maternity Protection Convention, 2000 (No. 183) and accompanying Recommendation (No. 191), as well as the Workers with Family Responsibilities Convention, 1981 (No. 156) and accompanying Recommendation (No. 165). The working paper identifies successful strategies by ILO constituents – governments, and employers' and workers' organizations – to promote maternity protection and support workers with family responsibilities, including stepping up efforts to ratify and implement the two Conventions.

The working paper is divided into three parts. The first part explains its aim, audience, and methodology used. It then describes why providing maternity protection and supporting workers with family responsibilities are key to achieving the Decent Work Agenda and gives examples of ILO research, policy development and operational activities. The costs of not taking action are summarized, followed by the rights-based and business cases for doing so including advantages for workers and their families, employers, and nations. Subsequent sections summarize how international labour standards are adopted, ratified and reported on, and list the core elements of Convention Nos. 183 and 156 and accompanying Recommendations.

The second part comprises two sets of country studies. The first set concerns ratification and application of Convention No. 183 in Benin, Moldova and Morocco, with a further country study on Sri Lanka focusing on its ratification and implementation of Maternity Protection Convention (Revised), 1952 (No. 103, which preceded Convention No. 183). The second set of studies concerns ratification and application of Convention No. 156 in Australia, Chile, The former Yugoslav Republic of Macedonia, Niger, Paraguay and Ukraine.

The third part highlights good practices from the country studies in relation to the substantive Articles of Convention Nos. 183 and 156, followed by main trends identified. A final section identifies opportunities to step up ratification and implementation of both Conventions, drawing on the 2009 International Labour Conference Resolution concerning gender equality at the heart of decent work. This section concludes with points of ILO constituents' consensus on relevant strategies within the four pillars of the Decent Work Agenda. The annex contains an annotated bibliography of some 150 relevant publications, making this a comprehensive reference tool for policy makers and practitioners.

Jane Hodges  
*Director, Bureau for Gender Equality*





## Acknowledgements

Jane Hodges conceived the idea for this working paper, which could not have been drafted, finalized and published without her sustained commitment and support. Substantive inputs and a review of the text were provided by Jane Hodges, Kat Landuyt, Kroum Markov, Martin Oelz, and Emi Omura. The external reviewer was Nora Wintour. Suggestions concerning case studies, potential contributors, and/or substantive issues were provided by Laura Addati, Syed Mohammad Afsar, Rosa Benyounes, Malak Ben Chekroun, Dimitrina Dimitrova, Simel Esim, Julia Faldt, Saadya Hamdani, Vasyl Kostyrytsya, Emil Krstanovski, Ala Lipciu, Jon Messenger, Fatime N'Diaye, Shauna Olney, Sergiy Savchuk, Reiko Tsushima, and María Elena Valenzuela. Administrative support or translation was provided by Raphaël Crettaz, Isabelle Delsaux, Bob Drew, Brigitte Honma, Riette Lagarde and Veronica Rigottaz. The cover photo of a male office worker was reproduced with kind permission of the Hudson Group, and the other two were provided by the ILO photo library.







# I. OVERVIEW

## Why this working paper?

ILO constituents requested this study in the programme and budget 2012-13 section entitled “Delivering results on gender equality”. It states that “...support for ratification and effective implementation of the key gender equality Conventions will remain a priority....[Concerning] maternity protection and equality for workers with family responsibilities, a comparative study will be carried out to track best practices and ratification prospects. This analysis will cover legislation and public policies (including care policies for workers with family responsibilities) as well as corporate social responsibility and collective bargaining”.<sup>1</sup>

Moreover, the 2009 International Labour Conference Resolution concerning gender equality at the heart of decent work called on ILO to “compile and disseminate good practices on parental leave and paternity and maternity leave and benefits, and provide technical support to governments to develop effective laws and policies” and “promote improved ratification rates, and analyze obstacles to ratification, of [Convention Nos. 183 and 156]...and ensure their effective implementation”. The Resolution also noted that “more analysis is required regarding the low number of ratifications of Convention No. 183 and efforts to promote it should be stepped up”.<sup>2</sup>

### › Aim

The goal of this working paper is to contribute toward improved ratification rates of Conventions Nos. 183 and 156 and the effective implementation of both the Conventions and their accompanying Recommendations. Within this goal, specific aims of the working paper include the following.

- ▶ Enhance knowledge-sharing of good practices and lessons learned through national case studies on ratification and application of the two Conventions, as well as challenges and lessons learned, across regions and within different national economic, political and cultural contexts.
- ▶ Identify some trends and research gaps, as well as emerging challenges, in recent literature on maternity protection and on workers with family responsibilities.
- ▶ Serve as an information resource for sensitization and capacity building on the two themes, especially for the tripartite constituents.

<sup>1</sup> *Programme and Budget for the Biennium 2012-13*, ILO, Geneva, 2011, page 83, para. 311.

<sup>2</sup> *Provisional Record No. 13, Gender equality at the heart of decent work (general discussion)*, Report of the Committee on Gender Equality, 98th Session of the International Labour Conference, Geneva, 2009, page 13/76 para. 54(d), page 13/77 para. 56 (b), and page 13/71 para. 30.

## › Audience

The main audience for this working paper are the ILO tripartite constituents – governments, and workers’ and employers’ organizations – although it will also be of interest to others including representatives of civil society, academics, gender equality advocates, and health professionals.

## › Methodology

The methodology for the ten country case studies, which were written by researchers based in the countries, was designed to capture a wide array of possible factors that they considered as contributing toward good practices. Interviews with constituents in the country, as well as ILO specialists and other development actors, were used to explore such factors including: political will and the policy environment, economic context, legislative framework, labour market trends, human resources and financing mechanisms, status of women and their share in the workforce, decision-making, labour administration and inspection, and social dialogue including collective bargaining and gender-related representation and mechanisms. Additional factors considered were the impact of public policies and cost-benefit analysis, working-time arrangements including part-time and flexitime, sex-disaggregated data, capacity and engagement of workers’ and employers’ organizations, public awareness campaigns, UN country teams’ multisectoral approaches, ILO initiatives, and civil society engagement. Researchers also carried out a desk study of relevant General Surveys and individual comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to ratifying countries, discussions by the International Labour Conference Committee on the Application of Standards,<sup>3</sup> and other ILO reports. Good practices described in the case studies, which reflect individual authors’ views and not necessarily those of ILO, were also highlighted by authors when they felt that these were relevant and/or illustrative of strategies within each unique national context.

The methodology for the annotated bibliography, which was shared with researchers prior to their own desk studies, was designed to prioritize relevance of the entries to ILO tripartite constituents as well as an international audience. This included choice of a selection of information resources based on usefulness, insights and lessons learned, good practices and any challenges overcome, and practical advice and guidance. A special effort was made to identify and include entries that incorporated a “men and masculinities perspective”<sup>4</sup> within the larger goal of gender equality in both the private and public spheres. All of the nearly 150 resulting entries were published in the last

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<sup>3</sup> These include *Workers with family responsibilities*, International Labour Conference, 80th Session, Geneva, 1993; and comments by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning application of international labour standards including Convention Nos. 183 and 156; see [www.ilo.org/normlex](http://www.ilo.org/normlex)

<sup>4</sup> This refers to the growing body of research on the roles, expectations and many widely-varying definitions of what it means to be a man in societies and how these can change over time and from place to place. Initiatives to work with men and boys must be placed in the overall context of promotion of gender equality; however increased focus on the “male side” of gender does not mean that necessary support to women and girls should be decreased. Unequal power relations suppress women and girls – but there are also significant negative effects on men and boys. These include enormous health disadvantages such as heightened vulnerability to alcoholism, sexually-transmitted diseases, homicidal violence, and imprisonment. There is also pressure on men to spend long hours at the workplace. In “gender just” societies and families, men would be able to enjoy more trusting and respectful relations with women, and with other men. They would have more opportunities for more equally taking part in the care of children – both as parents and as professional caregivers.

ten years in English, French and/or Spanish, and are accessible on internet. The first section of the annotated bibliography comprises mostly ILO international, regional and country-based research, and the second comprises guides and tools.

## Promoting decent work by providing maternity protection and supporting workers with family responsibilities

The ILO Decent Work Agenda comprises four strategic pillars: principles and rights, employment, social protection, and social dialogue – with gender equality and non-discrimination as crosscutting issues. ILO aims to help achieve full and productive employment for all women and men in conditions of freedom, equity, security and human dignity. Convention No. 183 on Maternity Protection and No. 156 on Workers with Family Responsibilities – along with the Equal Remuneration Convention, 1951 (No. 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – are considered to be the key gender equality Conventions, as they form the underpinnings of equal opportunity for women and men in the world of work. This is because issues related to equal pay, access to equal opportunities, reconciling work and family responsibilities, and maternity protection must be part of overall policy packages to promote gender equality. The gender pay gap is both a cause and consequence of gender inequalities between women and men, and must be addressed. Achieving equality also requires policies to better enable men and women with family responsibilities to prepare for, enter and advance in employment. Maternity protection is essential in ensuring that women’s reproductive roles do not jeopardize their economic security, their health or the health of their children. Thus the four Conventions together have been acknowledged as essential instruments for achieving gender equality in the world of work, and to be effective, gender equality policies should address issues covered by all of the four.

### What about such rights for domestic workers?

Female domestic workers have limited access to protection and measures that help ensure safe and healthy pregnancies and births, a replacement income while on leave, and the right to return to their jobs. Some 36 per cent of female domestic workers globally do not benefit from legal entitlements to maternity leave. Where maternity leave entitlements exist, their enjoyment in practice often is hampered by lack of income replacement during leave and dismissal of the domestic worker in case of pregnancy. And a number of countries receiving migrant domestic workers have laws or regulations that allow dismissal and/or repatriation of such workers found to be pregnant. This is despite the fact that Convention No. 183 on Maternity Protection aims to cover all employed women and prohibits discrimination based on maternity.

In the Decent Work for Domestic Workers Convention, 2011 (No. 189), Article 14(1) requires Members take appropriate measures to ensure domestic workers enjoy conditions not less favourable than those generally applicable to workers in respect to social security protection, including regarding maternity benefits. These measures are to be taken “in accordance with national laws and regulations” and “with due regard to the specific characteristics of domestic work”. Thus the Convention provides flexibility in design of appropriate measures to ensure domestic workers’ social protection, and the measures may be put in place progressively.

In the Decent Work for Domestic Workers Recommendation, 2011 (No. 201), Paragraph 25 states that “members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:...(b) address the work-life balance needs of domestic workers; and (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities”. Paragraph 3 states that “in taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, among other things:...(c) ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status”.

Sources: *Decent Work for Domestic Workers – Report IV(1)*, 99th Session of the International Labour Conference, ILO, Geneva, 2010; *Decent Work for Domestic Workers – Convention 189 and Recommendation 201 at a glance*, ILO Conditions of Work and Employment Programme, Geneva, 2011; and *Coverage of domestic workers by key working conditions laws*, Domestic Work Policy Brief No. 5, ILO Conditions of Work and Employment Programme, Geneva, 2011.

Safe maternity for women workers is at the core of life itself. Several entry points for improving maternity protection are provided by the Decent Work Agenda with gender equality as a cross-cutting issue. ILO priority areas include improving protection at the workplace and implementing, extending and improving social protection. Convention No. 183 has at its heart the strategic objective of social dialogue<sup>5</sup> as well as of achieving decent work for all by providing protection to all employed women, including those in atypical forms of dependent work such as home work and casual, seasonal and informal work. The Social Protection Floors Recommendation, 2012 (No. 202) includes healthy maternity among the basic elements of such floors.

### **What about such rights for women in agriculture?**

At the first-ever global meeting of women banana workers, held during the World Banana Forum in February 2012 in Guayaquil (Ecuador), participants identified three key concerns: lack of permanent employment opportunities for women in the sector; reproductive health concerns related to poor occupational safety and health and difficulty to access maternity rights; and sexual harassment at work. Generally it is difficult for women agricultural workers to exercise their legal rights, whether these are set by national legislation or by ILO Maternity Protection Conventions. Employers often keep women on short-term contracts, so that after three months the women must take a few days break and then are re-employed on another short-term contract. This is done to avoid them gaining entitlement to maternity benefits. There are cases in some companies where women must take pregnancy tests in order to be recruited.

ILO supervisory bodies have commented on problems including the exclusion or non-coverage of women in the agricultural sector with respect to maternity leave, as well as the lack of statistical data on coverage in this sector. ILO, its standards, and its technical cooperation have a key part to play in empowering rural women and ending hunger and poverty. The instruments are there – but more needs to be done to obtain ratification and then get them “off the paper” and into agricultural fields where women are working and need protection. Relevant Conventions include:

- ▶ Equal Remuneration Convention, 1951 (No. 100)
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

<sup>5</sup> For example, see Articles 2 and 3 and 6(b).

- ▶ Plantations Convention, 1958 (No. 110)
- ▶ Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- ▶ Rural Workers' Organisations Convention, 1975 (No. 141)
- ▶ Workers with Family Responsibilities Convention, 1981 (No. 156)
- ▶ Maternity Protection Convention, 2000 (No. 183)
- ▶ Safety and Health in Agriculture Convention, 2001 (No. 184)

Governments should review national legislation with a view to promoting extension of national labour law to all rural workers. National legislation should incorporate the specificities of rural work and spell out the rights and responsibilities of all concerned; promote gender-responsive employment policies; and strengthen rural labour inspection. Both governments and the social partners should develop innovative communication strategies to ensure that rural women workers are aware of their rights especially concerning maternity, and develop skills training programmes and vocational training qualifications for them.

Source: Sue Longley, Global Agriculture Coordinator, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF). Extract of presentation at ILO International Women's Day panel on "Empower Rural Women – End Hunger and Poverty", 8 March 2012, Geneva.

Supporting workers with family responsibilities is one of the most important strategies within the Decent Work Agenda for achieving equality between women and men in the world of work. Governments have a leadership role to play by setting policy and creating an enabling environment conducive to dialogue and reconciliation of work and family responsibilities. ILO technical support and guidance aims to help Governments design legislation and adopt measures to bring about more equal sharing of family responsibilities in the private sphere of the family, as well as achieving equitable opportunities and treatment in paid work for women and men with family responsibilities, which includes provision of affordable public services such as child and eldercare. ILO also provides technical support to employers' and workers' organizations in their efforts to design and implement work-family measures.

### **Key terms**

#### *Discrimination based on sex*

Refers to differential treatment of women and men on the basis of their sex. This type of discrimination has the effect of nullifying or impairing equal opportunity and treatment in employment or occupation, including terms and conditions and access to vocational training, and in equal access to and control over productive resources and benefits. Direct sex discrimination occurs when less favourable treatment is explicitly or implicitly based on a distinction between women and men. Indirect sex discrimination refers to what appear to be neutral situations, regulations or practices that in fact result in unequal treatment of persons of one sex.

#### *Gender division of labour*

Refers to segregation by sex in performance of unpaid and paid work in both private (such as in the family) and public spheres (such as in the labour market). This division reflects stereotypes about women and men, and boys and girls including their interests, abilities, responsibilities and roles. In

general women carry out the overwhelming share of unpaid work in households and communities;<sup>6</sup> this leads to inequality in labour markets since such work severely constrains women's access to and equal opportunities and treatment in paid work. This constraint is exacerbated by a lack of public expenditure on or cuts to infrastructure including water, electricity and transport, as well as services such as health, and child and eldercare. The gender division of market-related work translates into occupational sex segregation both horizontally (with women concentrated in lower-skilled jobs or the generally-undervalued caring and service occupations) and vertically (with women concentrated in lower-level positions without promotion opportunities), as well as women's disproportionate share of jobs in the informal economy and as unpaid agricultural or family workers.

#### *Gender equality*

Refers to the enjoyment of equal rights of women and men, and girls and boys, in all spheres throughout their lives. Such rights, including access to and control over resources and benefits, should not depend on whether a person is born male or female. Instead, everyone should be able to develop their interests and abilities, and make choices that are free from limitations set by rigid stereotypes and discrimination. ILO advocates gender equality and women's economic empowerment, both of which are critical to achieving its overall aim of decent work, especially through more equitable opportunities and treatment in the world of work. In order to promote gender equality, ILO uses a mainstreaming strategy to integrate gender equality across its four strategic objectives, namely to promote and realize fundamental principles and rights at work, create opportunities to secure decent employment and income, enhance the coverage and effectiveness of social protection, and strengthen tripartism and social dialogue.

### › Relevant ILO research and policy development

ILO research tools<sup>7</sup> relevant to both maternity protection and workers with responsibilities include the Database of National Labour, Social Security and Related Human Rights Legislation (NATLEX), which provides abstracts of legislation and relevant information indexed by keywords and subjects. The Information System on International Labour Standards (NORMLEX) is a database comprising ratification information, reporting requirements, and comments of the ILO supervisory bodies, as well as national labour and social security laws. The Database of Conditions of Work and Employment Laws provides information on regulatory environments for maternity protection in over 140 countries, as well as national laws on working time. The database, which also features national provisions for giving effect to maternity protection at work, allows for comparing such provisions with those established in international labour standards as well as with those of other countries.

#### – *Maternity protection*

Reviews have been conducted of national legislative provisions in comparison to requirements of Convention No. 183, the most recent of which was published by the ILO Conditions of Work and Employment Programme (TRAVAIL) in 2010. A global working

<sup>6</sup> References to statistical data are included in the annotated bibliography.

<sup>7</sup> All publications mentioned in this section are included in the annotated bibliography.

conditions survey, including on access to maternity protection, is now ongoing under a joint initiative of ILO and the European Foundation for the Improvement of Living and Working Conditions. Many research findings are summarized in ILO's *Maternity Protection Resource Package*, which was published in 2012.

– *Workers with family responsibilities*<sup>8</sup>

Research on trends that impact reconciliation of work and family responsibilities is conducted by TRAVAIL; examples include a comparative study on working time trends, laws and policies around the world; equal sharing of family responsibilities between women and men, including care giving in the context of HIV and AIDS; informal economy workers' childcare concerns; and a law and practice report on decent work for domestic workers including their maternity protection and childcare needs. TRAVAIL also maintains a research paper series on conditions of work and employment, with recent policy-oriented studies about reconciling work and family published on Brazil, China, Japan, Republic of Korea, Thailand, and Trinidad and Tobago. The ILO Policy Integration Department (INTEGRATION) recently published an in-depth analysis of the connection between unpaid care work and paid work.

ILO is developing policy options to assist constituents in upgrading social security systems to be more inclusive and take into account the needs of workers with family responsibilities. An example is a set of joint ILO and UNDP policy proposals, which comprise studies and reports on reconciling work and family responsibilities in Latin America and the Caribbean, including for Argentina, Paraguay and Peru. Studies have also been published by the ILO Bureau for Gender Equality (GENDER) on indigenous women workers and women in agricultural and rural employment, which examine maternity protection and family responsibilities, among other issues. An example of ILO contributions to international debates is a paper on policy initiatives for equal sharing of family responsibilities including care giving in the context of HIV/AIDS, presented during an expert panel at the 53rd Session (2009) of the UN Commission on the Status of Women.

**Decent working time arrangements: Promoting gender equality and family-friendly workplaces**

Five significant dimensions of decent working time are: working time arrangements should promote health and safety; be “family-friendly”; promote gender equality; advance the productivity of enterprises; and facilitate worker choice and influence over their hours of work. Advancing each of these requires a broad range of policies, which may be articulated at the national, sectoral and/or enterprise levels – depending also on socio-economic realities of the country.

Concerning family-friendly working time, conflicts in work-family responsibilities tend to be reported by persons who work long hours (over 48 hours per week) or work “non-standard” shifts in the evening, at nights and weekends, and/or have unpredictable variations in their working hours. Part-time jobs – often used as a strategy for balancing work-family responsibilities – are on average of less quality in terms of hourly wages and benefits such as pensions, social insurance coverage, training, and career

<sup>8</sup> Information on laws and policies, including progress made or obstacles encountered, can be found in a number of recent comments on the application of Convention No. 156 addressed by the CEACR to a number of ratifying States including Argentina, Japan, Korea, Paraguay, Peru and the Netherlands; see: [www.ilo.org/normlex](http://www.ilo.org/normlex)



development. These workers are also overwhelmingly female, which means in nearly all countries part-time work is sex-segregated.

Working time arrangements, instead of negatively impacting especially women's equal participation in the labour market, should be used simultaneously to promote gender equality. For example, part-time work or parental leave may promote work-family balance – but if only taken by mothers these help reinforce women's overrepresentation in marginal forms of labour market participation and their unequal burden of unpaid care. An example of a simultaneous strategy is changing the “long-hours culture”, which acts as an invisible barrier to women's participation in the labour market and advancement into management positions, while promoting men's more equal sharing of family responsibilities.

“Normalizing” part-time work – making such positions equivalent to those of full-time in terms of pay, benefits and career development opportunities – and flexible working time arrangements can improve conditions in part-time work while reducing the work-family conflict. Another strategy is “de-segregating” part-time work by making such positions available in a wider range of jobs, and by minimizing career penalties through incentivizing employers to structure part-time positions around “substantial” rather than “marginal” part-time hours.

To help overcome managerial resistance and negative attitudes of colleagues, which create obstacles to men's use of family-reconciliation working time measures, a range of policies – and not just on working time – are needed. Examples include implementing enterprise-level policies to promote the take-up of such measures by men, providing fathers with the right to take extended leave for family reasons, and reducing their working hours when they have young children. Such rights are already available to working mothers in many industrialized countries.

Source: “Towards Decent Working Time”, Messenger, J., chapter in *Decent Working Time – New trends, new issues*, edited by Boulin, J.Y.; Lallement, M.; Messenger, J. and Michon, F., ILO, Geneva, 2006.

## ► Relevant ILO operational activities

As part of the 2009 public awareness campaign entitled “Gender equality at the heart of decent work”, two of the 12 themes of GENDER-coordinated brochures, posters and videos were maternity protection and paternity leave, and workers with family responsibilities. The two themes also featured in a collective bargaining kit jointly-published by the ILO Bureau for Workers' Activities (ACTRAV) and InFocus Programme on Strengthening Social Dialogue, with “how to” modules on maternity protection and workers with family responsibilities.

ILO initiatives on the two issues form part of its contributions to wider global efforts including by the UN system. For example, ILO participates in the Partnership for Maternal, Newborn and Child Health, and in the UN “Countdown to 2015” campaign, which monitors maternal, newborn and child survival. The latter is especially relevant since ratification of Convention No. 183 is among the Countdown indicators for health systems and policies required to improve maternal, newborn and child health. ILO is also an active member in the Global Health Workforce Alliance, hosted by the World Health Organization (WHO) and launched in 2006; ILO and its partners are focusing attention on geographic imbalances and severe shortages of healthcare personnel. An example of these efforts is guidelines on health services and HIV and AIDS, jointly produced by ILO and WHO with health care experts and representatives of governments

and the social partners. The guidelines focus on, among other issues, improving health service workers' employment conditions – such as workplace risks to violence and HIV exposure, and lack of training opportunities – through consultation and participation of such workers in social dialogue and collective bargaining.

– *Specifically on maternity protection*

ILO technical assistance to constituents on international labour standards includes specific guidance for implementing the principles of maternity protection. One recent national-level example is in Jordan, where ILO worked with the Government and social partners to provide guidance on fair and affordable maternity protection, including

**Critical role of workplaces in preventing parent-to-child transmission of HIV**

Every year some 42,000 HIV-positive women die from complications related to the disease and pregnancy, and about 390,000 infants are infected during pregnancy, labour and delivery, or breastfeeding. Nearly all these risks of mother-to-child transmission can be eliminated with antiretroviral treatment (ART) and safer birthing and breastfeeding practices. Because reducing stigma and discrimination about the disease is critical to knowing one's HIV status and adhering to treatment, workplaces are an important platform to reduce these. And as timely information and counseling are key to preventing parent-to-child transmission, workplace learning sessions on HIV can be held for employees and their spouses/partners.

Workplaces can play a critical role in preventing mother-to-child transmission by setting up referral linkages with antenatal care centres, as well as those for ART. Adequate maternity leave and flexible working time arrangements help ensure the woman can take care of herself and infant. Workplaces should help prevent mother-to-child transmission through support to breastfeeding practices of women with HIV, in accordance with international guidelines of the World Health Organization (WHO). Based on the WHO guidance and where a mother living with HIV is encouraged to breastfeed as the best option for her infant, supporting breastfeeding after her return to work is even more critical.

For households affected by HIV, the situation is often dramatic: caring needs increase just when additional income is needed for medical costs. At the same time the HIV-positive family member may suffer possible income loss, and a relative – most often a female – may be expected to stop paid work or schooling to care for the sick person. “Temporary absence from work because of illness or caregiving duties related to HIV or AIDS”, states Recommendation No. 200 concerning HIV and AIDS and the world of work, “should be treated in the same way as absences for other health reasons, taking into account the Termination of Employment Convention, 1982”.

Sources: Joint United Nations Programme on HIV/AIDS, World Health Organization, and ILO<sup>9</sup>.

<sup>9</sup> *Global plan towards the elimination of new HIV infections among children by 2015 and keeping their mothers alive 2011-2015*, UNAIDS, Geneva, 2011; *Global HIV/AIDS response – epidemic update and health sector progress towards universal access: progress report 2011*, World Health Organization, Geneva, 2011; Addati, L. and Cassirer, N., *Equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS* (EGM/ESOR/2008/BP.2), prepared for Expert Group Meeting, Commission on the Status of Women, Geneva, 6-9 October 2008; *Recommendation concerning HIV and AIDS and the world of work, 2010, (No. 200)*, ILO, Geneva, para. 11; and *Maternity Protection Resource Package*, ILO, Geneva, 2012, module 10, part 2 on “Breastfeeding arrangements at work”, pages 21-22.

assessing the feasibility of implementing a maternity cash-benefits scheme. Another example is the ILO Better Factories Cambodia project, in which managers' and workers' awareness has been raised and knowledge has been increased on maternity leave and breastfeeding rights.

The most recent example of an ILO training tool is the *Maternity Protection Resource Package*, produced by TRAVAIL in collaboration with several UN funds and entities, as well as breastfeeding advocacy networks. The package's 15 modules bring together information, expertise and tools concerning every component of maternity protection at work, along with resources lists and activity sheets. It covers a wide variety of related issues such as assisting the social partners to assess workplace occupational safety and health risks to pregnancy and maternal health, and improving working conditions related to such risks in small and medium enterprises as well as among informal economy subsistence and agricultural workers.

– *Specifically on workers with family responsibilities*

Practical tools are one of the ways ILO provides technical assistance on how workers with family responsibilities can be supported. Examples of such tools for use by governments and the social partners include the book *Workplace solutions for childcare*, which reviews national approaches and explains how partnerships and support for childcare can be organized and funded. An example of a tool designed for employers is the training package on *Work and Family*, jointly compiled by TRAVAIL and the Bureau for Employers' Activities (ACT/EMP). An example of a tool for workers is a training package on collective bargaining, jointly compiled by TRAVAIL and ACTRAV; it includes modules on family responsibilities and how these can be addressed with working time arrangements such as part-time, flexitime and job sharing.

Practical advice is also featured in a series of information sheets on work and family, and another on working time, both produced by TRAVAIL. Other training modules on family-friendly measures are featured in the Work Improvement in Small Enterprises (WISE) kit, which was part of an ILO project on Improving Job Quality through Concerted Efforts by Government, Employers and Workers.

## **Reasons to provide maternity protection and support workers with family responsibilities**

### **› The human rights case**

The ILO uses a human rights-based approach to the issues of maternity protection and workers with family responsibilities support. This approach is based on internationally-agreed texts, the most notable of which is the 1948 Universal Declaration of Human Rights. Its Article 25(2) proclaims that “motherhood and childhood are entitled to special care and assistance” and others state that everyone has the right to family life, just and favorable remuneration to ensure for their family,<sup>10</sup> a standard of living adequate

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<sup>10</sup> Article 23(3).

for the family's health and wellbeing including necessary social services,<sup>11</sup> and the right to social security.<sup>12</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) – in addition to recognizing women's rights especially in paid work, states in Article 10(1) that “the widest possible protection and assistance should be accorded to the family”. The Covenant, which was adopted by the General Assembly in 1966 and entered into force in 1976, provides in Article 10(2) that “special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period, working mothers should be accorded paid leave or leave with adequate social security benefits”. Article 9 recognizes “the right of everyone to social security, including social insurance”.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and entered into force in 1981, observes in its preamble that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women”. It highlights “the social significance of maternity and the role of both parents in the family and in the upbringing of children, and ...[that] the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole”. The Convention describes provisions for maternity protection and for childcare as essential rights; these are incorporated in all its sections including on employment, family law, healthcare and education. Concerning employment, Article 11(2) specifies that “States Parties shall take appropriate measures: (a) To prohibit... dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them”.

The Convention on the Rights of the Child (CRC), adopted by the UN General Assembly in 1989 and in force in 1990, specifies in Article 18 that “States Parties shall render appropriated assistance to parents and legal guardians in the performance of their child-rearing responsibilities”; they “shall ensure the development of institutions, facilities and services for the care of children”; and “States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible”. More recently, the 1995 Beijing Platform for Action calls for maternity protection for women as well as for harmonization of work and family responsibilities.

In ILO Convention No. 111, Article 5 refers to special measures for maternity, and others designed to meet the particular requirements of certain categories of workers and which are generally recognized to be necessary for reasons such as age, disablement, family responsibilities, or social or cultural status, and are not deemed to be discrimination.

<sup>11</sup> Article 25(1).

<sup>12</sup> Article 22 is cited here since maternity protection is also about providing benefits (cash and medical).

At the time of adoption of Convention No. 100 and its accompanying Recommendation No. 90, ILO constituents already recognized the important link between application of the principle of equal remuneration for women and men for work of equal value and other measures such as providing welfare and social services that meet the needs of women workers, particularly those with family responsibilities.<sup>13</sup>

A 2012 General Survey,<sup>14</sup> when referring to work and family responsibilities, also mentions the importance given to work and family issues in collective bargaining,<sup>15</sup> the link between work and family issues and child labour,<sup>16</sup> the impact on equality between women and men of outdated gender stereotyping, and the need for measures to assist workers with family responsibilities as a means to achieve gender equality and equal pay between men and women.<sup>17</sup>

## ► The business case

### – Workers

The absence of maternity leave immediately before and after birth compromises the health of the child and increases the mother's risk of acute complications. Without cash and medical benefits during maternity leave, increased expenditure due to the pregnancy and birth can result in hardships for many families and force women to return to work before it is medically advisable. When there are no workplace breastfeeding arrangements, both mother and child lose the well-documented health-related as well as emotional benefits of nursing. Without health protection in the workplace, pregnant or nursing women and children may be exposed to significant risks. Loss of entitlements or her job due to pregnancy or maternity leave have devastating consequences for the woman, her child and family. Some women may leave paid work for extended periods and forego not only short-term wages but longer-term earnings due to skills erosion, missed opportunities for training and on-the-job experience, and less seniority.<sup>18</sup>

“Family-unfriendly” working conditions – such as unpredictable schedules and long and/or unsocial hours – increase the risks for workers' mental and physical health. This can take the form of stress, difficulty in concentrating, impaired relations with co-workers, accidents, burnout, and breakdown of family relationships including divorce. Consequences can include poor job performance appraisals or disciplinary action, diminished career prospects, refused training or promotion, and job loss. In addition to their paid work responsibilities, most women daily face a disproportionate responsibility for unpaid household work. These tasks can be arduous and damaging to health, especially for those women who have few labour-saving devices or easy access to water, fuel and services like electricity.

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<sup>13</sup> Recommendation No. 90, para. 6(c).

<sup>14</sup> *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008 – Report III (Part 1B)*, Geneva, ILO, 2012.

<sup>15</sup> See box on page 38 about freedom of association, and para. 221 of the 2012 General Survey.

<sup>16</sup> *Ibid*, see chapter on child labour.

<sup>17</sup> *Ibid*, see paragraphs 653, 712-719, 739, 757, 782-788 and 838-840.

<sup>18</sup> Hein, C., *Reconciling work and family responsibilities – Practical ideas from global experience*, ILO, Geneva, 2005, pages 20 and 23.

Some families hire domestic workers as a coping mechanism for childcare. Others without affordable, reliable and quality childcare often are forced to enlist an older sibling – often a girl who is pulled from school – to care for younger ones. Or children may be left at home alone or taken to work, which can result in their withdrawal from school or ending up in child labour. Likewise, sick or disabled relatives may be left without suitable care or neglected.<sup>19</sup>

When trade unions address maternity protection and issues related to family responsibilities, this helps strengthen the unions' visibility and increase membership by attracting new recruits, especially women. And since in collective bargaining there is often more scope for non-wage benefits than wage increases, gains in these areas can impact, among other things, poor working conditions in general. Tripartite forums on maternity protection and supporting workers with family responsibilities help reaffirm participating unions' role in social dialogue, as well as provide opportunities to make alliances with other social actors.<sup>20</sup>

#### – Employers

The benefits for business are wide-ranging. Effective maternity protection arrangements are also a means to increase female participation in the labour market in general and in male-dominated workplaces, sectors and organizations.<sup>21</sup> In addition to improving employee morale, transitions back to work after leave are eased, and absenteeism and healthcare costs are diminished due to improved infant health through breastfeeding.<sup>22</sup> “Family-friendly” working time arrangements help minimize lateness and missed shifts since workers can better plan and have more choice about starting and ending times. These arrangements also help move an organizational culture of “long-hours” toward one that is results-based with a focus on quality. Businesses that are branded as family-friendly and “in tune with the times” are more competitive since they attract sought-after candidates<sup>23</sup> and retain them longer. This retention, in turn, helps preserve institutional memory, build industry knowledge and pay back investment in staff training, and maintain networks and contacts.<sup>24</sup> Workplaces that satisfy prescribed labour and quality standards are also more competitive in funding and grants applications, tendering, and awards processes.<sup>25</sup> And they are less vulnerable to loss of productivity and increased absences from work, heightened demands on managers when problems arise and are

<sup>19</sup> *Give girls a chance: Tackling child labour, a key to the future*, ILO International Programme on Elimination of Child Labour, Geneva, 2009.

<sup>20</sup> *Ibid*, pages 29-30.

<sup>21</sup> Charlesworth, S. “Paid maternity leave in ‘best practice’ organizations: introduction, implementation and organizational context” in *Australian Bulletin of Labour*, volume 33, issue 2, National Institute of Labour Studies, city not cited, June 2007.

<sup>22</sup> *Maternity Protection Resource Package – From Aspiration to Reality for All*, ILO, Geneva, 2012, module 5, page 5.

<sup>23</sup> Hein, 2005, page 28 notes that some have stated the family-friendly “business case” is not as strong for employers of less educated and lower-skilled workers. However she warns that this may reflect an undervaluing of skills and cites an example in retailing where employers were placing high priority on recruiting and low priority on retaining the mostly-female employees. In fact, the high turnover rates were due to lack of flexibility and family-friendly working conditions. Because of the undervaluing of skills, the actual costs of turnover had been underestimated.

<sup>24</sup> For example, see case studies in *Paid maternity leave – the business case*, Equal Opportunity for Women in the Workplace Agency, Australian Government, Canberra, year not cited.

<sup>25</sup> “Making the case for action”, *Work and Family – Training Package on Managing Diversity and Equality at the Workplace*, ILO Bureau for Employers' Activities; and Conditions of Work and Employment Programme, Geneva, 2008, information sheet 2.

not resolved, poor labour relations, liability risks for maternity or family-related discrimination or dismissal, a negative company image, and customer complaints if services or products are affected.

– *Governments*

When women are discriminated against due to their reproductive role or not provided maternity protection, and when workers with family responsibilities are not protected, societal impacts are wide-ranging. Gender inequality is reinforced in workplaces since women's position in the labour market is undermined, and the gender division of labour within households is reinforced and perpetuated. Because family responsibilities mainly fall on women, many choose part-time work or settle for vulnerable and informal economic activities that allow some flexibility, and often proximity to the home. In addition to lower incomes, these choices diminish long-term earnings potential, skills development, career opportunities, and access to social protection including an adequate pension in old-age. Inequalities based on income are also reinforced or widened since families with the financial means can afford private child or elder care, while those without must resort to low-quality care or forego earnings. The State's investment in women's education is undermined as is use of their skills – which not only impedes growth and development but sabotages national policies that aim to increase women's labour force participation.<sup>26</sup>

Declining fertility rates – widely acknowledged to be one symptom of the difficulty, especially for women, in combining paid work with maternity and family responsibilities – have alarming consequences. Fertility rates that are below replacement levels (about two children per woman) have resulted in labour shortages in some countries. When in tandem with ageing populations, this threatens the viability of pension funds.<sup>27</sup> The UN has warned that in 83 countries and territories, women are not having enough children to ensure that on average each woman is replaced by a daughter who survives to reproductive age. For example, a cohort of 1,000 women in Hong Kong is now expected to give birth to just under 550 daughters; if nothing changes, they in turn are expected to give birth to some 300 daughters. When extrapolating, "...it would take only 25 generations for Hong Kong's female population to shrink from 3.75 million to just one...By the same unflinching logic, Germany, Italy, Japan, Russia and Spain will not see out the next millennium".<sup>28</sup>

The success of government strategies to promote women's equal opportunities and treatment in labour markets and to achieve gender equality are dependent on adequate and accessible maternity protection and family-friendly infrastructure and services. Women's equitable access to paid work serves as a particularly effective anti-poverty strategy and provides them with better protection against the financial risks related to separation, divorce or death of their partner; for women who head households this is not only crucial to survival but reduces need for financial assistance from the State.<sup>29</sup>

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<sup>26</sup> Hein, C., 2009, pages 16-22 and *Gender Equality at the Heart of Decent Work – Report VI*, International Labour Conference, 98th Session, ILO, Geneva, 2009, pages 39-52.

<sup>27</sup> Hein, C., 2005, pages 23-24.

<sup>28</sup> "Migration after the crash – Moving out, on and back", article in *The Economist*, London, 27 August 2011, page 50 with data cited from *2010 Revision of World Population Prospects*, United Nations, New York, 2011.

<sup>29</sup> *The "family-friendly" workplace*, ILO Conditions of Work and Employment Programme, Geneva, 2004, Information Sheet No. WF-3, page 1; and Hein, 2005, page 20.

Providing maternity protection and supporting workers with family responsibilities also ensure healthier workers for the future. Altogether these contribute to the social and economic well-being of families and communities, which helps minimize risks of social unrest and maximize chances in the long run for prosperity through more inclusive economic and social development.<sup>30</sup>

### Engaging men in more care giving in the home

Following are selected findings of research on the issue, especially in the Americas.<sup>31</sup>

- ▶ In general men spend a limited proportion of time caring for their children, although some are increasing this especially in The Netherlands, United States and Canada.
- ▶ Social class and educational attainment are key variables in men's childcare participation. While a study in Chile found low-income men spent less time with children than middle-income men, studies in Brazil, Mexico and the Caribbean suggest that lower-income unemployed men were more likely to care for their children due to economic necessity.
- ▶ When men carry out domestic chores, they often gain little or no social recognition for it, and some men even try to perform such work in "clandestine ways" to avoid "ruining their reputation".
- ▶ Studies show that men's childcare involvement increases chances their sons will be more equitable and nurturing when fathers, and daughters will have more flexible views.

Following are some recommendations based on documented and promising practices.

- ▶ Scale-up fatherhood courses and campaigns on men's roles in children's lives.
- ▶ Incorporate messages about men's role as fathers in other relevant campaigns such as on preventing HIV, promoting safe motherhood, and stopping violence against women.
- ▶ Increase initiatives to reach boys and young men and challenge rigid gender-related attitudes and behaviors, including about fathers as caregivers for their children.
- ▶ Focus efforts on employers and trade unions, as well as in workplaces, to create more flexible working time policies and promote fatherhood campaigns.
- ▶ Review national public health policies, including for maternal and child health, to identify ways to engage fathers to-be.
- ▶ Review childhood development policies in order to better engage men including as caregivers in the home as well as in care giving professions.
- ▶ Make health and other social services more accessible and friendly to men.

Source: "Engaging Men and Boys in Caregiving: Reflections from Research, Practice and Policy Advocacy", paper by Barker, G., Expert Panel on capacity-building for mainstreaming a gender perspective into national policies and programmes to support the equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS, 53rd Session of the UN Commission on the Status of Women, New York, March 2009.

<sup>30</sup> WISE + Work Improvement in Small Enterprises – Action Manual, ILO Conditions of Work and Employment Programme, Geneva, 2009.

<sup>31</sup> See also examples of CEACR comments which provide data of the low level of childcare leave taken up by men, or the obstacles encountered and reasons for this.



## Effects of work and family conflict

### Possible effects on work or work performance

- Loss of motivation
- Difficulty concentrating
- Absence from work / poor timekeeping
- Reduced productivity
- Impaired working relationships
- Wanting or needing to leave the job

### Possible effects on co-workers

- Demoralisation
- Work-related stress
- Increased absenteeism
- Poor team relationships
- Reduced productivity

### Health effects on individuals or family members and dependants

*Common symptoms and responses:*

- Stress
- Anxiety or depression
- Fatigue
- Physical / mental ill health
- Relationship problems
- Reproductive health problems

*In extreme situations, where demands of work and family cannot be reconciled:*

- Vulnerable children or other relatives put at risk
- Sick or disabled relatives neglected, left unattended or without suitable care
- Children forced out of school to provide essential care (in their parents' absence)
- Long-term ill health
- Mental or physical breakdown
- Death or suicide

*Effects on the future workforce:*

- Unfulfilled potential
- Loss of potential skills and training
- Less fit, less well-educated workforce

### Effects on the business

- Loss of productivity
- Increased absenteeism
- Increased demands on managers when problems arise and are not resolved
- Low morale
- Poor working relationships
- Difficulty retaining staff
- Increased costs
- Loss of continuity
- Poor industrial relations
- Increased financial risks
- Poor company image
- Customer / client complaints (if services / products / quality / costs are affected)

### Effects on wider society

- Gender inequalities reinforced at work and in the family
- Undermines women's position in the labour market
- Vulnerable groups not protected
- Impedes growth and development
- Poorest families hardest hit

### Possible consequences for individual

- Loss of job, job security or career prospects
- Possible disciplinary action
- Poor appraisal
- Refused training, transfer or promotion
- Forced resignation / dismissal or demotion
- Inability to complete training / qualify
- Inability to get another job
- Breakdown of work or family relationships

## Promoting decent work through international labour standards

Convention Nos. 183 and 156 and their accompanying Recommendations, like all international labour standards,<sup>32</sup> are legal instruments developed by ILO constituents to address specific world-of-work issues of growing international concern. Conventions are legally-binding international treaties that establish the basic principles to be implemented by ratifying countries. Recommendations usually accompany a Convention and provide guidelines on its application or suggest possible policies to go beyond the Convention's provisions. This section briefly describes how international labour standards are adopted, ratified and applied, along with their supervisory system.

### › Adoption

Both Conventions and Recommendations are adopted by the International Labour Conference – which annually brings together representatives of governments, and of employers' and workers' organizations.

Prior to adoption, the International Labour Office prepares a report that analyses the laws and practice of member States regarding the issue. This report – which is circulated to member States and workers' and employers for comments – is then discussed at the Conference. Based on these replies, the Office then prepares a second report which contains a draft standard. This is discussed the following year by the Conference, during which the draft is amended by the constituents and submitted for adoption by at least a two-thirds majority of votes cast by the delegates present at that Session of the Conference.

### › Ratification

After a Convention and/or Recommendation is adopted by the International Labour Conference, member States are required under the ILO Constitution to submit the adopted standard for consideration to their national competent authority, usually the parliament. In the case of a Convention, this means considering what action should be taken on the text and for a Convention, including possible ratification. Subject to some exceptions, most ILO Conventions enter into force 12 months following the second ratification by a member State. Once Conventions come into force, they become binding for new ratifying countries 12 months following the date on which the ratification was registered by the ILO.

Some member States may decide not to ratify a Convention but align their legislation with it by using ILO standards as models for drafting their national policy and legislation. Ratification is a formal procedure in which a member State accepts the Convention as a legally-binding instrument. Some member States go through a period of examining and revising their policies and legislation in order to comply with the instrument before they ratify. Others ratify an ILO Convention relatively quickly and then bring into line their national law and practice. The ILO supervisory bodies and technical assistance can provide guidance in these processes.

<sup>32</sup> This section is based on *Rules of the Game – A brief introduction to International Labour Standards*, ILO, Geneva, 2009.

### **International labour standards relevant to providing maternity protection and supporting workers with family responsibilities**

- ▶ Maternity Protection Convention, 1919 (No. 3), interim status<sup>33</sup>
- ▶ Equal Remuneration Convention, 1951 (No. 100) and Recommendation (No. 90)
- ▶ Social Security (Minimum Standards) Convention, 1952 (No. 102)
- ▶ Maternity Protection Convention (Revised), 1952 (No. 103) no longer open to ratification as a result of entry into force of Convention No. 183; and Recommendation (No. 95), replaced by Recommendation No. 191
- ▶ Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111)
- ▶ Employment Policy Convention, 1964 (No. 122)
- ▶ Medical Care and Sickness Benefits Convention, 1969 (No. 130)<sup>34</sup>
- ▶ Human Resources Development Recommendation, 1975 (No. 150)
- ▶ Home Work Convention, 1996 (No. 177)
- ▶ Nursing Personnel Convention, 1977 (No. 149)<sup>35</sup>
- ▶ Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165)
- ▶ Maintenance of Social Security Rights Convention, 1982 (No. 157)
- ▶ Termination of Employment Convention, 1958 (No. 158)
- ▶ Part-time Work Convention, 1994 (No. 175)<sup>36</sup>
- ▶ Maternity Protection Convention, 2000 (No. 183)<sup>37</sup> and Recommendation (No. 191)
- ▶ Decent Work for Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201)
- ▶ Recommendation on National Floors of Social Protection, 2012 (No. 202)

In addition to Convention Nos. 100 and 111, two other fundamental Conventions of particular relevance to gender equality are: Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and Right to Organize and Collective Bargaining Convention, 1949 (No. 98). These contain enabling rights to pursue gender equality, and the application of these two Conventions is particularly important for the realization of all other rights, including women's human rights.

<sup>33</sup> For information about the status of such instruments, see *Working Party on Policy regarding the revision of standards (Cartier Working Party), Follow-up decisions by the Governing Body, Information note on the progress of work and decisions taken concerning the revision of standards*, ILO, Geneva, 2002. See also the specific document of the Cartier Working Party on maternity protection (GB.283/LILS/WP/PRS/2).

<sup>34</sup> This sets standards for access to preventive and curative medical care.

<sup>35</sup> This addresses working conditions and rights of nursing personnel; shortages of such personnel are a major cause underlying the poor supply and quality of maternal care.

<sup>36</sup> This establishes the principle of equal treatment of part-time and full-time workers.

<sup>37</sup> Convention No. 183 is the most up-to-date standard on maternity protection, although in some countries earlier ones are in force, namely the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103).

## › Application

International labour standards are a benchmark for human rights in the world of work. For this reason they are first-and-foremost tools for governments – in consultation with employers’ and workers’ organizations – to draft and implement social policy and labour law so that it is in conformity with internationally-accepted minimum standards.

A certain degree of flexibility in most standards allow them to be applied in national law and practice while taking into account the fact that countries have diverse cultures and histories, legal systems and levels of economic development. Specific “flexibility clauses” in some standards allow States to establish temporary standards that are lower than those generally prescribed, to exclude temporarily certain categories of workers from the application of a Convention, or to apply only certain parts of the instrument. If a ratifying country exercises such flexibility, it is usually required to declare this to the ILO Director-General at the time of ratification and make use of such clauses only in consultation with the social partners.

### – *Additional uses of standards*

In addition to serving as models and targets for national labour law, standards are used for guidance, information and advocacy, including the following situations.

- ▶ by national courts when deciding cases on which national law is inadequate or silent
- ▶ development of national and local policies
- ▶ models for collective agreements
- ▶ drafting of multinational enterprise voluntary codes of conduct
- ▶ by international framework agreements negotiated between a multinational company and a global union federation
- ▶ in reports on the application of international labour standards, which are regularly submitted to UN human rights bodies and other international entities
- ▶ by civil society when advocating changes in policy, law or practice

## › Supervisory system

Ratifying countries commit to apply the Convention in national law and practice, and must regularly report on implementation measures taken in relation to the Conventions they have ratified. Copies of these reports must be submitted by Governments to the relevant employers’ and workers’ organizations, which can comment on the reports including directly to the ILO.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR), composed of 20 eminent jurists appointed by the ILO Governing Body, gives impartial and technical evaluations in the form of “observations” or “direct requests”. The former are comments about fundamental questions linked to application by a specific member State, and are published in the Committee’s annual report. The latter, which are more technical questions or requests for further information, are communicated directly to the specific Government. Although these are not part of the CEACR’s report, they are public and accessible online. The CEACR’s annual report is submitted to the International Labour Conference which has a dedicated Committee to review the application of international labour standards, namely the tripartite Committee on the Application of Standards.

## Convention No. 183 on Maternity Protection and Recommendation No. 191

Maternity protection<sup>38</sup> – a core issue for ILO from its beginning in 1919 when member States adopted Convention No. 3 – is central to advancing the rights, health, and economic security of women and their families everywhere. The scope and entitlements of maternity protection have been expanded progressively by Convention No. 103, adopted in 1952, and by Convention No. 183, adopted in 2000. Together with corresponding Recommendations, No. 95 in 1952 and No. 191 in 2000, the instruments aim to preserve the health of both mother and newborn, and provide job security – especially from dismissal and discrimination, maintenance of wages and benefits during maternity, and the right to resume work after giving birth. Thus the goal is to allow women to combine successfully their reproductive and productive roles, and to prevent unequal treatment in employment due to women’s ability to give birth.

### › Scope and main elements

Convention No. 183 and Recommendation No. 191 are extremely broad in scope. They apply to all employed women including those in atypical forms of dependent work. Examples of these forms are part-time, casual and seasonal work, job-sharing, fixed-term contracts, temporary agency work, home work, remote/tele-working, piecework, informal work, and disguised employment relationships. Self-employed women and entrepreneurs are covered as well.

The first main element is maternity leave or period of rest from paid work in relation to pregnancy, childbirth and the postnatal period. The second is cash and medical benefits during absence for maternity and for healthcare related to pregnancy, childbirth and postnatal care. The third element is health protection at the workplace, for both the mother and unborn child during pregnancy and for both during breastfeeding. The fourth is employment protection and nondiscrimination, which are a guarantee of women’s employment security and right to return after maternity leave to the same job or equivalent one with the same pay. The fifth element is breastfeeding arrangements to help women at the workplace breastfeed or express milk.

#### – (i) *Maternity leave*

Maternity leave, as stated in Convention No. 183, should amount to a minimum of 14 weeks of which six should be taken immediately after childbirth. Recommendation No. 191 suggests that maternity leave be at least 18 weeks. Convention No. 183 also establishes a right to additional leave in case of illness, complications or risks of complications arising out of pregnancy or childbirth.

#### – (ii) *Cash and medical benefits*

The right to cash benefits during absence for maternity leave is an essential part of maternity protection. Convention No. 183 provides that such a cash benefit shall be at

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<sup>38</sup> This section is slightly revised from *Maternity Protection Resource Package*, ILO, Geneva, 2012, Module 1, text on “Maternity Protection at work: What is it?”, pages 3-5.

a level that ensures the woman can maintain herself and her child in proper conditions of health and a suitable standard of living. Where benefits are based on earnings, the amount of the benefit shall not be less than two-thirds of previous or insured earnings, and shall be provided through social insurance or public funds or in a manner determined by national law and practice. The Convention provides for free of charge medical benefits including prenatal, childbirth and postnatal care as well as hospitalization when necessary. The basic principle of payment through social insurance or public funds is essential to help protect women from discrimination in the labour market.

– (iii) *Health protection at the workplace*

Convention No. 183 states that member States should adopt measures to ensure that pregnant or breastfeeding women are not obliged to perform work that is prejudicial to their or the child's health, or where an assessment has established a significant risk to the mother or child. Recommendation No. 191 provides for adaptation of a pregnant or breastfeeding woman's working conditions in order to reduce particular risks. When it is safe for her to do so, the woman should retain the right to return to her job or an equivalent one paid at the same rate. She should also be allowed to leave her workplace, if necessary and after notifying her employer, for medical examinations related to the pregnancy.

**Selected comments on maternity protection Conventions  
by the ILO Committee of Experts on the Application  
of Conventions and Recommendations**

*Dismissal during maternity leave*

"...the Convention does not allow notice of dismissal to be made on any ground during the protected period when a woman is absent from work on maternity leave, nor at such time that the notice would expire during such absence". (Convention No. 103, Ghana, CEACR individual observation, 2010)

*Benefits during maternity leave*

"The Committee therefore requests the Government to ensure that these benefits are provided either by means of public funds or by means of compulsory insurance; the latter does not necessarily call for public financing but can be funded by employers' and workers' contributions". (Convention No. 3, Zambia, CEACR direct request, 2009)

*Qualifying period*

"The Committee recalls that...the period of maternity leave shall be at least 12 weeks and shall include a period of compulsory leave of six weeks after confinement; furthermore, the maternity leave shall be granted as a right and no qualifying period may be imposed". (Convention 103, Papua New Guinea, CEACR direct request, 2010)

*Foreign women*

"The Committee reminds the Government that the principle of equal treatment requires foreign women to be covered by compulsory insurance in the same way as nationals". (Convention No. 103, Tajikistan, CEACR direct request, 2010)

Source: *Maternity Protection Resource Package*, ILO, Geneva, 2012, Module 5, text on "International rights and guidance on Maternity Protection at work", page 21.

– (iv) *Employment protection and non-discrimination*

Convention No. 183 provides for employment security by prohibiting maternity-related dismissal during pregnancy, maternity leave, and a period of time after the woman worker's return to work. It also provides for the right to reinstatement upon return to work in the same job or an equivalent one with the same pay. The Convention requires member States to take measures to ensure that maternity is not a source of discrimination in employment, including access to it. The Convention also prohibits pregnancy tests when a woman is applying for employment, except in very specific circumstances related to the nature of the work to be performed.

– (v) *Breastfeeding arrangements at work*

Maternity leave usually expires before the end of the breastfeeding period, which is recommended by the World Health Organization to be six months of exclusively the mother's milk. Thus, enabling women to breastfeed upon return to work is important and in her and the child's best health interests. Convention No. 183 entitles women to one or more daily breaks or a reduction of hours of work for breastfeeding. These breaks or reduced working hours shall be counted as working time and remunerated accordingly. The length and number of breaks are to be determined by national law.

## **Convention No. 156 on Workers with Family Responsibilities and Recommendation No. 165**

“Work-family conflict” refers to simultaneous pressures from paid work and unpaid family responsibilities that are in some respect mutually incompatible, so that meeting the demands of one role makes it difficult to meet the demands of the other. The use of “conflict” in the phrase reflects how difficult and stressful daily problems are for those who are faced with these pressures.<sup>39</sup> The work-family conflict affects especially women's ability to engage in paid work since many settle for a job with poor working conditions and lower pay in order to perform an unequal share of unpaid household tasks and childcare.

The Workers with Family Responsibilities Convention, 1981 (No. 156) and the Workers with Family Responsibilities Recommendation, 1981 (No. 165) are the main international standards that address reconciliation of work and family responsibilities with policies and measures to support such workers. The Convention and Recommendation are intended to promote equality of opportunity and treatment in employment for men and women workers with family responsibilities, as well as between workers with family responsibilities and those without such responsibilities.

### **› Scope and main elements**

The scope of Convention No. 156 is all categories of workers in all economic activities. It refers to responsibilities in relation to “dependent children” and “other members of the

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<sup>39</sup> Hein, 2005, page 3.

immediate family who clearly need their care or support". Each country defines which persons are covered by these terms since perceptions of family and related obligations can have many forms in different contexts and societies. However the Convention clearly includes dependent sick or elderly as well as children.

Countries that ratify Convention No. 156 make an aim of national policy to enable persons with family responsibilities to exercise their right to obtain or engage in employment without being subject to discrimination, and to the extent possible without conflict between their employment and family responsibilities. The Convention provides that family responsibilities should not constitute a valid reason for termination of employment.

All measures compatible with national conditions and possibilities shall be taken to:

- ▶ enable workers with family responsibilities to exercise free choice in employment
- ▶ take account of their needs in employment terms and conditions, and in social security needs and community planning
- ▶ develop or promote community services, such as childcare and family services and facilities
- ▶ provide vocational training and guidance to help workers with family responsibilities enter and remain in the labour force
- ▶ promote information and education that contribute to broader public understanding about the principle of equality of opportunity and treatment for women and men workers with family responsibilities

Recommendation No. 165 outlines concrete actions that can be taken by countries to enhance the reconciliation of work and family life. The Recommendation spells out in detail and within a framework of the national policy, the need to avoid discrimination against workers with family responsibilities and to enable them to combine paid work with those responsibilities. The Recommendation provides that all measures concerning the following shall be taken.

- ▶ vocational training
- ▶ terms and conditions of employment
- ▶ social security
- ▶ childcare, family services and facilities

In addition to maternity protection, examples of work/family initiatives – which can be introduced at national, community and workplace levels – include reliable and quality child and eldercare services, paid or unpaid leave provisions such as paternity and parental leave, working time arrangements such as flexi-time, and work-family provisions in collective bargaining agreements. All such initiatives should explicitly aim to promote gender equality and recognize and encourage men's more equitable sharing of family responsibilities.



### **Selected comments on Convention No. 156 by the ILO Committee of Experts on the Application of Conventions and Recommendations**

In addition to the following, more recent comments by the CEACR regarding progress made or obstacles encountered in applying the Convention in a number of countries are accessible online.<sup>40</sup>

► *Pre-ratification legislation*

(Concerning some governments' concern to ensure that national legislation is in conformity with, as far as possible, the Convention's provisions before ratification, or at a minimum does not contradict the instruments' spirit) "...[U]nder Article 9, the Convention may be applied by a variety of means, consistent with national practice and national conditions. In addition, many provisions of the Convention would appear to be suited to implementation by other means such as collective agreements or enterprise policies that are capable of easy adaptation to new situations". (para 251)

► *Flexibility*

"...[T]he Convention allows considerable flexibility, under Article 10, for its provisions to be applied by stages...It was with a view to enabling application and ratification by all countries, whatever their stage of economic development, that the substantive provisions of the Convention are drafted in terms that take account of limitations in national resources...[Article 5] refers to the obligation to develop or promote public or private community services, such as childcare and family services and facilities, in terms which make it clear that the measures required are those which are compatible with national conditions and possibilities. Similarly, action 'compatible with national conditions and possibilities' is to be taken under Articles 4 and 7...which concern respectively, measures to create equality of treatment in regard to the free choice of employment, terms and conditions of employment and social security and measures, such as vocational guidance and training, to enable the integration and re-entry to employment of workers with family responsibilities". (para 254)

► *Employers' strategies*

"...[T]he strategies undertaken by employers in accordance with the Convention have proven beneficial, rather than detrimental, in economic terms...In market-oriented economics, all enterprises are inevitably faced with maintaining their competitive edge and viability. Considerations that would strengthen a company's position in the marketplace are even more important in the current economic climate". (para. 253)

► *Social and economic development*

"Many countries have also referred [in their reports to the Committee] to the importance of these instruments in the social and economic development of their countries. On this point, the Committee would like to stress that the Convention and Recommendation form an intrinsic part of any measures to promote equality of opportunity and treatment between men and women, an objective to which all countries should be committed, whatever their economic policy or stage of development". (para 254)

<sup>40</sup> These are in NORMLEX; see [www.ilo.org/normlex](http://www.ilo.org/normlex)

► *Equity measures*

“[A]ll equality instruments involve both the obligation to eliminate discrimination and, in order to overcome its effects, to take active measures to promote equality of opportunity. The latter obligation does not imply preferential treatment but an attempt to place workers who are disadvantaged in particular ways, on an equal footing with workers not similarly affected. In so far as all workers... may need to assume responsibility for family members at some point, Convention No. 156 and Recommendation No. 165 are, in fact, of relevance to all workers and not just to particular groups”. (para. 255)

► *Coverage*

“...[A]ll workers should be covered, whether in full-time, part-time, temporary or other forms of employment and whether they are salaried or self-employed. However, Article 10 of the Convention would enable the application of the instrument to be delayed in respect of specific categories of workers. The Committee considers that the differential treatment of limited categories of workers would not be contrary to the Convention, provided that efforts were demonstrably made to progress towards the coverage of these groups as national circumstances permitted and provided that such differential treatment did not amount to discrimination between men and women”. (para. 260)

Source: *Workers with family responsibilities, Report III (Part 4B)*, General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981 – Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution), 80th Session of the International Labour Conference, ILO, Geneva, 1993.





## II. COUNTRY CASE STUDIES

### Convention No. 183 on Maternity Protection and Recommendation No. 191

#### BENIN

BY MR. WILLIAM KODJOH KPAKPASSOU<sup>1</sup>

#### › Introduction

Pursuant to its international commitments as a member State of ILO, the Republic of Benin issued Decree No. 2010-19 on 3 February 2010, which authorized the ratification of Convention No. 183. The Decree was signed by the President of the Republic after the National Assembly adopted the Act on 22 January 2010 to authorize ratification. In doing so, the State gave practical effect to article 26 of the Benin Constitution, which says: “The State shall assure to everyone equality before the law without distinction of origin, race, sex, religion, political opinion or of social position. Men and women are equal under the law. The State shall protect the family and particularly the mother and child. It shall take care of handicapped and aged persons”.

According to the 1993 Declaration of the World Conference on Human Rights held in Vienna, “the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community”.<sup>2</sup> And as stated by the Committee of Experts on the Application of Conventions and Recommendations (CEACR), ratification of Convention No. 183 “constitutes important progress in achieving the broader objective of gender equality in employment and occupation, as enshrined in Convention No. 111”.<sup>3</sup>

However on the international level and notably in Benin, ratifying Convention No. 183 with its accompanying Recommendation No. 191 poses a number of challenges. This paper aims to present the situation in Benin as regards maternity protection at work, circumstances in which Convention No. 183 was ratified, and challenges the country faces in full application.

#### › Women in the socio-economic and political context of Benin

Benin is located in West Africa and bordered by Nigeria to the east, Togo to the west, the Atlantic Ocean to the south and by Niger and Burkina Faso to the north. The country<sup>4</sup>

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<sup>2</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna, 25 June 1993, Part I, para. 18.

<sup>3</sup> *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Geneva, ILO, 2012, para. 784.

<sup>4</sup> Statistics from *Politique Nationale de l'Emploi, Bénin*, Ministry of Micro-finance and Employment of Young People and Women, October 2011, pages 10-14.

covers an area of 114,763 square kilometres. Benin is part of several subregional economic areas, the most important of which are the West African Economic and Monetary Union (UEMOA) and the Economic Community of West African States (ECOWAS).

According to the General Population and Housing Survey (RGPH3) the country's population, which in 2002 was 6,769,914, was estimated in 2008 to be about 8,286,000 (with 4,054,641 men and 4,231,042 women). The population is growing at an annual average rate of 3.25 per cent and is projected to reach 12,114,193 inhabitants by 2020. The steady increase in Benin's population is attributable to its continued high fertility rate, the gradual decline in mortality, and substantial migratory flows.

The growth rate of Benin's population, one of the highest in the subregion, explains many of the challenges facing the country in terms of social demands (such as education, health, employment, housing, and urban planning) and available factors of production. Over 50 per cent of the population is under 18 years of age. Life expectancy is 61.1 years and slightly higher for women at 63.2 years than for men at 58.9. Half the population between 15 and 64 years old is economically active, and over 40 per cent live in urban areas.

The distribution of the active population is varied; the main employment sectors in both urban and rural areas are agriculture, fishing, hunting, commerce and catering. Sectors employing most skilled workers are banking and insurance which require 12 completed years of education on average, and water, electricity, gas, and other services which require some ten years of education. The vast majority of workers in commerce and catering are women at 83 per cent, while employment in building and transport, communications, energy, water and the extractive industry in Benin is dominated by men. Employment in Benin tends to be non-formal, with the level of education an indicator of the likelihood of participation in the formal labour market.<sup>5</sup>

#### Structural trends of economically-active population

Institutional sector	2006 (percentages)			2007 (percentages)		
	Men	Women	Total	Men	Women	Total
Public administration	1.92	1.55	1.86	4.34	1.5	2.94
Public enterprise	1.14	0.95	1.12	1.27	0.78	1.03
Private formal economy	1.09	1.11	1.09	0.26	0.09	0.17
Private non-formal economy	95.49	96.03	95.57	93.10	97.26	95.15
Associative sector	0.36	0.35	0.36	1.03	0.38	0.71
Total	100	100	100	100	100	100

Source: EMICoV survey of household living conditions 2006-07, INSAE.

Formal employment is shared almost equally by the private sector at 2.5 per cent and public sector at 2.7 per cent. More than 95 per cent of the active population is employed in the informal enterprise sector (agricultural and non-agricultural). Informal activity is

<sup>5</sup> As revealed by data included in the General Population and Housing Survey (RGPH3) 2002, conducted by the Institut National de la Statistique et de l'Analyse Economique (INSAE).

defined as any activity that is not registered and/or keeps no written accounts and is the principal employment of a company owner or own-account worker.<sup>6</sup>

Statistics from the 2002 general population and household survey indicate that only 19,123 inhabitants were unemployed in 2002, which is a rate of just 0.68 per cent. According to findings of the above-mentioned survey in 2006 and 2007, the unemployment rate was estimated at 2.2 per cent in 2006 and 0.7 per cent in 2007 – a decline of 66.5 per cent between the two years. Disaggregated, the corresponding figures for women were 2.7 per cent in 2006 and 1.6 per cent in 2007. For men these were 1.7 per cent in 2006 and 0.6 per cent in 2007. In reality however, the situation is alarming.

According to Decree No. 2009-178 of 5 May 2009, it is the Ministry for Micro-Finance and Employment of Young People and Women that is responsible for proposing and implementing Government policy on the subject. An analysis carried out by the Ministry indicates that Benin's very low unemployment rate conceals a high rate of overt under-employment, which in 2007 stood at around 70 per cent. This very serious situation is assumed to be the result of a dysfunctional educational system, the structure of the economy, and shortcomings of the country's employment promotion strategies. At the same time, the absence of any unemployment compensation scheme does nothing to encourage jobseekers to register with the authorities. Instead, unemployed workers tend to turn to the informal economy which is characterized by low productivity.<sup>7</sup>

In trying to reduce this underemployment, the National Employment Policy (PEN) focuses on employment-generating activities. Through the National Micro-Finance Fund, the Ministry for Micro-Finance and Employment of Young People and Women is running a "Micro-Credits for the Poorest" programme. Through it women can engage in income-generating activities anywhere in the country. According to the Ministry, the Fund's total disbursements as of 30 June 2011 in favour of strategic partner institutions amounted to 51,028,751,807 CFA francs.<sup>8</sup> There are 11 such partners operating throughout the country. The Government's micro-credit policy is an encouraging step forward for women in rural and urban areas. Women invest these micro-credits in the following ways.

- ▶ small retail outlets: 82.57 per cent
- ▶ processing: 9.28 per cent
- ▶ agriculture: 2.17 per cent
- ▶ arts and crafts: 4.45 per cent
- ▶ storage: 1.24 per cent
- ▶ other: 0.27 per cent

Nevertheless, in 2010 Benin was ranked 134th of 177 countries in the Human Development Index (HDI), which clearly signals extensive poverty. To combat the scourge of poverty, successive Benin governments have devised and implemented a series of poverty reduction strategies. The current policy document on poverty reduction and growth strategies (SCRIP) for 2011-15,<sup>9</sup> which was issued in December 2010, sets out the strategic

<sup>6</sup> *Etat des lieux des inégalités femmes/hommes en milieu de travail privé au Bénin*, Ministry of Labour and Public Service, Cotonou, 2007, page 7.

<sup>7</sup> *Politique Nationale de l'Emploi, Bénin*, 2001, page 17.

<sup>8</sup> Parity of the Beninese CFA franc with the euro is fixed at 1 € = 656.66 CFA francs.

<sup>9</sup> *Stratégies de croissance pour la réduction de la pauvreté 2011-15*, Government of Benin, Cotonou, page XIII.

development guidelines defined by the Government. The latter's stated objective is to speed up economic growth in order to attain the Millennium Development Goals (MDGs).

As to the situation of women, this is the subject of the SCRP strategic priority No. 3 on human development. It lists six areas for priority action: control demographic growth, promote development education, improve the population's health and nutrition, create decent jobs, reduce gender inequality, and improve social protection.

Thanks to earlier policies, poverty dropped sharply among households headed by women between 2006 and 2007, from 36.1 per cent to 26.5 per cent. The estimated figure for female-headed households in 2009 was 30.39 per cent, compared to 36.17 per cent among male-headed households.<sup>10</sup> However, an assessment of the country's poverty reduction and growth strategies for 2007-09 showed that although in the three years concerned the average annual growth rate was 4.0 per cent (up from 3.3 per cent between 2003 and 2005), it was still well below the 7 per cent needed to attain the MDGs.

Thus Benin is faced with an economic growth rate that is too low and too slow to meet the social demands engendered by its rapid population growth. It is this gap between demographic growth and economic growth that is responsible for the increasing proportion of the population living in poverty. The economy is dominated by the primary and services sectors, with a barely nascent secondary sector.

In the socio-economic context of Benin, women face many inequalities. One of the underlying causes of poverty, which affects women particularly, is illiteracy. Of the total population, 67.4 per cent is illiterate with 78.1 per cent among women and 44 per cent among men.<sup>11</sup> One of the main causes was the wide gap between actual school attendance of girls, which in 1989 was 42.31 per cent in primary school, and that of boys at 73.87 per cent.

Socio-cultural considerations also explained the phenomenon, especially a prevailing mentality in Beninese society that formal education for girls was a waste of time and money, and that school was an immoral and costly undertaking. The preference of low-income parents is to send only their boys to school.<sup>12</sup>

However since 1990, eliminating illiteracy and improving basic education – particularly for girls – has been a major concern of public authorities and civil society. Thanks to joint efforts of the Government and non-governmental organizations (NGOs), gross school attendance figures for girls over a period of ten years rose from 49.64 per cent in 1995 to 86.09 per cent in 2006.<sup>13</sup> Following the decision taken a few years ago to make primary school free of charge for girls, the figure has risen further. This is one of the world's fastest rates of progress, and the gender gap in primary enrolment has narrowed sustainably.<sup>14</sup>

Disparities that have always existed between the status of men and women spill over into the labour market, and some relevant and interesting observations are found in the

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<sup>10</sup> Statistics from *Stratégies de croissance pour la réduction de la pauvreté 2011-15*, page 11.

<sup>11</sup> *Femmes du Bénin au cœur de la dynamique du changement social, le livre blanc*, second edition, Friedrich Ebert Stiftung, 2008, page 110.

<sup>12</sup> *Promotion de la femme au Bénin, le livre blanc*, first edition quoted in second edition, 2008, page 115.

<sup>13</sup> *Femmes du Bénin au cœur de la dynamique du changement social, le livre blanc*, page 116.

<sup>14</sup> See for example Engel, J. with Maglorie, E. and Rose, P., *Benin's progress in education: Expanding access and narrowing the gender gap*, Overseas Development Institute, 2011.

following extracts from a study commissioned by the Ministry in Charge of Labour to take stock of gender inequalities in Benin.<sup>15</sup>

“The survey<sup>16</sup> covered 50 per cent of women entrepreneurs and 50 per cent of male entrepreneurs in various types of enterprise. More than half of the entrepreneurs were in the 40-60 years age bracket; 37 per cent had received higher education, 25 per cent had received secondary education, and 38 per cent had attended primary school only or had no education at all.

Concerning enterprises, 94 per cent had been in existence for over three years; 11 per cent were in the primary sector, 22 per cent in the secondary sector and 67 per cent in the services sector (mainly informal sector enterprises run by women). Commerce and catering accounted for 30 per cent of the survey sample, followed by other services (20 per cent), manufacturing (15 per cent), transport (10 per cent) and building and public works (10 per cent), with agriculture and extractive industries at the bottom of the list (5 per cent each).

Some 63 per cent of the enterprises had a capital of over 500,000 CFA francs, most of them run by men, 19 per cent had a capital of between 200,000 and 500,000 CFA, with two out of three of the entrepreneurs being women, and 19 per cent had less than 200,000 CFA in capital and were run by women.

The 16 enterprises surveyed in 2005 employed 6,003 workers, 96 per cent of them men and 4 per cent women. In the formal sector there were 94 per cent more men than women but in the informal sector only 54 per cent more. Men were the majority in businesses selling fuel, in carpentry and, above all, in cargo handling services, while women were very much in the majority in informal catering and hairdressing businesses”.

There are also major disparities in the representation of women in Benin’s public service and decision-making bodies. Women have occasionally reached the highest State offices such as President of the Constitutional Court, President of the High Court of Justice, Minister, Ambassador, Director of the Cabinet of the President, senior officer in the army, and President of the Court of Appeals of Cotonou. Moreover, women are represented in most branches; there are women magistrates, lawyers, bailiffs, notaries, auctioneers, doctors, pharmacists and so on.

However although half the population of Benin are women, their representation in the various spheres of society is still unsatisfactory. According to the World Economic Forum’s 2008 Global Gender Gap Report, which addresses 130 countries, in terms of three factors – participation in the economy, access to education and exercise of political leadership – Benin is ranked 126th. While recognizing efforts the country has made to promote equal rights, this low ranking should serve as a wake-up call for its development actors.<sup>17</sup>

Benin’s “democratic renewal” process began in 1990, and between 1991 and 2007 the proportion of women in Government ranged from 10 per cent to 23 per cent.<sup>18</sup> Although there was a small improvement of 5.55 per cent in 1996 compared with 23.08 per

<sup>15</sup> *Etat des lieux des inégalités femmes/hommes en milieu de travail privé au Bénin*, pages 76-78.

<sup>16</sup> The survey was conducted in 2005, and the report published in 2007.

<sup>17</sup> *Femmes du Bénin au cœur de la dynamique du changement social, le livre blanc*, page 12.

<sup>18</sup> *Ibid*, pages 61-77.



cent in 2007, the fact remains that women are involved in less than one-fourth of the Government's activities. Moreover, statistics show that these are almost invariably positions that are based on traditional themes considered to be of importance to women, such as in the Ministry of Family and Social Affairs, and in health, education and commerce. On the other hand, the Head of State elected in 2006 and re-elected in 2011 has appointed women to several senior positions such as Minister of Foreign Affairs (2006), Minister of Finance and Economy (2011) and Minister of Justice (2011).

In terms of legislative power, women's representation in Parliament is low and ranged from 6.25 per cent to 12.19 per cent during the first four National Assembly terms of the democratic era from 1995 to 2008. For example in 1991 there were four women deputies (6.25 per cent) and 60 men, and in 1995 there were ten women deputies (12.19 per cent) of a total of 82. In the third and fourth terms the figure dropped to six women deputies (7.22 per cent) of a total of 83.

Although employment in public administration is in principle equitable in its accessibility, there is a considerable gender gap: 73.23 per cent are men and 26.77 per cent are women, barely more than one-fourth of the total. Irrespective of sociological bias already mentioned, socialized gender-related constraints on women – such as those connected with pregnancy and maternity, responsibility for family welfare, non-separation of spouses – are additional barriers to their appointment to positions of professional responsibility. The White Paper from which these figures are drawn states unambiguously: “Daycare facilities are not yet common practice in the public administration, so as to allow women who are breastfeeding to continue working. Besides, it is all too easy to claim that nursing mothers are less efficient than men who, so long as traditional socio-cultural practices persist, still tend not to get involved in family life and domestic responsibilities, which are left entirely to women without their work being either financially or personally enriching”. Ratification of Convention No. 183, which is currently the main international standard on maternity protection, therefore marks one more step in Benin's determination to combat the marginalization of women.

In addition to the already-mentioned Article 26 of the Constitution, an outcome of the Conference of the Principle Actors of Beninese Society, held in Cotonou from 19-28 February 1990, was that the country opted for a State of law and a pluralistic democracy. As such fundamental human rights, civil liberties, dignity of each person, and justice are guaranteed, protected and promoted as a precondition for the genuine and harmonious development of each Beninese citizen, economically, culturally and spiritually.

As will be seen below the juridical protection of women in general, and of maternity in particular, is ensured by a number of legal texts and public and private institutions. Observance of the rights embodied in the Constitution is guaranteed by the Constitutional Court, to which citizens may appeal directly and whose rulings are definitive, inasmuch as they are not subject to appeal, and mandatory for all public authorities, including civil, military and jurisdictional authorities.<sup>19</sup>

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<sup>19</sup> Article 124 of the Constitution of 11 December 1990. For rulings and opinions of the Constitutional Court of Benin, see [www.cour-constitutionnelle-benin.org](http://www.cour-constitutionnelle-benin.org)

## › Juridical framework

Benin's legal provisions on the protection of women derive both from ratified conventions and from national legislation; these are discussed in this and the following section.

### – *Protection of women: International instruments ratified by Benin*

Through its membership in the United Nations and African Union, Benin is party to several conventions on human rights. The most important include the 1966 International Covenant on Economic, Social and Cultural Rights (ratified by Benin on 12 March 1992), the 1966 International Covenant on Civil and Political Rights (ratified on 12 March 1992), and the 1989 Convention on the Rights of the Child (ratified on 3 August 1990). At regional level, the 1981 African Charter on Human and Peoples' Rights is an integral part of Benin's Constitution and legislation, and it takes precedence over domestic law.<sup>20</sup>

In addition to Convention No. 183 which Benin ratified on 3 February 2010, reference must also be made to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ratified on 22 May 1961, and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified on 12 March 1992.<sup>21</sup> Both of these contain provisions relating to the protection of women and non-discrimination on grounds of maternity.

For example, paragraph 2 of Article 11 in CEDAW<sup>22</sup> reads as follows.

“In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities<sup>23</sup> and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them”.

On the latter point, attention is drawn to Inter-ministerial Decree No. 132/MFPTRA/MISP/DC/SGM/DT/SST of 2 November 2000; it lays down the type of work and categories of enterprises in which women workers, pregnant women and young people are

<sup>20</sup> Preamble and article 7 of the Constitution of 11 December 1990. Article 7 is often used by the Constitutional Court as a reference point for the protection of rights guaranteed by the Constitution.

<sup>21</sup> The CEDAW was published in *Official Gazette*, 17th year, No. 17 bis, 5 September 2006.

<sup>22</sup> Articles 12 and 13 also deal with maternity protection.

<sup>23</sup> Since the CEDAW is an integral part of Beninese law, these provisions can be invoked by women workers with family responsibilities, pending ratification by Benin of ILO Convention No. 156.

prohibited, along with the age group to which the prohibition applies.<sup>24</sup> Taken as a whole, law in Benin does contain provisions that protect women in general and maternity in particular.

– *National juridical framework as it relates to women's rights*

Ever since Benin embarked upon its democratic process in 1990 and adopted a new Constitution establishing the primacy of human rights, the country's body of law has acquired a substantial number of legal texts that are intended to protect women and children. These texts establish, inter alia, the principle of equality of men and women, which is embodied in the Constitution, confer health and safety rights on women, and provide for their social protection. Some outstanding provisions of this juridical framework are described below.

– *Labour Code Act No. 98-004 of 27 January 1998*

Benin's Labour Code, which entered into force more than two years before Convention No. 183 was adopted by the ILO,<sup>25</sup> contains a number of important provisions protecting maternity at work. Among other things the Act establishes women's right to maternity leave as per Article 170, paragraph 2; to full pay during maternity leave, to benefits in kind and healthcare, as per Article 170, paragraphs 4-5; to protection against dismissal and discrimination, as per Articles 171-172; and to protection of their health which includes a rest period for breastfeeding, as per Article 173.

Article 170, paragraphs 2-3, stipulates: "All pregnant women are entitled to maternity leave, which shall begin six weeks prior to the expected date of birth and end eight weeks after birth. Such leave may be extended by four weeks in the event of a duly established illness resulting either from the pregnancy or from childbirth.<sup>26</sup> In all cases, should the birth take place before the expected date, the rest period shall be for the duration of the 14 weeks to which the worker is entitled. Should the birth take place after the expected date, the worker shall not return to work until eight weeks after her delivery".<sup>27</sup>

Moreover, article 171 of the Labour Code provides that "other than in the event of serious misconduct not linked to a worker's pregnancy or of the impossibility for the employer to prolong her contract, no employer may dismiss a worker whose pregnancy is apparent or has been medically confirmed".

A woman worker dismissed by an employer who is not aware of her pregnancy is entitled to a period of 15 days to have her condition confirmed. In such an event the dismissal is revoked, except on the grounds referred to in the paragraph above. No employer may in any event dismiss a woman worker during the periods set out in paragraphs 2 and 3 of Article 170. The said periods suspend the period of notice resulting from a previously notified dismissal.

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<sup>24</sup> For the decree text, see *Social et jurisprudence*, Ministry of Labour and Public Service, Cotonou, 2nd edition, articles 5-10.

<sup>25</sup> Although Benin had not ratified Maternity Protection Convention, 1919 (No. 3), or Maternity Protection Convention (Revised), 1952 (No. 103), they were no doubt at the origin of the relevant provisions of the 1998 Labour Code.

<sup>26</sup> In the event of sickness or complications arising from childbirth, maternity leave may be extended to 18 weeks.

<sup>27</sup> Postnatal leave of eight weeks is mandatory.

The question arises of the optimum implementation of the legislation in force and, as a recent study on the subject noted: “Laws and regulations on maternity protection are not applied systematically in the private sector. Generally speaking, the social partners do not treat it as a matter of priority. Hence the instances of dismissal and discrimination shown against handicapped persons and women.”<sup>28</sup> It is a fact that maternity protection at work continues to be threatened,<sup>29</sup> especially in the informal economy where there is virtually no control.

– *General Collective Labour Agreement of 30 December 2005*

The collective labour agreement (CCGT), which was concluded on 30 December 2005 by the National Employers’ Board (CNP) and several workers’ organizations in Benin to replace the 17 May 1974 agreement, supplements the Labour Code by regulating the labour relationship between employers and workers in Benin’s private and semi-public sectors.

Article 53 of the CCGT stipulates that, for the purpose of determining paid leave entitlements, any leave taken by a pregnant worker is considered a period of work. This provision meets the requirements of Paragraph 5 of Recommendation No. 191.

In the event of the birth taking place at the worker’s home, the CCGT provides for special paid leave of absence of three days for the spouse, which is likewise considered as time worked when fixing annual leave. This entitlement is valid for up to one month after the birth at home, as per Articles 53 and 54.

To guarantee healthy pregnancies, the CCGT further stipulates in Article 55, paragraph 2: “Should a pregnant woman be exposed in her job to any risk that could endanger the harmonious development of the foetus, her employer must arrange for her transfer to another post. In such cases, the woman concerned continues in her new posting to receive the guaranteed wage that she was entitled to before her transfer. Pregnancy in itself cannot in any event serve as grounds for dismissal”.

With regard to social protection, the CCGT provides that all employers must register workers with the Social Security Fund so that they can benefit from coverage under the scheme. Employers must register workers with the Fund from the day they are recruited, as per Article 59.

– *Act No. 86-013 of 26 February 1986 establishing the general rules and regulations governing permanent State officials, and Legislative Decision No. 89-009 of 12 April 1989 amending and supplementing the said Act*

This Act, which governs employment in the public service, grants rights to women in the event of pregnancy. Article 94 stipulates that women employees are entitled to a period of leave on full pay during pregnancy and breastfeeding. Maternity leave is 14 weeks: six before the birth and eight after. If a woman is not able to resume her work at the end of this period, the Health Board can recommend that she be placed on sick leave.<sup>30</sup> The

<sup>28</sup> Bocco, G.N., *Contribution de l’inspecteur du travail au renforcement de la protection de la maternité en milieu de travail au Bénin, Mémoire*, National School of Administration and the Judiciary (ENAM), Cotonou, 2011.

<sup>29</sup> This concerns cases of dismissal for pregnancy, for which some examples are given.

<sup>30</sup> Sick leave, whether short-term or long-term, is governed by Articles 86 to 98.

Act specifies that such officials are not replaced during their maternity or sick leave, as per Article 95.

A provision that is specific to Act No. 86-013 is that a permanent official is entitled to leave of absence on request to raise a child under five years of age or who suffers from an infirmity demanding constant care. State officials who wish to accompany their spouse are also entitled to such leave of absence if they are required by their profession to establish their habitual place of residence far from the place of employment. (In practice this provision is for the benefit of women employees.) During such leave of absence, however, officials do not receive any remuneration, as per Articles 116 and 117. By and large the rules and regulations governing the public service are fairly protective in Benin, as is the case in many African nations.

– *Social Security Code Act No. 98-019 of 21 March 2003 and Legislative Amendment No. 2007-02 of 26 March 2007*

Act No. 98-019 regulates the general social security scheme operated by the National Social Security Fund (CNSS) for workers governed by the Labour Code. Under the scheme, the Fund is responsible for family and maternity benefits, occupational injury and disease benefits, old-age, invalidity and survivors' benefits, and sickness insurance benefits.<sup>31</sup> Family benefits include prenatal allowances, family allowances, compensation for maternity leave and in-kind health and social benefits, all of which are provided through the Fund's medical centres, as per Articles 38-53.

Compensation for maternity leave is the equivalent of the pregnant worker's full remuneration at the time she stops working; it is paid by the employer throughout the period of leave, with 50 per cent reimbursed by the Fund as per Article 50. In other words, half of the benefit is paid by the social security scheme and half by the employer.<sup>32</sup>

In practice, requests for benefits under the family benefits branch are on the whole relatively rare, for at least two reasons: the persons insured tend not to be aware of their entitlement to the benefits, especially allowances for pregnant women and prenatal allowances; and the persons insured are not usually interested because the benefits are so small. If one takes prenatal benefits, for example, which are intended to provide for medical supervision of pregnancy and ensure that future mothers have access to good conditions of hygiene and health, the total entitlement is 4,500 CFA francs. For the third month examination it is 1,000 CFA francs, for the sixth it is 2,000 CFA francs, and for the eighth it is 1,500 CFA francs.

Moreover if the woman misses an examination, she loses her entitlement. The level of benefits no longer corresponds to the medical costs involved for pregnancy in Benin. Even in State facilities a medical consultation is far more expensive, not counting the various tests and examinations and other forms of treatment that are required during pregnancy.<sup>33</sup> In Benin today, a birth can cost up to the equivalent of 300 euros, and a few years ago the Government introduced a policy under which birth by Caesarean section was free of charge, due to its exorbitant cost for the average family.

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<sup>31</sup> This branch is not yet operational.

<sup>32</sup> *Maternity at work. A review of national legislation: Findings from the ILO Database of Conditions of Work and Employment Laws*, Geneva, ILO, 2010, page 105.

<sup>33</sup> Currently the consultation fee in the case of pregnancy is the equivalent of between 30 and 60 euros.

**Number of women receiving maternity benefits<sup>34</sup>**

Year	Type of benefit	
	Maternity leave allowance	Prenatal allowance
2010	173	644
2011	177	657

However, the fact that so few women benefit under the existing scheme (see table above) highlights challenges faced by Benin in this area. Ratification of Convention No. 183 will certainly help to promote better maternity protection at work.

- *Act No. 2002-07 of 24 August 2004 establishing the Code of Persons and of the Family (CPF)*

The Code of Persons and of the Family (CPF) is the principal law governing the family in Benin. When it entered into force in 2004, Dahomean<sup>35</sup> customary law and traditional practices that discriminated against women ceased to have any juridical value. As early as 1996, the law had already been declared unenforceable by the Constitutional Court.<sup>36</sup>

Today's Code deals, *inter alia*, with the civil register, marriage, parentage, adoption, donations and inheritance. It has introduced innovations into Beninese law such as the abolition of polygamy, equality of women and men in marriage and family relationships, inheritance rights of a surviving spouse, and equality of rights for children. Article 1 of the Code solemnly affirms that all human persons – without any distinction whatsoever as regards race, colour, sex, religion, language, political or other opinion, national or social origin, wealth, birth or any other circumstance – are juridical persons from birth to death. Except as otherwise dictated by law, the right to life and physical and moral integrity is recognized from the moment of conception.

Among the principal texts related to the status of women and protection of maternity, the following must also be cited.

- ▶ Act No. 2003-03 of 3 March 2003, which outlaws the practice of genital mutilation of women
- ▶ Act No. 2003-04 of 3 March 2003 regarding sexual health and child-bearing
- ▶ Act No. 2005-31 of 10 April 2006 regarding the prevention, treatment and control of HIV and AIDS
- ▶ Act No. 2006-19 of 5 September 2006, which outlaws sexual harassment and protects its victims
- ▶ Act No. 2011-26 of 9 January 2011 regarding the prevention of violence against women and which outlaws it

<sup>34</sup> Figures provided by the CNSS.

<sup>35</sup> Dahomey was the former name of Benin.

<sup>36</sup> Decision DCC No. 96-063 of 26 September 1996.

The National Tripartite Declaration on the Fight against HIV/AIDS in the Workplace, a text with the legal force of an agreement, was also signed on 22 July 2007 by the public authorities and workers' and employers' organizations. In the Declaration the social partners commit to engaging to protect all workers, without distinction based on their sex or real or perceived HIV status.

Generally speaking, Benin's juridical framework outlaws discrimination against women. In addition to the judicial system, which punishes infringements of the law, several public institutions and associations also contribute in some degree to enforcement of the law.

### › **Institutional framework**

The public institutions most directly concerned with enforcing the law as it relates to labour market participation and social protection of women are the Ministry of Labour and Public Service, and the Ministry of the Family, Social Affairs, Solidarity and Handicapped Persons.

The Ministry of Labour and Public Service plays an important part in enforcing labour rules and regulations and in social protection of workers and occupational safety. It is also the principal purveyor of employment and traineeships in the public service, where its role in career development through apprenticeships and continuous training is essential. The Ministry's mandate is carried out through the General Directorate of Labour, General Directorate of the Public Service, General Directorate of Capacity-building and Employability, and the Continuous Vocational Training and Apprenticeship Fund.

The Ministry of the Family, Social Affairs, Solidarity and Handicapped Persons is responsible for State policy in those areas. It operates mainly through two important structures: the Directorate for Promotion of Women and Gender, and the Family, Woman and Child Observatory.<sup>37</sup>

The Directorate for Promotion of Women and Gender, established by Order No. 937/MFPSS/DC/SGM/DPFG/SA of 1 July 2005, is responsible for promoting public awareness of legal texts and international instruments that are in favour of women and that have been ratified by Benin. In addition to ensuring application of these, the Directorate identifies the main problems facing women and priority actions to be taken at juridical, economic and social levels to facilitate their participation in the development process.

The statutes of the Family, Woman and Child Observatory were adopted by Decree on 17 August 2005. Among other things, the Observatory is responsible for promoting gender equality and for devising indicators that reflect trends in both the private and public spheres concerning women and men's relations and in the living conditions of families and children.

By Decree No. 2009-728 of 31 December 2009, the Government also established the National Institute for Promotion of Women under the auspices of the President of the Republic. The Institute's mandate includes promoting gender equality and raising skills levels of girls and women through theoretical, technical and practical training.

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<sup>37</sup> See [www.offebenin.org](http://www.offebenin.org)

Private associations such as Women In Law and Development in Africa (WILDAF-Benin)<sup>38</sup> and the Association of Women Lawyers of Benin<sup>39</sup> are also actively involved in promoting and defending women's rights. Although numerous civil society organizations such as women's rights groups address issues related to maternity protection, there does not appear to be one that specifically focuses on maternity protection at work.

### › Ratification and incorporation into law

Under Article 144 of the 11 December 1990 Constitution, the President of the Republic has authority to negotiate and ratify treaties and international agreements. Article 147 goes on to state that “treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other party”. Benin is a monist State, which means that no transitional law is needed to incorporate an international convention into domestic law.

Treaties or agreements that modify internal laws of the State may be ratified only by a law, as per Article 145. By Decree No. 2008-590 of 20 October 2008, the Government accordingly placed a Bill before the National Assembly authorizing ratification of Convention No. 183. The President of the Assembly called on the Committee on Education, Culture, Employment and Social Affairs to examine the substance of Convention No. 183 and for an opinion from the Committee on Foreign Relations, Development Cooperation, Defence and Security.

When the Bill had been first placed before Parliament, the General Directorate of Labour, through the Directorate on Labour Standards, conducted a technical evaluation known as a “study of conformity”. This was done to verify whether law and practice of the State complied with provisions of the standard whose ratification was being sought. The study of conformity showed that national legislation, regulations and practice at the time were such that the moment was favourable for ratifying Convention No. 183, as far as maternity protection was embodied in a number of the provisions of the Labour Code, Social Security Code, the general rules and regulations governing permanent State officials, and the General Collective Labour Agreement. The principle requirements of the Convention – namely maternity protection, employment protection and non-discrimination, entitlement to benefits and health protection – were deemed to be covered by Benin's existing legislation.

However, practical application of the standards left something to be desired since women working in the informal sector did not benefit from the guarantees provided for under Convention No. 183, which included women engaged in atypical forms of dependent labour such as market-sellers employed by business owners.

Women working in the informal economy are not registered with the National Social Security Fund and therefore are not entitled to its benefits. That being so, Benin had the option under Article 2, paragraph 2 of Convention No. 183 to ratify it while excluding that category of working women wholly or partly from its scope. So it was that the National Assembly's Committee on Social Affairs, which had been called upon to

<sup>38</sup> See [www.wildaf-ao.org](http://www.wildaf-ao.org)

<sup>39</sup> See [www.afjb.courantsdefemmes.org](http://www.afjb.courantsdefemmes.org)



conduct a study as to the substance of Convention No. 183, was asked to give the plenary Assembly its opinion on the desirability of ratifying it.

In its report the Committee observed that discrimination continued to exist against women, who often lost their jobs if they became pregnant. The Committee concluded: “Ratifying the Convention would attest once again to the desirability for the country to promote women and the family and to its manifest will to do so. It will highlight Benin’s adherence to the international trend towards eliminating discrimination as an integral part of any strategy seeking to reduce poverty and foster sustainable economic development”.

Accordingly, the authorization to ratify Convention No. 183 was adopted by the National Assembly, without reservation, on 22 January 2010 by virtue of Act No. 2010-09. This enactment of the Act authorizing the ratification was a combined outcome of the Government’s political will, the socio-economic environment, and Benin’s existing laws and regulations. Because of the monist nature of the country’s juridical system, Convention No. 183 is now an integral part of national law and takes precedence over internal law. In the event of its conflict with an earlier legislative provision, priority must go to Convention No. 183. It remains for Convention No. 183 to be published in the *Official Gazette*<sup>40</sup> for it to be fully and directly enforceable by the national courts.<sup>41</sup> Ratification of Convention No. 183 by Benin was registered on 12 January 2012 and will enter into force on 12 January 2013. The first report on application of Convention No. 183, to be submitted by the Government in accordance with Article 22 of the ILO Constitution, is to be transmitted by September 2013.

### › Analysis of legal rulings on maternity protection

A judicial system’s effective application of the laws in force is a reflection of the degree to which maternity protection exists in practice. The 98th Session of the International Labour Conference, held in June 2009, recognized it was essential that such protection be reinforced if gender equality at work was to become a reality. Benin’s social jurisprudence shows judges have been known to rule that dismissals are abusive on grounds that the legal provisions on maternity protection have been violated and to order employers to pay damages accordingly.

For example in a case in which the Court of First Instance of Cotonou issued Ruling No. 009/09 of 20 July 2009,<sup>42</sup> a woman worker entered into an open-ended contract with her employer on 14 June 1997. Her job as an area coordinator responsible for assisting people in rural areas meant that she had to travel by motorcycle. In January 2000 she took maternity leave and was assigned to sedentary work until August 2000. When subsequently she was asked to return to her previous post, she presented a certificate to the effect that she was pregnant again. However because of complications she was issued medical certificates on 17 and 26 April 2001 which indicated her state of health did not allow her to travel on two-wheeled vehicles, as the vibrations could be

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<sup>40</sup> At the time of writing, Convention No. 183 has not yet been published in the *Official Gazette*.

<sup>41</sup> *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, ILO, Geneva, 2008, page 7.

<sup>42</sup> *Recueil de jurisprudence sociale au Bénin*, ILO PAMODEC cd-rom, 2011, page 977. See also judgment No. 05 of 30 June 1999 of the Court of First Instance of Porto-Novo, page 1,021.

harmful to her health. She duly informed her employer and complained about having to return to her former job. On 23 April the employer noted her complaint, and on 3 May he dismissed her on the grounds that she was unable to resume her work as a community worker and area coordinator.

Believing that she had been unfairly dismissed, the worker took her case to the labour inspector, who was unable to reconcile the two parties. At that point the matter was brought before the court in Cotonou. The employer asked the court to declare that that breach of contract was not of his doing, as the medical certificate presented by the employee attested to her inability to carry out her duties. Since her reclassification was impossible he had dismissed her on 3 May 2001 on grounds of her physical incapacity, thereby complying with the relevant formalities. In his opinion therefore he could not be held responsible for her dismissal.

The issue on which the court was required to rule was whether or not an employee could be legally dismissed during an extension of her period of maternity leave, since owing to complications arising from her delivery she was no longer in a condition to resume her former job. Recalling the provisions of Article 8 of Convention No. 183, the court observed that Articles 170 to 172 of the Labour Code used were identical in their approach to maternity protection. Furthermore, the employee had been dismissed during the period of maternity leave arising from childbirth, in violation of Article 170. The court emphasized that the employer had abused the worker's rights, and his claim that she was physically incapacitated was irrelevant. The court ordered the employer to pay the employee damages.

In another case that gave rise to Ruling No. 015/2010 by the Court of First Instance of Cotonou on 10 May 2010, a woman worker had been recruited as an operations officer by letter of 27 May 2002, on which date she duly signed an open-ended contract placing her in charge of the south office at a gross monthly salary of 900,000 CFA francs. In the course of employment the woman encountered health problems that required her medical evacuation to France, on the advice of the medical adviser of the enterprise's insurance company. During sick leave she sent her employer a pregnancy certificate dated 14 September 2005, which set the expected date of birth at 26 January 2006 and after which she benefited from maternity leave until her scheduled return to work on 24 March 2006.

In a letter dated 26 April, her employer notified her of dismissal on economic grounds since her post had been suppressed following a reorganization of the enterprise, which took place during her absence. The employee contested the validity of the grounds for terminating her contract and lodged a complaint with the labour inspector, who having failed to reconcile the two parties submitted the case to the court. The employer explained to the court that the dismissal was a result of an internal reorganization that had resulted in new staffing arrangements in which there was no post that corresponded to the employee's profile. Noting that the employer had not taken the time to assess the performance of the employee (who had meanwhile been declared fit for work by her doctor), the court ordered him to pay damages. The order was upheld by Ruling No. 012/2012 handed down by the Court of Appeals of Cotonou on 21 March 2012.<sup>43</sup>

<sup>43</sup> Court order No. 015.2010 of 10 May 2010, and ruling No. 012/2012 of 21 March 2012, have not yet been published but are available for consultation.

Despite advances in national legislation, discriminatory practices associated with maternity and pregnancy continue to exist. Hence the importance of ratifying Convention No. 183 and the relevance of Recommendation No. 191.

### › Challenges and prospects for implementation

Ratification of Convention No. 183 calls for a detailed assessment of the legislation in force in light of both the instrument itself and accompanying Recommendation No. 191, as all their provisions still pose major challenges. The court rulings recounted above give some idea of the challenges facing the social partners in tripartite dialogue bodies, beginning with the National Labour Council (CNT).

In Recommendation No. 191, Paragraph 1 states: “(1) Members should endeavour to extend the period of maternity leave referred to in Article 4 of the Convention to at least 18 weeks. (2) Provision should be made for an extension of the maternity leave in the event of multiple births.” It does not, however, identify any measures for applying the provisions in internal law. This question may be raised in the CNT following a review of the Labour Code, which the Government has already initiated. So too may the question of the kind of leave involved, for which there is no specific provision in Beninese law. Currently, a worker or a worker’s spouse in both the public service and private sector can only interrupt a contract by taking an unpaid leave of absence for a minimum of at least one year.

Although workers on maternity leave do receive their previous earnings in full, low levels of medical benefits and the few women who actually benefit from them are important issues, as mentioned earlier. This state of affairs has to be looked at in order to bring it in line with Convention No. 183 and Recommendation No. 191. Article 37 of the Social Security Code, which stipulates that “the Fund shall at least once every five years conduct an analysis of its financial operations and actuarial estimates of the various branches of the social security scheme”, must be implemented in order to raise the present level of medical benefits.

It should be emphasized that for several years now Benin has had a policy whereby births by Caesarean section are free of charge, so that women can give birth in more sanitary conditions and the frequency of avoidable deaths can be reduced. The Government has issued two decrees implementing the decision: Decree No. 2008-730 of 22 December 2008 declares Caesarean births to be free of charge, and Decree No. 2009-096 of 30 March 2009 provides for the creation, organization and functioning of the National Free Caesarean Management Agency (ANGC). Providing Caesarean births free of charge is one of the Government’s responses to Millennium Development Goals 4 and 5 regarding the reduction of maternal and child mortality rates.

Under its free Caesarean policy the State covers costs of the pregnant woman’s transport to the health centre, an intravenous drip prior to transport, medical consultation, the operation itself, medication and medical consumables, hospitalization, and post-operative check-ups. Free Caesarean births, which became available on 1 April 2009, are available in 44 hospitals throughout Benin. That year marked a turning point in reducing the country’s backwardness in terms of emergency obstetrical care. Between the nine

months from 1 April to 31 December 2009, reimbursement payments by the Agency amounted to 1,225,000,000 CFA francs, an increase of 25 per cent over 2008.<sup>44</sup>

For many women, whether they work in the formal or informal sector or are not employed, free Caesarean operations are part of general healthcare. However, a number of problems remain<sup>45</sup> including delays in allocating the ANGC subsidy, shortfalls between the subsidy allocated and number of women needing a Caesarean, and incomplete coverage of the cost of Caesareans by the State. One solution could be to institutionalize a mechanism guaranteeing full medical coverage for all women under the Universal Sickness Insurance Scheme which the Government is in the process of introducing. This would make it possible to improve women's ability to pay for quality healthcare.<sup>46</sup>

The other major challenge to maternity protection in Benin is coverage of women working in the informal economy, in which 90 per cent of the active population is engaged. The General Directorate of Labour does not have sufficient human, material or financial resources to enforce labour legislation properly. According to a study in 2000, Benin had only 126 labour inspectors – or one inspector for every 1,124 workers in the private, formal and informal sectors.<sup>47</sup>

Those who violate women's rights are able to do so in part because of illiteracy and people's ignorance of the law. Pending an improvement in Benin's performance in these domains, an extensive public information campaign on relevant international standards and national legislation could do much to combat discrimination on grounds of pregnancy and maternity.

## › Conclusion

Convention No. 183 and its accompanying Recommendation No. 191 seek to promote the equal status of all working women and safety and health of mother and child more effectively. They also aim to ensure that protection of pregnancy is a shared responsibility of public authorities and civil society. In ratifying Convention No. 183, the Republic of Benin testifies to its desire to follow international movement in this direction. Following ratification of the Convention, the dialogue with the supervisory bodies of the ILO and the CEACR in particular will provide the Government with useful guidance on how to best implement the Convention's provisions and monitor that effective measures and policies are being followed in this respect.

<sup>44</sup> Agbodjinou, T. Félix: *Contribution à l'amélioration du niveau des subventions de l'Etat octroyées à la césarienne gratuite*, Mémoire, National School of Administration and the Judiciary (ENAM), Cotonou, 2011, page XI.

<sup>45</sup> Ibid.

<sup>46</sup> Gbaguidi, A.C., *Contribution à la mise en œuvre optimale du mécanisme national d'assurance maladie universelle au Bénin*, Mémoire, National School of Administration and the Judiciary (ENAM), Cotonou, 2012, pages 7, 12 and following.

<sup>47</sup> Bocco, Georges N: *Contribution de l'inspecteur du travail au renforcement de la protection de la maternité en milieu de travail au Bénin*, Mémoire, page 16.

## MOLDOVA

BY MS. ANGELINA ZAPOROJAN-PIRGARI<sup>1</sup>

### › Introduction

On 20 April 2006,<sup>2</sup> Convention No. 183 was ratified by the Republic of Moldova. According to the Constitution, the State is obliged to take measures for protecting family life<sup>3</sup> and maternity.<sup>4</sup> Trade unions, which have some 500,000 members of whom 58.6 per cent are women, played an active role in advocating for the ratification of Convention No. 183. Negotiations for ratification were begun at the initiative of the Women's Organization of the Trade Unions of Moldova.<sup>5</sup>

Since ratification, the national authorities have taken measures to incorporate the standards set out by Convention No. 183 into the legislative and regulatory framework. This includes in the 2003 Labour Code,<sup>6</sup> the 2005 Law on Equal Opportunities between Women and Men,<sup>7</sup> the 2005 National Strategy on Reproductive Health,<sup>8</sup> the 2011 National Program on Demographic Security<sup>9</sup> and the 2012 Law on Equal Opportunities.<sup>10</sup> This framework guarantees women's rights and supports institutional mechanisms for all matters related to pregnant and nursing women's status and their maternal health at the workplace.

Women who enjoy protection in the event of pregnancy and motherhood are employed women and apprentices.<sup>11</sup> These women are entitled to 126 days of maternity leave from the 30th week of pregnancy, and in the case of complex and multiple births to 140 days.

The monthly maternity cash benefits amount to 100 per cent of the average monthly income obtained in the last six months prior to maternity leave. As a result once a woman's salary is increased, the maternity cash benefits are increased accordingly. The amount of a one-time allowance for the birth of child is established on an annual basis and increases by about 15 per cent each year.<sup>12</sup>

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<sup>2</sup> Law No. 87-XVI, 20 April 2006, *Official Gazette*, No. 75-78/320, 19 May 2006.

<sup>3</sup> Constitution of the Republic of Moldova, 29 July 1994, *Official Gazette*, No. 1, 12 August 1994, Art. 28.

<sup>4</sup> *Ibid.*, Art. 49.

<sup>5</sup> Interview with Ana Selina, Representative of the Women's Organization of the Trade Unions of Moldova, June 2012.

<sup>6</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, *Official Gazette*, No.159/162/648, 29 July 2003.

<sup>7</sup> Law on equal opportunities between women and men, No. 5, 9 February 2006, *Official Gazette*, No. 47-50/200, 24 March 2006.

<sup>8</sup> Government Decision No. 913, 26 August 2005.

<sup>9</sup> Government Decision No. 768, 12 October 2011.

<sup>10</sup> Law on Equal Opportunities, No. 12, 25 May 2012, *Official Gazette*, No. 103/355, 29 May 2012.

<sup>11</sup> Also protected are women not engaged in paid work but whose husbands are.

<sup>12</sup> Law No. 270 on the State Social Insurance Fund for 2012, 23 December 2011, *Official Gazette*, No. 15/73, 17 January 2012, Art. 23; Law No. 54 on the State Social Insurance Fund for 2011, 31 March 2011, *Official Gazette* No. 63-64/153, 2 April 2011, Art. 23.

Employed women and apprentices are entitled, as well as women not engaged in paid work but whose husbands are, to childcare leave and a monthly allowance for childcare until the child until is three years old. The amount of this allowance also increases regularly. Women who are not employed are entitled to an allowance for caring for a child until the age of one and a half years old.

While national law in Moldova incorporates most of the standards set out by Convention No. 183 and accompanying Recommendation No. 191, in practice there are still many challenges. The CEACR has raised a number of issues with respect to application of Convention No. 183 and awaits further information from the Government in its next report due in 2013.

This paper will highlight good practices in implementation of the provisions of Convention No. 183 into national law as well as discuss challenges in its implementation.

## › Good practices in implementation

### – Scope – Article 1

All citizens are entitled to enjoy equal rights and freedoms enshrined by the Constitution and are equal under the law<sup>13</sup> regardless of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.<sup>14</sup> All citizens enjoy protection whether physically in the country or abroad,<sup>15</sup> and the law provides these same rights and obligations to foreign nationals and stateless persons<sup>16</sup> with a work contract in the country. This includes those employed by a natural person or legal entity in the public or private domain as well as in the not-for-profit organizations, religious organizations, trade unions, employers' organizations, foundations, parties and other non-profit organizations. These persons are entitled<sup>17</sup> to enjoy equal rights, freedoms and obligations as citizens in the field of labour including leave and medical assistance and benefits and pensions within the framework of mandatory health insurance and social security.

The Labour Code also enshrines the principle of equality without discrimination for all employed persons.<sup>18</sup> Any direct or indirect discrimination toward a worker is prohibited on the basis of sex, age, race, skin colour, ethnicity, religion, political opinion, social origin, disability, HIV and AIDS status, trade union membership, as well as any other criteria not relevant to professional qualifications. The Gender Equality Law<sup>19</sup> guarantees the enjoyment of equal rights by women and men including in political, economic, social, and cultural domains, and it aims to prevent and eliminate all forms of sex discrimination. The Law further prohibits any difference, exclusion, restriction or pref-

<sup>13</sup> Constitution of the Republic of Moldova, Art. 15.

<sup>14</sup> Ibid, Art. 16.

<sup>15</sup> Ibid, Art. 18.

<sup>16</sup> Ibid, Art. 19.

<sup>17</sup> Law No. 257-XIII on the Legal Status of Foreign Citizens and Stateless Persons in the Republic of Moldova, 10 November 1994, *Official Gazette*, No. 20/234, 29 December 1994.

<sup>18</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, *Official Gazette*, No.159/162/648, 29 July 2003, Art. 8.

<sup>19</sup> Law on Equal Opportunities between Women and Men, No. 5, 9 February 2006, *Official Gazette*, No. 47-50/200, 24 March 2006.

erence that would in effect limit or undermine equal opportunities and rights in employment, vocational training or dismissal.<sup>20</sup>

– *Article 2*

The Moldovan Government has declared that the provisions of Convention No. 183 extend to employed women and apprentices.<sup>21</sup>

In compliance with ILO Recommendation 191 and according to national labour law and practice, adoptive parents enjoy the same rights and have access to the same protection system related to leave, benefits and employment protection.

– *Health protection – Article 3*

In case a pregnant woman should request, in accordance with a medical certificate, a partial working day or working week, her wages are adjusted to the actual hours worked. Part-time hours do not affect her rights concerning calculation of the total length of service, the duration of annual paid leave, or other labour rights.<sup>22</sup> The Labour Code prohibits the following types of work for pregnant women: night shifts, overtime work, work on days off, work on official holidays, and work in continuous shifts.<sup>23</sup> Mothers with children younger than six years or with disabled children may be assigned to perform such work only with their written approval; the employer is obliged to inform these women in writing that they have the right to refuse such work. Women who are pregnant, based on a medical certificate, may be sent on duty travel only upon their written consent; the employer is obliged to inform these women about their right to refuse such travel.<sup>24</sup>

The Labour Code categorically prohibits the use of women in labour that is physically difficult or in hazardous conditions.<sup>25</sup> Regulations for the maximum weight accepted for women to manually lift were established in 1993 by Government Decision No. 624.<sup>26</sup> These prohibit women from lifting weights over ten kilograms at the workplace and include the following professions: boiler maker, brick layer, locksmith, riveter and welder. At first glance, this legislation seems to be highly protective of women since it categorically prohibits them from a number of professions considered to have hazardous conditions. However such legislation could be considered discriminatory, as it prevents all women – not just those who are pregnant or breastfeeding – from equal job opportunities.

Pregnant women and those who have recently given birth and/or breastfeeding are among protected groups, given their vulnerability to specific work-related risks.<sup>27</sup> Pregnant and

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<sup>20</sup> Ibid, Art. 8.

<sup>21</sup> It also applies to women not engaged in paid work but whose husbands are.

<sup>22</sup> Ibid, Art. 97.

<sup>23</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, *Official Gazette*, No.159/162/648, 29 July 2003, Art. 103, Art. 105, Art. 110, Art. 111 and Art. 318.

<sup>24</sup> Ibid, Art. 249.

<sup>25</sup> Ibid, Art. 248.

<sup>26</sup> List of industries, professions and work with difficult and hazardous conditions, prohibited to women and the norms of maximum input accepted for women to manually lift, Government Decision No. 624, 6 October 1993, *Official Gazette*, No. 10, 30 October 1993.

<sup>27</sup> Ibid, Art. 22.

breastfeeding women, based on a medical certificate, should be transferred to a less physically demanding job. The aim is to avoid harmful production conditions yet maintain the average salary of the previous job.<sup>28</sup> While waiting for a transfer decision, pregnant and breastfeeding women are exempted from working, however they are entitled to receive their average salary for all days in which they were unable to work for this reason. While at work, pregnant and breastfeeding women are provided an opportunity to rest in a horizontal position and in adequate conditions.<sup>29</sup>

In 2009 when it analyzed the first report submitted by Moldova on the application of Convention No. 183, the CEACR observed that the regulations approving the list of industries, professions and work with difficult and hazardous labour conditions prohibited for women, as well as the regulations for the maximum weight accepted for women for manual lifting and transportation of weights, were adopted in 1993. The CEACR requested the Government to provide information on how it ensures that this list is updated regularly, as well as on the procedure for carrying out an assessment of the health risks involved for work that is not listed in the abovementioned decision, but nevertheless may be prejudicial or present a significant risk to the health of the mother or child. The Government also was asked to explain how this list and the results of assessment were made available to the women concerned.

#### – *Maternity leave – Article 4*

Convention No. 183 establishes in case of childbirth a minimal maternity leave of 98 days, of which 42 days are provided after childbirth. In compliance with ILO Recommendation 191, women are entitled to maternity leave and postnatal leave which is much longer compared to the requirements of Convention No. 183. Women are also entitled to paid leave for taking care of the child.

According to the Labour Code employed women and apprentices<sup>30</sup> enjoy a paid maternity leave of 126 days. This includes 70 days of prenatal leave and 56 of postnatal leave. In the case of difficult or multiple births, the postnatal leave is of 70 days.<sup>31</sup> All such leave is paid from the budget of the State Social Insurance Fund.

Upon expiry of the maternity leave employed women and apprentices, and women who are not engaged in paid work but whose husbands are, can request in writing to their employer a partially-paid leave for caring for the child until the age of three. These allowances are also covered by the Social State Insurance Fund budget.<sup>32</sup>

In its 2009 direct request to the Government related to the application of Convention No. 183 in Moldova, the CEACR noted that the Labour Code does not contain express provisions on the compulsory period of postnatal leave, which needs to be established in accordance with the Convention. The CEACR asked the Government to provide infor-

<sup>28</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, Art. 250.

<sup>29</sup> Minimal conditions of security and health at the workplace, Government Decision No. 353, 5 May 2010, *Official Gazette*, 91-93/525, 8 June 2010.

<sup>30</sup> Also covered are women not engaged in paid work but whose husbands are.

<sup>31</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, Art. 124.

<sup>32</sup> *Ibid.*, Art. 126.



mation on how effect is given to this provision of the Convention, according to which maternity leave shall include a period of six weeks' compulsory leave after childbirth.

Besides maternity leave and partially-paid leave for childcare until three years old, based on a written request, women can take a supplementary unpaid leave for caring for the child between the ages of three and six years and still maintain their previous job. This partially-paid leave can be used also by the father, grandmother, grandfather or another relative taking care of the child.<sup>33</sup> The same conditions are valid in case of adoption of a newborn child from a maternity ward.<sup>34</sup>

In the case of a premature birth, maternity leave is increased to 140 days. In the case of the newborn not surviving, maternity leave is 70 days. In case a woman is pregnant again during the six-year period when on maternity leave for caring for a child, she will receive a paid maternity leave for the whole period of 126 days. It should be highlighted that all the time spent on maternity leave and on partially-paid leave for taking care of the child until the age of three are included in the total length of service.

Moreover the Labour Code provides, as an exception, that women either before starting their maternity leave or immediately after it ends may take annual leave during the first year worked, even before expiry of the six months of work in the same place.<sup>35</sup>

– *Leave in case of illness or complications – Article 5*

According to national law in the case of complications arising from pregnancy and childbirth, and in the case of multiple births, women are entitled to 14 days of medical leave.<sup>36</sup> In cases when the pregnancy is interrupted, medical leave is granted in accordance with a medical certificate that confirms temporary and limited work-capacity.<sup>37</sup>

Concerning taking care of a child under the age of three who is ill, a medical certificate is usually issued to the mother regardless of the fact that there could be another family member able to care for the child.

– *Benefits – Articles 6 and 7*

According to national law and practice, cash benefits are provided in case of maternity both to insured women (employed women and apprentices, and women who are not engaged in paid work but whose husbands are) and non-insured women. As described, the payment of such benefits is fully covered by the budget of the State Social Insurance Fund.

The monthly cash benefits for maternity constitute 100 per cent of the average monthly salary paid in the last six months. Besides employed women and apprentices, and women who are not engaged in paid work but whose husbands are, in cases prescribed

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<sup>33</sup> Ibid, Art. 124, para. 4.

<sup>34</sup> Ibid, Art. 127.

<sup>35</sup> Labour Code of the Republic of Moldova No. 154-XV, 28 March 2003, Art. 115.

<sup>36</sup> Instructions regarding issuance of a medical certificate for medical leave, Government Decision No. 469, 24 May 2005, *Official Gazette*, No.77-79/529, 3 June 2005, para. 45.

<sup>37</sup> Ibid, para. 49.

by law unemployed women are also entitled to maternity cash benefits.<sup>38</sup> These are paid starting with the 30th week of pregnancy for a period of 126 days, and for 140 days in case of complicated or multiple births. The same conditions apply in the case of the child's death.<sup>39</sup>

In cases where a woman would not qualify for cash benefits under the social insurance system, the Government supplied information in its report on the application of Convention No. 183, stating that cash benefits are paid after childbirth to women who do not fulfill the conditions provided for in section 6 of the law on indemnities for temporary labour disability and other social insurance benefits. The CEACR requested the Government to supply information on social assistance benefits paid to these women during the prenatal period of maternity leave, taking into consideration that these benefits should be at a level that ensures the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, according to these provisions of the Convention.

All women are entitled to payment of a one-time allowance for the birth of a child born alive. The amount of this allowance, which is established every year in the Law on the State Social Insurance Budget,<sup>40</sup> has regularly increased. For example in 2006 the payment was 800 Moldovan Lei (MDL) for the first child and each subsequent child, while in 2012 this raised to 2,300 MDL for the first child and 2,600 MDL for each subsequent child.

Both insured and non-insured women on leave for taking care of a child less than three years old are entitled to monthly cash benefits for such care. These benefits can be paid also to other family members, such as: the father, grandmother, grandfather or other family member taking care of the child.<sup>41</sup> Although amounts of the cash benefits have been regularly increasing, they are still not adequate.

There is a tendency on behalf of the Government to unify amounts of the cash benefits, irrespective of whether a woman is insured or non-insured. In 2006, the amounts comprised 20 per cent of the average monthly salary for an insured woman and 100 MDL for an uninsured; in 2012 the amounts comprised 30 per cent of the average monthly salary or 300 MDL.

National law entitles women to medical benefits such as prenatal, childbirth and postnatal care.<sup>42</sup> Obstetric and gynecological assistance is provided in public and private hospitals that are licensed and accredited, according to standards established by the law. Pregnant women are entitled to choose a doctor and medical institution for childbirth and postnatal care. Women are entitled to qualified medical assistance free of charge and provided by public hospitals during pregnancy, childbirth and postnatal care for both herself and the infant.<sup>43</sup>

<sup>38</sup> Law on Allowances for Temporary Loss of Labour Capacity and Other Social Benefits, No. 289, 22 July 2004, Official Gazette, 168-170/773, 10 September 2004, Art. 7.

<sup>39</sup> Ibid, Art. 16.

<sup>40</sup> Ibid, Art. 17.

<sup>41</sup> Law on Allowances for Temporary Loss of Labour Capacity and Other Social Benefits No. 289, 22 July 2004, Official Gazette, 168-170/773, 10 September 2004, Art. 18.

<sup>42</sup> Law on Health Protection, No. 411, 28 March 1995, Official Gazette, 34/377, 22 June 1995.

<sup>43</sup> Ibid, Art. 33.

In case of hospitalization of a child younger than three years and for serious medical problems of older children, based on medical advice, the mother or father is entitled to stay overnight in the medical ward in order to accompany the child. In case the child is not hospitalized and home treatment is prescribed, the mother, father or another family member is entitled to paid leave from work.<sup>44</sup>

– *Employment protection and non-discrimination – Article 8*

National labour law prohibits dismissal of employees in the case when they are on medical or maternity leave, partially-paid leave for taking care of a child younger than three years, and on supplementary unpaid leave for taking care of a child aged between three and six years.<sup>45</sup> The mother, father or other family member who benefits from partially-paid leave for taking care of a child until it is three years old and additional unpaid leave for taking care of a child between three and six years old are entitled to return to their former professional position.<sup>46</sup>

In 2009, the CEACR asked the Government to provide information on how effect in practice is given to the provision of the Convention guaranteeing the right to return to the same position or an equivalent position paid at the same rate at the end of maternity leave.

The employer is obliged to compensate a woman for incurred loss in case of unjustified refusal to hire, illegal termination of her employment, or transfer to another position without her consent.<sup>47</sup>

All labour disputes are litigated in the courts of law. Concerning labour discrimination cases, the burden of proof is on the employer<sup>48</sup> and employees are exempted from paying court fees.<sup>49</sup> In case of a court order to return an employee to her former position, if she was illegally dismissed or transferred she is entitled to receive compensation from the employer. This mandatory compensation, which is for the entire period of forced absence from work, should be the average salary of the employee for this period as well as reimbursement of legal costs and for moral damages.

– *Article 9*

National labour legislation categorically prohibits any form of discrimination of employees, whether direct or indirect.<sup>50</sup> All clauses – whether in individual or collective labour contracts, in bargaining agreements or in legal acts issued by public authorities – that worsen an employee's situation compared to labour legislation are considered null and void.<sup>51</sup>

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<sup>44</sup> Ibid, Art. 51.

<sup>45</sup> Labour Code of the Republic of Moldova, No. 154-XV, 28 March 2003, Art. 86.

<sup>46</sup> Ibid, Art. 126.

<sup>47</sup> Ibid, Articles 330-332.

<sup>48</sup> Law on Equal Opportunities, No. 121, 25 May 2012, *Official Gazette*, No. 103/355, 29 May 2012, Art. 19 and Art. 7.

<sup>49</sup> Labour Code of the Republic of Moldova No. 154-XV, 28 March 2003, Articles 351-355.

<sup>50</sup> Ibid, Art. 8.

<sup>51</sup> Ibid, Art. 12.

At the same time, different treatment shall not constitute discrimination when it is established for the reason of special care of employees who require increased social and legal protection. These refer to women who are pregnant, or have recently given birth or those breastfeeding. For example according to the law, pregnant women who have just been hired do not have to complete a probation or trial period.<sup>52</sup> The CEACR asked the Government to specify in which cases a medical certificate can be required in accordance with national legislation, and to supply a list of categories of women workers who need to undergo medical examination before or in the course of employment.

The law further prohibits a refusal to hire or a lowering of the salary on grounds of pregnancy, or for having children younger than six years old.

It is prohibited for employers to request or process data regarding the private life of employees. In certain cases employers may request personal data, which are provided in written form and upon agreement of the employee. National law categorically prohibits employers from requesting documents other than identity papers, labour book, military documents if relevant, diplomas, and medical certificates if relevant for certain categories of jobs.<sup>53</sup>

According to national law there are certain professions that require the production of a medical certificate upon hiring.<sup>54</sup> For the purpose of protecting public health, prevention of occurrence and dissemination of transmitted diseases, certain categories of employees are subject to mandatory medical examination upon hiring, as well as to periodic medical examinations.<sup>55</sup>

#### – *Breastfeeding mothers – Article 10*

According to national law, one parent or guardian with a child younger than three years old is entitled to additional breaks in order to provide a meal to the child including breastfeeding. These additional breaks are to be every three hours during the working day, with a minimal duration of 30 minutes. For one parent or guardian with two or more children younger than three years old, the break duration is no less than one hour. Breaks for providing a meal to the child are counted as working time and are remunerated accordingly. One parent or guardian of a disabled child is given an additional day off per year, which is paid by the employer.<sup>56</sup>

The law also provides for the possibility to establish a partial working day or partial working week, upon mutual agreement between the employee and employer anytime. The employer is obliged to grant a partial workday or partial week schedule for pregnant women and for women and men with children younger than 14 years or disabled children. In this case, the employee is remunerated proportionally for the time worked. Such arrangements have no repercussions on calculations for length of labour service, duration of annual leave, and other labour rights.<sup>57</sup>

<sup>52</sup> Ibid, Art. 62.

<sup>53</sup> Ibid, Art. 57.

<sup>54</sup> Law No. 158 on Public Servants and on Public Service, 04 July 2008, Official Gazette, 230-232/840, 23 December 2008, Art. 27; Law No. 294 on Prosecutor's Office, 25 December 2008, Official Gazette, 55-56/155, 17 March 2009, Art. 36; Regulation on hiring of managers of medical institutions, Government Decision No. 1079, 2 October 2007, Official Gazette, 157-160/1114, 5 October 2007.

<sup>55</sup> Law No. 10 on the State Supervision of Public Health, Official Gazette, 67/183, 3 April 2009.

<sup>56</sup> Labour Code of the Republic of Moldova No. 154-XV, 28 March 2003, Art. 108.

<sup>57</sup> Ibid, Art. 7.

## ► Challenges in implementation

The major challenges faced in implementation of Convention No. 183 concern especially the coverage of women in the informal economy, who are without maternity protection guarantees, as well as maternity-related discrimination.

Although the majority of the population is engaged in formal employment (four of five women and three of four men) a higher proportion of women, especially in urban areas, are engaged in informal work.<sup>58</sup> They fall outside the maternity protection system and benefit only from social assistance allowances, which are insignificant.

In 2006 the Committee on the Elimination of Discrimination against Women expressed its concern regarding the situation of Moldovan women in the labour market. It stated that labour legislation was overly protective with regards to pregnant women and women with children and could create obstacles to women's participation in the labour market and perpetuate gender role stereotyping.<sup>59</sup>

In fact, on one hand this legislation establishes extensive rights for women; on the other hand this discourages employers from hiring them due to additional costs and measures related to maternity and family responsibilities. An example already mentioned is the fact that the law guarantees the right to unpaid leave for taking care of a child until it is six years old, with the obligation to keep the former professional position upon the woman's return. These highly protectionist measures place women of childbearing age at a disadvantage in the labour market.

A survey in 2008 revealed that over 38 per cent of the businesses believed women were discriminated against in the labour market. Respondents admitted their preference for hiring men, even when those candidates had weaker professional qualifications; this was done "in order to prevent possible human resources fluctuations caused by maternity leave", according to respondents. The majority, 56.7 per cent, stated that discrimination against women took place most often in the hiring processes, while 37.8 per cent considered that this occurred most often during promotion. Over 20 per cent stated that the main reason for women not being promoted to management positions was that women have to "combine their professional activity with family responsibilities, which impedes them from fulfilling their work tasks at the required level of quality".<sup>60</sup>

Although parental leave for working men is guaranteed by law, in practice very few take such leave. Over the last three years, about 97 per cent of working women took such leave, while only 3 per cent of working men did.<sup>61</sup>

The Government has recently drafted amendments to the labour legislation in order to help change attitudes and behaviors concerning the gender division of labour. The draft amendments repeal the provision on women's unpaid leave until the child is six years old with the obligation of the employer to keep her position. New provisions are planned

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<sup>58</sup> *Women and Men in the Republic of Moldova, Analysis of Territorial Aspects*, National Statistics Bureau of the Republic of Moldova; UNDP Office in Moldova; and UN Women Office in Moldova, Chisinau, 2012, page 23.

<sup>59</sup> "Concluding comments of the Committee on the Elimination of Discrimination against Women for the Republic of Moldova", Committee on the Elimination of Discrimination against Women, 36th Session, New York, 7-25 August 2006, page 28.

<sup>60</sup> *Situation of Women in the Labour Market in the Republic of Moldova*, Academy of Economic Studies, Chisinau, 2008.

<sup>61</sup> *Women and Men in the Republic of Moldova – Analysis of Territorial Aspects*, National Statistics Bureau of the Republic of Moldova; UNDP Office in Moldova; and UN Women Office in Moldova, Chisinau, 2012.

to be introduced for mandatory paid paternal leave of 30 days with relevant benefits for fathers.<sup>62</sup>

There are no official statistics on the number of court cases brought by working women concerning their maternity-related rights. According to a Labour Inspection Activity Report, in the year 2011 there were 3,150 complaints filed on matters related to labour rights, of which only 2 per cent dealt with maternity-related rights.<sup>63</sup> Of the few cases about the latter filed with the Labour Inspectorate in the same year, these concerned the right to return to work after maternity leave and after childcare leave of three years, and failure to pay maternity cash benefits.

Prevention and elimination of any form of discrimination in the labour market including gender pay gaps, differences in promotion, and integration of socially-excluded groups are major goals of the National Strategy on Labour Occupation Policies for 2007-2015.<sup>64</sup> The Strategy aims to establish a network of community-based and regional centres for counseling and professional orientation of youth and women who seek to enter or rejoin the labour market. Participants will be entitled to undertake free professional re-qualification courses. The Strategy also envisages offering childcare services for dependents. Ratification of Convention No. 183 provides a strategic framework for the further development of maternity protection in view of the main challenges faced by Moldova in this area and described above.

<sup>62</sup> As of July 2012, these amendments were still being discussed by the Government.

<sup>63</sup> Labour Inspection Activity Report No. 783 for 2011, *Official Gazette* No. 131-134, 29 June 2012.

<sup>64</sup> National Strategy on Labour Occupation Policies for 2007-2015, Government Decision No. 605, 31 May 2007, *Official Gazette*, No. 82-85/660, 15 June 2007.

## MOROCCO

BY MR. RACHID FILALI MEKNASSI<sup>1</sup>

### › Introduction

When Morocco ratified Convention No. 183,<sup>2</sup> it marked the end of a lengthy process of adaptation of the country's labour standards. This process began with a tripartite dialogue on the draft Labour Code in 2000,<sup>3</sup> and most recently found expression in amendments in 2011 to the sick leave and maternity leave provisions of the Civil Service Regulations.<sup>4</sup> The ten intervening years could suggest that Morocco's commitment was because the new international standards on maternity protection coincided with the Government's decision to review its labour law, and that the subsequent legislation therefore reflected the need to adapt the existing provisions accordingly. But this would underestimate efforts of the social partners to promote incorporation of the fundamental labour rights and principles into the Labour Code, and the widespread social movement during the 1990s to foster equality and equity between the sexes. It was inevitable that negotiations between 1998 and 2003 on the Labour Code were deeply influenced by political debate on the subject and by reforms that ensued. These were notably the promulgation of a Family Code in 2002 and reinforcement of penal sanctions for discrimination, sexual harassment and forced labour. The social partners were also engaged at the time in overhauling the National Social Security Fund (CNSS) which was completed in 2004, and in adopting the decrees on application of the Basic Medical Coverage Code which was formalized the following year.

If the drafters of the Code were influenced to reform the provisions on maternity by the tripartite dialogue on ratification of Convention No. 183 – and logically sought to facilitate matters by making sure that the Bill on which they were working complied with it from the start – they also were determined that the principle of non-discrimination in employment and occupation should be given the force of an international standard. This same preoccupation was reflected in other state policies dealing specifically with gender equality and equity and with mother and child healthcare, notably in pursuit of the Millennium Development Goals.

The measures that Morocco adopted to bring its legislation into line with the provisions of the Maternity Protection Convention show clearly how much progress it has made in standard-setting, but at the same time they reflect differences in the dual nature of the country's protection schemes. These differences point to glaring disparities among working women, whereby most of them are in fact denied legal protection in their everyday lives. If Morocco is to continue its implementation of Convention No. 183, then in addition to steadily improving its laws and regulations along the lines of Convention No. 183 and its accompanying Recommendation No. 191, it above all needs to ensure genuine progress concerning women's ability to exercise their recognized fundamental

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<sup>2</sup> Dahir of April 2012.

<sup>3</sup> Act No. 65-99 decreed by Dahir of 11 September 2003, *Official Gazette*, No. 5210, 6 May 2004.

<sup>4</sup> Act No. 50-05 decreed by Dahir of 18 February 2012, *Official Gazette*, No. 9944, 19 May 2011.

rights effectively. Failure to enforce their rights in practice is one of the ways discrimination against women takes place.

### › **Adaptation of national legislation to international standards on maternity protection**

Incorporation of the standards set by Convention No. 183 into Moroccan law began with revision of a 1947 Dahir (decree) that established general labour regulations; its provisions had been based on a 1928 Act that modified the French Labour Code as it related to employment of women and maternity. Other legislative measures that were adopted mainly involved extending maternity leave to 14 weeks, which resulted in some inconsistency in the relevant provisions (see below).

#### – *Progress through the Labour Code*

The draft Labour Code was fiercely debated and extensively amended in tripartite social dialogue between 2000 and 2003 before the final version was adopted unamended by a unanimous vote in Parliament. Instead of a “12-week rest period for women in childbirth”, the new provisions refer to “14 weeks’ maternity leave”.<sup>5</sup> The seven-week prohibition on women working following their childbirth is one week longer than under the previous legislation. In addition, employers must ensure that working women have a lighter workload before and after giving birth. Maternity leave can be taken from the seventh week preceding the expected date of birth, and in the event of pathological complications is extended to eight weeks prior to birth and 14 weeks after giving birth.

In addition to these two innovations, a working mother who wishes to spend more time with her newborn may postpone returning to work for up to 90 days, subject to informing her employer at least 15 days before the normal end of maternity leave. Section 156, paragraph 1, goes on to state that “in order to raise her child a woman employee may, with her employer’s consent, take one year of unpaid leave”. Unlike the previous provision, this does not constitute an entitlement but merely offers a woman the option of seeking her employer’s consent to a postponement of return to work. This applies to all other absences from work that are attributable to maternity leave or sick leave. While Paragraph 10 of Recommendation No. 191 suggests that the employed mother or employed father should be entitled to parental leave, subjecting such entitlement to the employer’s consent necessarily implies that all working parents would not have the same rights and entitlements. Be that as it may, this additional provision encourages the parties concerned to consider this option; it also opens up the possibility of including consensual leave in the general maternity scheme, thereby guaranteeing a worker’s reinstatement at the end of such leave “with all the benefits acquired prior to the suspension of their contract”.<sup>6</sup>

As in the past, any woman whose pregnancy has been established is officially entitled to resign from her job at any time without notice.<sup>7</sup> After childbirth, she may also decide not to return to work provided she informs her employer at least 15 days before the end

<sup>5</sup> Section 152.

<sup>6</sup> Section 156.

<sup>7</sup> Section 158.



of her maternity leave.<sup>8</sup> As to the prohibition on dismissing pregnant women, the relevant period now covers the entire pregnancy: the 14 weeks following childbirth and for as long as a pathological condition requires that maternity leave be prolonged.<sup>9</sup> Should a woman be dismissed before her employer has been informed of her pregnancy, she has 15 days to present a medical certificate to that effect, whereupon the dismissal is immediately revoked. However, these provisions do not prevent a fixed-term contract from ending on the designated date, and the employer can still dismiss an employee for serious misconduct should the eventuality arise.<sup>10</sup>

A working mother continues to be entitled to a paid rest period of 30 minutes for breastfeeding each morning and again each afternoon for one year following her return to work. Section 161 adds that “an employed woman may, with her employer’s consent, use the hour set aside for breastfeeding at any moment of the working day”, which affords her the possibility of combining the two authorized absences and taking them successively at the start or end of the working day. All enterprises employing 50 or more women workers over 16 years of age are required by law to provide a “special breastfeeding room”. The designated room may be on the enterprise’s premises, in the general vicinity or a nearby location where it can serve more than one enterprise and be used as a daycare centre for employees’ children.<sup>11</sup>

Along with these measures relating specifically to maternity, there are other innovative regulations pertaining to working women. The prohibition of night work for women has been rescinded,<sup>12</sup> subject to (i) provision of transport between their place of work and residence, and (ii) nightwork being interrupted every two days with a rest period of at least 11 hours including the period of nightwork. By contrast, the Labour Code has maintained its restrictions on work in underground mining operations, quarries and activities that are dangerous, “beyond the capacity of women” or “liable to endanger their morals”.<sup>13</sup>

This special dispensation is backed up by explicit prohibition of any form of discrimination, such as based on sex or marital status, which is “tantamount to an infringement or modification of the principle of equal opportunity and treatment on an equal footing in terms of employment or the exercise of an occupation, especially with respect to recruitment, performance or distribution of work, vocational training, remuneration, promotion, entitlement to social benefits, disciplinary measures and dismissal”.<sup>14</sup> Regarding the latter point specifically, section 36 of the Labour Code reasserts that neither a worker’s family responsibilities nor his or her sex or marital status may constitute valid grounds for disciplinary sanctions or dismissal.

The new juridical framework is consolidated by an improved occupational health scheme and by the generalization of occupational healthcare. Its entry into force has meant that other measures have had to be adapted accordingly.

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<sup>8</sup> Section 157.

<sup>9</sup> Section 159.

<sup>10</sup> Section 160.

<sup>11</sup> Sections 161-163.

<sup>12</sup> Section 172.

<sup>13</sup> Section 179.

<sup>14</sup> Section 9.

– *Extending protection under the law*

Insofar as maternity leave entailed financial coverage by the National Social Security Fund (CNSS), its long-term implementation meant that the benefit had to be made consistent. For this reason the CNSS, whose tripartite Board of Directors at the time was busy preparing a revision of the Act under which it functioned, gave its immediate attention to the provision's implications on the financial equilibrium of the Fund's short-term benefits branch. Once it was ascertained that the measure was viable, coverage was increased to 14 weeks with the same eligibility period of 54 days' contribution during the ten months preceding childbirth. It was also decided to maintain the benefit at 100 per cent of the beneficiary's average daily remuneration, subject to a lower limit equal to the legal minimum wage.

It was not until 2011 that the extension of maternity leave from 12 to 14 weeks in the public service was adopted.<sup>15</sup> At the time, Parliament opted not to make any further changes to the existing scheme, which also applies to natural miscarriages after the seventh month of pregnancy and allows public sector workers to remain on full pay throughout the period of leave. Extension of this leave comes under the rules governing short-term sick leave, which authorize the payment of remuneration in full for the first three months and half-pay for three additional months within the same year. To enable a woman worker to raise a child who is under five years of age or who suffers from an illness requiring continuous care and attention, section 59 of the general regulations governing the public service also entitles women, on request, to a period of non-active service for as long as the child meets the said conditions.

There is no equivalent in the public service of the Labour Code provisions dealing with working conditions and breastfeeding, but it is common practice for women to be allowed 30 minutes in the morning and again in the afternoon for breastfeeding during a child's first year.

From a juridical standpoint, coverage of mother and child healthcare comes under the same compulsory health insurance scheme for both public sector workers and employees of private enterprises. However, in practice the scheme is administered by the National Fund for Social Welfare Institutions (CNOPS) in the case of public sector employees, and by the CNSS for other employees. This is because if the rights that public sector employees previously acquired under their health insurance mutuels are to be maintained, then the national rates have to be exceeded and the member mutuels have to provide extra coverage. For this reason, public sector employees are better protected.<sup>16</sup> It would appear that the public service is less concerned with modifying its maternity protection arrangements to comply with the standards set in Convention No. 183, while in practice the financial coverage it offers is significantly higher. More than anything it is the enforcement of the law that gives rise to most disparities between beneficiaries.

<sup>15</sup> Act No. 50-05 promulgated by Dahir of 18 February 2012, *Official Gazette*, No. 5944, 19 May 2011, page 1653.

<sup>16</sup> For the CNSS, rates are based on the official national tariff which is 70 per cent of the expenses incurred subject to a maximum ranging from 500 to 3000 dirhams for a normal birth, and from 2,620 to 8000 dirhams for a Cesarean birth.

### ► Maternity protection as measured by effective healthcare and gender equality

Because the rules and regulations relating to maternity are in practice severely limited, they need to be seen in perspective. Therefore the enforcement of maternity protection standards must be analyzed from a standpoint that embraces the declared objectives in a comprehensive strategy aimed at equitable and egalitarian exercise of men and women's rights without either de jure or de facto discrimination.

#### – Challenge posed by the ineffectiveness of maternity protection

Although modification of the law referred to above has not yet been followed in the public service by consequent updating of the Sick Leave and Maternity Leave Decree of 10 May 2000, the new text was put into effect by means of internal circulars as soon as it was promulgated.<sup>17</sup> Consequently, a public employee simply needs to register her pregnancy in the manner prescribed under the maternity scheme to benefit from an interruption of her employment on full pay. However, for private sector employees implementation of the new legal provisions is in practice partly dependent on maternity leave being covered financially by the social security scheme and on the employer's compliance with the legislation in force. Meanwhile, CNSS statistics confirm that the vast majority of registered women employees do meet the qualifying conditions for entitlement to daily maternity benefits and medical coverage.

#### Selected relevant statistics on employees registered with CNSS

Year	Number of registered employees	Average number of days worked	Number of women employees receiving daily maternity allowances	Average remuneration in dirhams
2008	574,568	202	20,000	3,364
2009	589,367	199	19,836	3,614
2010	622,267	202	20,882	3,749

Source: CNSS, Department of Research

However the same statistics suggest that the ratio of maternity allowance recipients to the number of women registered with the CNSS is low: this was 3.5 per cent in 2008, 3.4 per cent in 2009, and 3.4 per cent in 2010. This could indicate that some women stop working when they become pregnant.

If the distribution of registered working women by economic branch is considered, the implication again is that their access to social security is greatly restricted. Whereas the proportion of women workers among agricultural employees is close to 51 per cent, they account for just 2 per cent of the maternity allowances paid (fewer than 320 beneficiaries). The textiles sector, which with a female employee ratio of almost 90 per cent is the biggest industrial employer, accounts for only about 22 per cent of allowances paid

<sup>17</sup> Circular of 5 June 2011, issued by the Ministry for Public Service and Modernization of the Public Sectors.

(fewer than 5,000 beneficiaries). It can be assumed that most other women workers entitled to the maternity allowance are employed in the structured services sector, such as banking, since in urban areas 89.9 per cent are concentrated in the four sectors indicated in the table below. But here again the paltry figure of 20,000 beneficiaries seems to confirm that vast numbers of them are not in fact registered with the CNSS and therefore do not exercise their right to maternity benefits. It should be recalled that Convention No. 183 covers all employed women and that with a view to demonstrating that this is fulfilled, the Government will need to indicate in its reports on application of the Convention the measures taken in order to guarantee the protection of the Convention.

**Beneficiaries of maternity and child benefits by main sectors employing women  
Selected relevant statistics for some sectors**

Year	Agriculture	Textiles	Clothing	Agri-food industry
2009 – beneficiaries	317	892	4,538	910
– percentage	2	4	23	5
2010 – beneficiaries	318	931	4,604	930
– percentage	2	4	22	4

Source: CNSS, Department of Research

For all those who are not registered with the CNSS, exercising their right to maternity leave can mean losing their entire income. So it may be assumed that leave tends to be shortened, as the law only prohibits employers from requiring women to work during the seven weeks that follow their childbirth.

In fact, a large share of paid work that employs women in large numbers is seasonal or occasional, which means it is easy not to register them with the CNSS since the work is informal. As a result, dismissal on the slightest pretext becomes common practice, and it happens all too often that pregnant women are simply not taken on or are dismissed as soon as the pregnancy becomes noticeable. In such cases, a woman's reinstatement in her job after giving birth is treated as a new recruitment, with permanent positions restricted to long-serving employees. This situation is confirmed by the very few breastfeeding facilities that exist, even though they have been obligatory since 1947. It is clear from an assessment of equality and equity, conducted by the Ministry of Employment, that no global gender-specific data are available on non-compliance with the country's labour legislation. However the assessment does cite unduly long working hours, non-registration with the CNSS, non-payment of overtime, dismissal on grounds of pregnancy, and the absence of breastfeeding facilities as being among the many infringements of the law suffered by working women.<sup>18</sup> For their part, women not covered by labour legislation, such as employees in small craft industries and domestic workers, find themselves legally denied any health and maternity protection.

<sup>18</sup> *Diagnostic de l'état de l'égalité/égalité dans le secteur de l'emploi, de la formation professionnelle et de la protection sociale*, Ministry of Employment and Vocational Training, Rabat, 2010, page 24.

This denial of women's rights is attributable as much to the economic and social exclusion that goes with precarious employment as to the vertical and horizontal segregation of which working women are the victims.<sup>19</sup> At the top of the employment pyramid are women employees of public authorities and permanent staff of structured enterprises. It is outside of these in "occasional" paid activities and in small and medium-sized enterprises especially where a large proportion of women are concentrated – such as in agriculture, craft trades, textiles, clothing, and the agri-food industry – where failure to respect the right to maternity protection goes hand in hand with a general disregard of women's social rights and de facto discrimination against women in workplaces and in occupations. Given these circumstances, maternity protection cannot be isolated from the universal goal of development that is inclusive of women.

### › Gender equality and maternity protection

The enforcement of international standards on maternity protection is both a standard-setting issue and a practical issue. An integrated approach in all circumstances is imperative. As the term "employed women" used in Convention No. 183 refers to all women working for remuneration in both the private sector and public service, it is clear that much remains to be done in terms of standard setting under the monitoring of the ILO supervisory bodies. Revision of the above-mentioned decree of 2000 already does provide the opportunity to adjust existing arrangements in the public service. These include by granting the beneficiaries greater freedom in setting effective dates of their maternity leave, by making provision for breastfeeding, and by separating the extension of leave due to pathological complications from the short-term sickness scheme.<sup>20</sup> However aside from these revised provisions, a review still needs to be done of the whole area of healthcare and occupational safety in the public service.

Concerning the private sector, the main healthcare standards needing to be updated have to do with defining the precautions and measures that must be taken to prevent pregnant women or those breastfeeding from engaging in work harmful to their health or that of their child. From an institutional standpoint, it is not yet envisaged that a social assistance fund should finance a replacement income for mothers not engaged in paid work. However a solution of this kind is needed, especially since only a small proportion of working women actually have access to social security and most of those in precarious employment are in practice denied the protection of labour legislation in spite of the fact that "atypical forms of dependent work" fall under the scope of Convention No. 183.

Maternity protection entails both enforcing existing regulations more effectively and steadily improving them by reference, for example, to Recommendation No. 191. Nevertheless this should be made in a progressive manner since extending maternity leave to at least 18 weeks and granting paid leave to women who cannot be transferred to a post that is compatible with their pregnancy (as suggested by the latter) could result however in greater discrimination in recruitment procedures and maternity-related dis-

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<sup>19</sup> In rural areas, where 46 per cent of the population lives, the agricultural sector employs three out of four workers and 92 per cent of economically active women, who provide almost half of the paid labour force in the sector. In urban areas almost 80 per cent of economically active women are paid employees, but just under 90 per cent are concentrated in unskilled jobs in the services, clothing and agri-food sectors.

<sup>20</sup> Technically this last suggestion is not required by Convention No. 183, which leaves this to national law and practices.

missals. Given that there is no such danger in the public service and that the risk is minimal for women who are covered by social security, some progress in this direction would seem perfectly plausible both in the cases cited and in the event of multiple births. Likewise, freedom to set the dates for the non-compulsory portion of maternity leave should not pose any major obstacle.

Moreover, one can assume that a nationwide assessment of the health risks for working women and their new-born children – with an eye to the improvement of general labour laws and regulations and to the evolution of occupational health and safety services – quite naturally would come within the purview of these bodies. At the same time this would increase their usefulness, especially regarding sectors that employ mostly women.

In much the same way, medical care for a working mother and her child is more a matter of medical coverage – with its two branches of sickness insurance and medical assistance – than of the labour relationship between an employer and employee. A similar link with the sharing of family and social responsibilities is apparent in the granting or transfer of postnatal leave to the father in the event of the mother's death during maternity leave. This measure concerns the father and employer just as much as it does the question of financial coverage, and it raises directly the issue of social coverage of the parents and children, particularly when they are not paid employees and therefore not covered by social security.

Any assessment of the present situation and future prospects of applying the provisions of Convention No. 183 and Recommendation No. 191 in Moroccan law and practice inevitably raises the issue of the mother and child's health as "the shared responsibility of government and society", as stipulated in the Convention's preamble. In their effort to assume that responsibility here and now, Government has taken advantage of the existing juridical and institutional framework as far as possible and adopted a step-by-step approach to maternity protection. But this must be part of a global policy that focuses all means at its disposal to make equity and equality a reality not just at work but also within the family and society as a whole.

In fact just such an approach does exist since civil society and the public authorities have been mobilizing to promote equality and women's integration in development for almost 20 years. One of Morocco's greatest institutional successes is its national gender equity and equality strategy for mainstreaming gender in development policies and programmes. The strategy was approved by the Government in May 2006 and gave rise to its Agenda for Equality, 2011-15. The Agenda, which was adopted in March 2011, targets nine priority areas that include the following.

- ▶ reducing inequalities in the labour market and engaging in the fight against poverty and all forms of precarious employment to which women and girls are exposed
- ▶ promoting a culture of equality and tackling gender stereotyping
- ▶ creating mechanisms to ensure balance between family life and work, as well as guaranteed compliance with laws and regulations related to the social protection of vulnerable categories of the population

A medium-term strategic programme was adopted in 2010 for institutionalizing gender equity and equality in employment, vocational training, social protection and working conditions. A core theme of the programme is better understanding of gender-related constraints with a view to introducing appropriate measures in employment and social

protection. One of the programme's goals is to support women workers in the industrial and services sectors so that they can reconcile family and working life. Another is to introduce a gender-sensitive information system to raise public awareness about violations of the Labour Code. A guide to equality has also been prepared to facilitate labour inspection and bring the issue to the attention of the social partners. Finally, the Constitution adopted in July 2011 reaffirms the principle of equality and creates an authority for promoting and combating all forms of discrimination, thereby setting the seal on the Government's commitment to this goal.

Although participants in tripartite social dialogue and civil society actors still believe in gender equality and in combating gender stereotyping, the precarious circumstances in which workers in general find themselves continue to exert pressure on the more vulnerable among them, most of whom are women. At the same time, since maternity protection is incorporated into a global strategy and is subjected to periodic assessment, it must be strengthened in many areas with activities designed to improve public awareness, harmonize laws, implement workers' education, promote social dialogue, broaden labour inspection, spread the concept of corporate social responsibility, introduce pilot schemes for sharing family responsibilities, and develop childcare services. If society is genuinely concerned about its future and about the greater welfare of its children, then it has to alleviate the constraints of procreation and ensure that the responsibilities implicit in it are shared by parents and society alike.

## **SRI LANKA** **(CONVENTION No. 103)**

BY MS. SHYAMALI RANARAJA<sup>1</sup>

### › **Introduction**

While still under British rule, in 1939 Sri Lanka enacted legislation on maternity benefits;<sup>2</sup> much of that legislation was based on the Maternity Protection Convention, 1919 (No. 3). In 1993 Sri Lanka ratified the Maternity Protection Convention (Revised), 1952 (No. 103) but has not ratified the subsequent Maternity Protection Convention, 2000, (No. 183). Despite the fact that Sri Lanka was a developing country at the time of ratification of Convention No. 103, it had enviable social conditions that made such ratification possible, as well as policies and practices in place in order to implement the provisions. This case study examines those good practices that made ratification of Convention No. 103 possible, as well as the various remaining challenges in fully-implementing its provisions and meeting the new standards set by Convention No. 183 and Recommendation No. 191.

### › **Background**

Sri Lanka is an island of 65,610 square kilometers in the Indian Ocean with a population of 20.9 million. Presently it has a parliamentary system of government but was under colonial rule from 1505 to 1948 under the Portuguese, Dutch and lastly the British before independence in 1948. Per capita GDP in 2011 was the equivalent of about US\$ 2,400, life expectancy was 74.9 years (among the highest in Asia), infant mortality was 8.5 per 1000 live births, and maternal mortality was 39.3 per 100,000 live births.<sup>3</sup> Literacy levels are high at an average of 91.9 per cent, with female literacy of 90.8 per cent.

These achievements have placed Sri Lanka well above the average for South Asia in human development.<sup>4</sup> However, challenges remain in providing employment for women: although they make up one-third of the labour force of 8.1 million, more women are employed as contributing family workers or own-account workers rather than as wage earners or employers (see table below).

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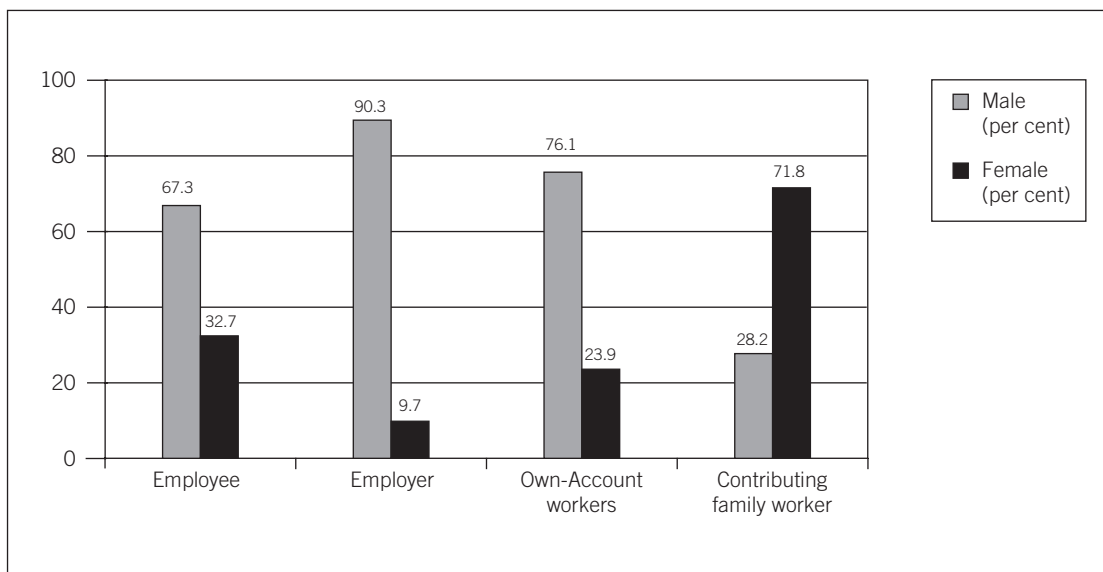
<sup>2</sup> In 1931 while Sri Lanka (then known as Ceylon) was still under British rule, a system of government by elected representatives was made possible due to the grant of universal franchise. The legislative assembly was the State Council, and there were seven Ministers including a Minister of Health, which made it possible to adopt legislation such as the Maternity Benefits Ordinance at a very early stage. The State Council also implemented other schemes that had an impact on maternity benefits and maternal health such as free public education from primary to university level, a food distribution system, and a State subsidy on the staple food of rice.

<sup>3</sup> Annual Report of the Central Bank of Sri Lanka, Central Bank of Sri Lanka, Colombo, 2002.

<sup>4</sup> See full details in the Human Development Report at <http://hdrstats.undp.org/en/countries/profiles/LKA.html>



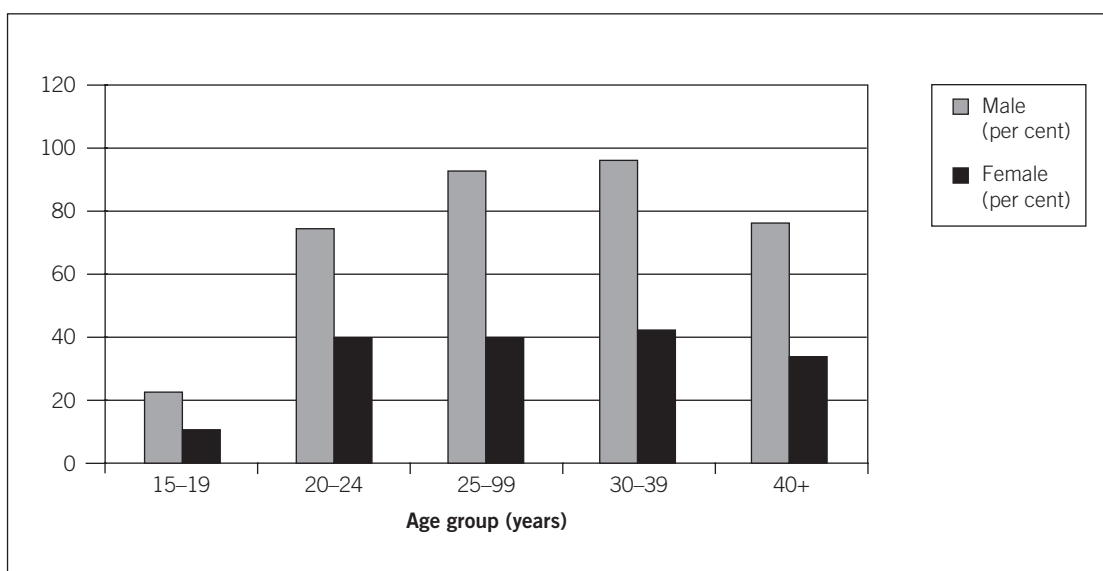
### Distribution in 2010 of employment status by sex



Source: *Bulletin of the Annual Labour Force Survey (2010)*, Department of Census and Statistics

Women’s labour force participation is less than 50 per cent in the age range of 20-39 years old, and only about 37 per cent overall (see table below).

### Labour force participation rate in 2010 by age and sex



Source: *Bulletin of the Annual Labour Force Survey (2010)*, Department of Census and Statistics

Unemployment among women is also high, and remains at nearly double the rate for men, despite a rapid decrease in overall unemployment rates since adoption of liberal market policies in the late 1970s. These factors pose a challenge in providing maternity protection to women, as a large number of women of childbearing age are not in wage employment which in Sri Lanka is the primary source of maternity benefits.

## › Application of Convention No. 103

Numerous comments have been made by the CEACR on the application of Convention No. 103, and in 2011 Sri Lanka was a Conference case in the Committee on the Application of Standards.

Article 1 of Convention No. 103 provides for maternity protection for “women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage earners working at home”. Sri Lankan legislation seeks to follow this broad division in providing maternity protection: the Maternity Benefits Ordinance No. 32 of 1939 (MBO) sets out such benefits to women employed in any trade (including any industry, business, undertaking, occupation, profession or calling); the Shop and Office Employees’ Act No. 19 of 1954 provides for maternity benefits to women employed in shops and offices (non-industrial occupations); and the Establishments Code sets out maternity benefits applicable to women in Government service. The MBO also applies to women employed in agriculture, including plantations, provided that her employment is not of a casual nature.<sup>5</sup> It does not cover women working as self-employed agricultural workers. While women employed in most of the industrial, non-industrial and agricultural activities listed in Convention No. 103 are entitled to maternity benefits, two specific categories of women it mentions – women wage earners working from home and domestic workers in private households – are not entitled to any maternity benefits under Sri Lankan legislation.

Maternity benefits under the three different legislative provisions noted above differ in some ways between the separate provisions as well as with Convention No. 103. These provisions are summarized below.

### Summary of legislation on maternity benefits

	Shop and Office Employees’ Remuneration Act	Maternity Benefits Ordinance	Establishments Code
<b>Coverage</b>	All females employed in or related to the business of a shop or office	All females employed on a wage in any trade, industry, business undertaking, occupation, profession or calling except: <ul style="list-style-type: none"> <li>■ females covered by the Shop and Office Employees Act, or</li> <li>■ whose employment is of a casual nature</li> <li>■ home workers</li> <li>■ domestic workers in private households</li> </ul>	All females employed in the public sector or in Statutory Boards are covered by the provisions of the Establishments Code (Chapter XII, Articles 18.1-18.10., and Public Administration Circular 4/2005, February 3, 2005)

<sup>5</sup> Casual employment has been defined in Sri Lankan judicial decisions as, “employment as is subject to, resulting from or occurring by chance and without regularity”.

	<b>Shop and Office Employees' Remuneration Act</b>	<b>Maternity Benefits Ordinance</b>	<b>Establishments Code</b>
<b>Paid leave for the birth of first or second child</b>	84 working days (which could be taken as a maximum of 14 days pre-natal and 70 days post-natal leave), to which would be added: <ul style="list-style-type: none"> <li>■ holidays under the Shop and Office Employees' Act</li> <li>■ one and a half days weekly holiday</li> <li>■ Poya days<sup>6</sup></li> <li>■ Statutory holidays</li> </ul>	Twelve weeks (84 days) which could be taken as a maximum of 14 days prenatal and 70 days postnatal leave No additional non-working days or holidays added	<ol style="list-style-type: none"> <li>1. Eighty-four working days (which could be taken as 14 days pre-natal leave and 70 days post-natal leave). Poya holidays and declared public holidays (usually eight in the year), and two days weekly holidays are added.</li> <li>2. Further 84 days on half-pay, including intervening holidays</li> <li>3. A further 84 days without pay, including intervening holidays</li> </ol>
<b>Paid leave for third or subsequent child<sup>7</sup></b>	42 working days (calculated as above)	42 days (calculated as above)	No difference in benefits, leave entitlement as above for the birth of every child
<b>Nursing intervals</b>	None provided	If child under one year: <ul style="list-style-type: none"> <li>■ if crèche provided, two intervals per day, at any time required of not less than thirty minutes duration each</li> <li>■ if crèche not provided, two intervals per day, at any time required, of at least sixty minutes duration each</li> </ul>	Sixty minute nursing breaks per day until child is six months old
<b>Rate of Payment</b>	Based on full wage	If normal working week is six working days and one unpaid holiday wages only for six days (six-sevenths of weekly wage) except on plantations where in some circumstances can be reduced to the equivalent of four-sevenths of weekly wage	Based on full wage

<sup>6</sup> Public holiday on the day of the full moon every month, which is of religious significance for the majority Buddhist population.

<sup>7</sup> The reduced leave is also applicable if child is stillborn or if miscarried at less than 28 weeks.

The period of maternity leave under the MBO, which was initially 42 days, was increased in 1992 to 84 days (12 weeks) primarily due to initiatives to promote breastfeeding on the grounds that a longer period of maternity leave would increase the likelihood of newborns being breastfed.<sup>8</sup> This was even prior to ratification of Convention No. 103. However both under the MBO and the Shop and Office Employees' Act this entitlement is reduced by half on the birth of a third child, although in the public sector there is no reduction of leave.

This lower entitlement was due to family planning policies adopted in 1965 by the State to slow population growth due to the likelihood of increased social costs if the rate of population increase was maintained. In 1985 the MBO was amended to reduce the period of maternity leave for the third child's birth or of subsequent children.<sup>9</sup> Therefore the leave entitlement for births of the first and second child is 84 days and for the third and subsequent children is 42 days. This lower entitlement is not compliant with Article 3.2 of Convention No. 103, which requires at least 12 weeks maternity leave irrespective of the number of births.

Maternity leave can also be taken as two weeks pre-natal leave and the balance as post-natal maternity leave, but prenatal leave if utilized is deducted from total maternity leave. However, there is no provision for extended pre-natal or post-natal leave based on medically-certified conditions arising from pregnancy although workers are entitled to some sick leave benefits – under the Shop and Office Employees' Act and the Establishments Code – which may be utilized for some portion of such extended absence.

### › Cash and medical benefits related to pregnancy

Article 4 of Convention No. 103 provides for cash and medical benefits during maternity leave including prenatal, childbirth and postnatal care by qualified midwives or medical practitioners as well as hospitalization care. It specifies that rates of cash benefits, which must be fixed by each State, should be sufficient to maintain the mother and her child adequately. The cash and medical benefits must be provided either by means of compulsory social insurance or by means of public funds, and no employer should be individually liable for the cost of such benefits due to women they employ.

There is no system of social insurance or public assistance programme for maternity purposes; however there are numerous income-transfer programmes aimed primarily at poverty alleviation and which are available to about 35 per cent of the population regardless of employment status. However there is no means of ascertaining what proportion of pregnant women are entitled to access such benefits. Women employed in the public sector benefit from a social insurance scheme, but there is no such assistance to other women. For women employed in the private sector, cash benefits consist of wages paid by the employer during maternity leave despite the specific provision against it in Article 4(8) of Convention No. 103.

While public service workers and those covered by the Shop and Office Employees' Act are entitled to full wages during maternity leave, the MBO requires payment of only

<sup>8</sup> *Infant and Young Child Feeding Programme Review: Case study Sri Lanka*, United Nations Children's Fund, New York, 2012.

<sup>9</sup> The effectiveness of family planning policies is visible in the reduction of the total fertility rate from 3.1 in 1981 to 1.7 in 2010; see *Annual Report of the Central Bank of Sri Lanka*, Central Bank of Sri Lanka, Colombo, 2011.

six-sevenths of the last paid daily wage. In addition, section 5(3) of the MBO provides for the Commissioner General of Labour to permit women employed on a plantation to receive four-sevenths of the daily wage where alternative maternity benefits – such as a maternity ward, services of a mid-wife, and meals during the ward stay – are provided by the employer.

#### – *Medical Benefits*

Maternal and child healthcare is an important component of the current health care system in Sri Lanka, and all pregnant women are provided with maternal care during the antenatal, intranatal and postnatal periods. Antenatal care is provided by a network of local health clinics, public health officers and midwives through routine home visiting.<sup>10</sup> The following indicators (see box below) demonstrate effectiveness of the maternal and child healthcare systems in Sri Lanka, in comparison with regional indicators.

<b>Maternal and childcare indicators for Sri Lanka and South East Asia region in 2010</b>		
	<b>Sri Lanka</b>	<b>South East Asia</b>
Maternal mortality ratio (per 100,000 live births)	35.0	200.0
Mortality ratio of children under five-years of age (per 100,000 live births)	17.0	57.0
Physicians (per 10,000 inhabitants)	4.9	5.6
Nurses and midwives (per 10,000 inhabitants)	19.3	10.9
Percentage of pregnant women receiving antenatal care (+ four visits)	93 per cent	52 per cent
Percentage of births attended by skilled health personnel	99 per cent	59 per cent

Source: *World Health Statistics*, World Health Organization, Geneva, 2012.

Public healthcare in Sri Lanka, in keeping with the policy adopted at independence, is provided free of charge. Therefore maternal and child healthcare are available to all women whether employed or not, and all children. In addition, private healthcare institutions provide quality maternity care. Although some employers reimburse through insurance schemes, the expenses incurred in these private healthcare institutions are voluntary, with care provided based on the premium paid by the employer.

#### – *Nursing intervals and childcare*

Public sector employees are entitled to breastfeeding periods of 60 minutes per day until the child is six months old. The MBO provides for two such periods of 30 minutes

<sup>10</sup> Maternal and child care in Sri Lanka commenced long before independence. The first public maternity hospital was established in the country in 1879 in Colombo, and the registration of births and deaths was introduced in 1887 which signal a systematic approach to maternal care. The first antenatal clinic was started in 1921, and all midwives were required to be registered by 1927. These early initiatives in maternal care served to reduce maternal and infant mortality appreciably and have provided a strong platform for providing accessible maternal care.

in workplaces with facilities provided by the employer, or two-60 minute intervals in other workplaces. The nature and type of breastfeeding facilities are not specified in the MBO or regulations made under the statute. The Shop and Office Employees' Act does not provide for any such periods, and although many employers do provide time for these it is entirely discretionary.

Maternity benefits are provided in kind on many of the large-scale plantations in Sri Lanka. However, the plantation owners may reduce the maternity leave payments as a consequence, under the provisions of the MBO, although this is not in conformity with the ILO Convention.

Examples of alternative medical benefits on estates include the following.

*Maternal and antenatal care*

- ▶ maternal clinics
- ▶ dietary supplement to pregnant women and mothers, including iron
- ▶ free transport to hospital at time of delivery
- ▶ fully paid pre- and post-natal leave in accordance with the MBO

*Post-natal care*

- ▶ dietary supplement to children including iron
- ▶ home visits by mid-wife
- ▶ after maternity leave can report to work 30 minutes later and leave 30 minutes early to nurse child until one year of age

*Infant and child healthcare*

- ▶ screening of newborn children for health and well-being
- ▶ immunization
- ▶ monitoring of child's growth (including feeding practices and nutrition education for mothers)
- ▶ screening of children for malnutrition
- ▶ providing child development centres (daycare/crèche facilities) to children of mothers working on plantations

– *Termination and working conditions during maternity leave*

Article 6 of Convention No. 103 provides that “while a woman is absent from work on maternity.... it shall not be lawful for her employer to give her notice of dismissal during such absence or to give her notice of dismissal at such a time that the notice would expire during such absence.” This provision has been given effect in section 18F of the Shop and Office Employees' Act and section 10A of the MBO.

The relevant provisions are described below.

- ▶ The services of a female employee cannot be terminated only on the basis of pregnancy, childbirth or consequent illness. If such an allegation is made, the burden is on the employer to prove that termination was due to any other reason.
- ▶ If notice of pregnancy has been given to the employer, a female employee cannot be employed – during the three months immediately before and after delivery – in any work injurious to her health or that of the child.

- ▶ A female employee cannot be given notice of dismissal for any reason during absence on maternity leave, or in such a manner that notice of termination expires during the period of such leave.

However public service workers do not enjoy this protection against dismissal, as section 55(1) of the Constitution of Sri Lanka provides that “the appointment, transfer, dismissal and disciplinary control of public officers is.... vested in the Cabinet of Ministers, and all public officers shall hold office at pleasure.” A protection against dismissal in the context of maternity was considered as being inconsistent with this principle.

### ► **Challenges faced in complying with Convention No. 103 in Sri Lanka<sup>11</sup>**

Since Sri Lanka ratified Convention No. 103, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has commented on several occasions about the Government’s need to bring national law and practice in line with provisions of Convention No. 103. Specific comments by the CEACR are considered here, together with the Government’s responses about the practical issues that have so far prevented the changes required.

#### – *Article 1 – Coverage for domestic workers and women workers in plantations*

The Government has reported that due to constraints regarding enforcement and the exclusion of domestic workers from other labour laws, it is difficult to provide female domestic workers, subsistence agricultural workers, and women working from home with protection guaranteed by Convention No. 103.<sup>12</sup>

The Government has argued that the nature of employment of the female labour force in Sri Lanka creates some difficulties in giving practical effect to the provisions of the Convention. As noted earlier, 44 per cent of the female labour force is either an own-account worker or an unpaid family worker. A large proportion of own-account workers and unpaid family workers are not covered by existing labour legislation, which generally applies to those with a contract with an employer. In addition, 56.2 per cent of all female workers are employed in the informal economy, which makes providing maternity benefits more challenging given the undocumented and irregular nature of such work.

Domestic workers – including maids, cleaners and nannies in private households – are excluded from the application of labour legislation relating to dismissal, social security payments, as well as leave, holidays and overtime. Maternity benefits could be provided to these workers, given their relatively small numbers (an estimated 10,000) but special attention would be needed to ensure that they are able to access these benefits, as they often lack representation as well as awareness about their rights.

Most recently, the Government indicates that Sri Lanka adequately covers workers in agricultural occupations where a labour relationship exists, stressing at the same time that in practice most rural agricultural workers are self-employed. However action needs to be taken with a view to repealing redundant provisions relating to alternative maternity

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<sup>11</sup> See CEACR observation on Convention No. 103 in *International Labour Conference, 100th Session, 2011: Report III (Part 1A)*, page 752; and *101st Session, 2012: Report III (Part 1A)*, pages 899-901.

<sup>12</sup> *Report of the Ministerial Sub-committee to examine the legislative amendments required to give effect to ILO Convention No. 103 on Maternity Protection* (unpublished mimeograph), Legal Division, Ministry of Labour, Colombo, 2012.

benefits in the Maternity Benefits Ordinance, in consultation with the social partners. Discussions on this respect between the Department of Labour and the Ministry of Labour and Labour Relations are currently taking place and the final decision will be forwarded to the National Labour Advisory Committee (NLAC) so as to take suitable measures in the future. The CEACR, in its 2011 and 2012 Observations, noted the Government has indicated that most estates have ceased to apply alternative medical benefits and trusts the Government will ensure that the redundant provisions in the Ordinance are repealed in the very near future.

– *Article 3(2) and (3) – Limitation on the length of maternity leave based on the number of children*

Under section 3(1)(b) of the Maternity Benefits Ordinance a woman worker in the private sector having a third and subsequent child has reduced maternity leave entitlements (six weeks as opposed to 12) while the Convention provides for maternity leave of at least 12 weeks in each case, irrespective of the number of births. In its 2011 report, the Government indicated that the discussions are taking place within relevant government units with a view to amending the legislation so as to comply with the Convention and that the final decision will be forwarded to the NLAC to take suitable measures in the future. In 2012, the CEACR considers that, in order to secure the right to maternity leave to all women workers covered by the Convention, the measures taken by the Government should be based on the sound actuarial evaluations of the financial implications of the extension of maternity leave for third and subsequent child and reminds the Government of possibility to avail itself of the technical assistance of the ILO.

– *Article 3(4), (5) and (6) – Entitlement to extension of maternity leave for medically certified reasons and Article 4(1) – Entitlement to cash benefits during supplementary leave*

At present only women workers in the public sector have the right to obtain further extension of maternity leave (not necessarily for medical reasons but for any reason). However they are only entitled to 50 per cent of their salary during a further three months, after which they would not receive any pay. In the private sector there is no obligation to grant such leave, and it is unlikely that employers would agree to such extension with cash benefits since at present the cost is borne by the employer. The introduction of a social insurance scheme is therefore critical to the implementation of this provision; the CEACR considers that ways to guarantee cash benefits should be based on sound actuarial evaluations of the financial implications.

– *Article 4(4) and (8) – Cash and medical benefits to be provided by the State*

The introduction of a social security system or a scheme of medical insurance by the Government needs to be implemented in order to give effect to Article 4 of Convention No. 103. The requirement for the employer to make payments of maternity benefits excludes from cash benefits a large number of women employed as own-account workers in their homes, domestic workers, and unpaid family workers. One option would be to extend existing income transfer programmes to all pregnant women regardless of income-based qualifying criteria.



The option put forward by the social partners during the 2011 International Labour Conference discussion of Sri Lanka's application of this Convention, was that of compulsory maternity insurance and the Conference conclusions hoped that, notwithstanding the difficulties involved, the Government would undertake to replace progressively the direct employer liability system by a social insurance scheme. In its subsequent report the Government stressed that all citizens, including women during pregnancy, up to childbirth and thereafter, are granted free medical services through special clinical arrangements and repeated that it would be difficult to provide cash benefits by means of public funds or government-sponsored social insurance. The CEACR pointed out that the difficulties invoked by the Government would be largely outbalanced by the social and economic advantages brought by the establishment of a social insurance mechanism to cover maternity benefits. It invited the Government to undertake an actuarial feasibility study for setting up a maternity insurance scheme and to report back on the results of such a study and the measures envisaged for cash and medical benefits.

– *Article 6 – Protection against dismissal during maternity leave in the public sector*

In its most recent report the Government indicated that there were no reported incidents of government sector employees being dismissed during the maternity period and added that the issue would be discussed further with line ministries to get detailed information on the situation in practice. The CEACR pointed out that, to apply Article 6 of the Convention, the Establishment Code must ensure that public employees may not be dismissed during maternity leave nor receive notice of dismissal expiring during the leave. It requested the Government to keep it informed of measures taken or envisaged to ensure conformity with Article 6 of the Convention.

The protection provided in Convention No. 103 would not in any way conflict with the basis for employment of female public service workers. Therefore, a Public Administration Circular could be issued to provide the same protection against dismissal as for women covered by the MBO and the Shop and Office Employees' Act.

› **Current initiatives by social partners**

Both employers and trade unions have actively participated in the discussions before the CEACR on application by Sri Lanka of Convention No. 103. The Government has consulted the National Labour Advisory Council (NLAC), a tripartite body convened by the Minister of Labour, on amendments needed to comply with comments made by the CEACR. A ministerial sub-committee has also met and made recommendations for consideration in July 2012 by the NLAC. The Lanka Jathika Estate Workers' Union, a trade union representing workers on plantations, has raised issues of discrimination in relation to application of Convention No. 103 across the three sectors of public service workers, those covered by the Shop and Office Employees' Act, and workers covered by the MBO. The union takes the position that the right to maternity leave should be applied uniformly to all women workers, irrespective of sector, as otherwise it would be a breach of the right to equal treatment.

The Free Trade Zone Workers' and General Workers' Union, which represents workers in enterprises operating in export processing zones, has submitted proposals to the Ministry of Labour for revisions. These proposals endorse the comments of the CEACR

and include additional proposals for paternity leave of three days, and extension of coverage to women workers employed on time-bound contracts, women in the informal economy, and domestic workers. Both unions have reiterated the need to introduce an insurance scheme to enable maternity benefits to be accessed by all women on maternity leave.

The Employers' Federation of Ceylon (the main representative organization for employers) has also agreed that deviations highlighted by the CEACR need to be revised. In addition it has stated that the sole liability of the employer to pay maternity benefits contrary to Article 4(8) not only promoted discrimination against women but could negatively affect women's share of formal employment, as employers might not wish to incur additional liabilities. This would be the case if maternity leave and other benefits were to be increased by the revisions without removing the employer's liability to pay cash benefits.

The Government of Sri Lanka introduced the National Workers' Charter in 1994, a year after ratifying Convention No. 103, which set out an obligation that the "State shall ensure that regulations under the Maternity Benefits Ordinance in the implementation of alternative maternity benefits granted shall be repealed to ensure that maximum benefits are conferred on the workers." Although the Workers' Charter was not formally adopted, the Government's commitment to remedial action is clearly stated. The need for a scheme of social insurance has also been discussed extensively, as well as the possibility of setting up an interim scheme – through commercial insurance providers – including for specific groups such as pregnant women.

In proposals for amendments to give effect to Convention No. 103, in June 2011 a ministerial sub-committee<sup>13</sup> made the following recommendations on specific conclusions on application of Convention No. 103 by the CEACR. These are summarized below.

- ▶ With regard to extending maternity benefits to domestic workers and agricultural workers outside large plantations, the Committee noted it would be difficult to do so unless a policy decision was taken to recognize an employer-employee relationship in these arrangements which would also lead to coverage under other labour legislation.
- ▶ The extension of cash benefits to domestic workers and agricultural workers through an income-transfer scheme, such as the current poverty alleviation programme (known as the "Samurdhi" programme), was also suggested.
- ▶ Maternity leave should be similar for the birth of any child, and the reduction for the third or subsequent child should be removed.
- ▶ The practical difficulty in providing post-natal maternity leave of at least six weeks would not arise if the 12-weeks' maternity leave was provided for every childbirth.
- ▶ With regard to the State's obligation to provide cash benefits, the Committee considered that it would require more time to develop a mechanism suitable for Sri Lanka, and it called on the Government to seek ILO technical assistance for this purpose. It was also not possible to remove the liability on the employer to make such payments at present due to the absence of any other arrangement for such payments.

<sup>13</sup> The Ministerial sub-committee convened by the Secretary to the Ministry of Labour and Labour Relations and had members from the Ministry of Labour, Department of Labour, Ministries of Public Administration, Child Development and Women's Affairs, and the Board of Investment.

- ▶ The Committee recommended that nursing intervals be provided for female workers covered by the Shop and Office Employees' Act, which did not provide for such intervals.
- ▶ The Committee recommended that public sector workers be protected against dismissal during maternity leave or for reason of pregnancy.
- ▶ Supplementary maternity leave should be granted only for a period of three weeks if certified by a medical practitioner, and the employer should continue to pay maternity benefits during such extended period.
- ▶ The provisions in the MBO for alternative maternity benefits should be repealed.

These recommendations are to be discussed further by the NLAC shortly.

### › **Possibility of ratifying Convention No. 183**

As previously mentioned Convention No. 103 was revised by the ILO in 2000 by Convention No. 183, which sets the new international standard on maternity protection and in many respects goes beyond the Scope of Convention No. 103 while also being in certain ways more sensitive to the diversity in social and economic development of member States. For example, it provides an exception where the onus has been on the employer to provide such benefits prior to adoption of Convention No. 183. However the period of maternity leave is 14 weeks, which is more than the 12 weeks currently provided under Sri Lankan law.

# Convention No. 156 on Workers with Family Responsibilities and Recommendation No. 165

## AUSTRALIA

BY MS. SARA CHARLESWORTH AND MS. ALISON ELDER<sup>1</sup>

### › Introduction

Over 22 years ago on 2 March 1990, the Australian federal Government announced it had ratified Convention No. 156.<sup>2</sup> Today, the specific needs of workers with family responsibilities are well recognized in Australian legislation, government and enterprise policy, and in political discourse.

Since 1990 there has been significant innovation in providing a legislative and policy framework supporting such workers at both the state and federal level,<sup>3</sup> which draws directly on the articles in Convention No. 156. This has included specific provisions in both employment and anti-discrimination regulation that have been expanded and strengthened over time. There have been major policy reforms, reflected in the government-funded national Paid Parental Leave (PPL) scheme introduced in 2011, and other good practices at both the policy and enterprise level. There have also been some challenges along the way as well as tensions – particularly between the social partners and the major political parties concerning the most effective way to support men and women who have both paid work and caring responsibilities.

This case study of Australia outlines the contexts and drivers leading up to ratification of Convention No. 156, with a focus on the economic context and labour market changes as well as on the political and policy environment. In particular, it outlines the successful collaborations between the federal Government, women’s agencies and civil society groups, which drew on international developments related to gender equality. The study then considers the various phases and major milestones in the implementation process, which is still ongoing. With the benefit of hindsight, it will then outline some key achievements in the ratification and implementation of Convention No. 156 since 1990, along with the factors that underpinned them, as well as challenges overcome. Finally, the study will note two challenges that remain “works in progress” in the much-changed current political and economic context.

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<sup>2</sup> Convention No. 156 entered into force in respect to Australia on 30 March 1991, one year after it was ratified.

<sup>3</sup> Australia has a federal system of government, with the Commonwealth government and the six state and two territory governments having both distinct and overlapping legislative and fiscal responsibilities. Over the last 20 years the Commonwealth (federal) government has grown in importance due to both its expanding fiscal and legislative capacity. See Kildea, P., Lynch, A. and Williams, G. (editors) *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012, pages 1-4.

## ► Background leading to ratification

The federal Government had been committed since 1983 to ratifying Convention No. 156. However, strategic work by the Office of the Status of Women with help from the National Women's Consultative Council, women unionists within the Australian Council of Trade Unions and women within the Labour Party was crucial in achieving ratification in 1990.<sup>4</sup> This activity took place within a rapidly-changing economic, political, policy and legislative context as outlined below.

### – *Economic context and changes in the labour market*

The 1970s and early 1980s saw profound changes in the international economic context for industrialized countries due to transformation of globalized markets through international competition and rapid technological change. Australian employers, along with those in other industrialized countries, argued there was a need for labour market flexibility to improve productivity.<sup>5</sup> At the enterprise level, effective employer-employee relationships were seen to play an important role in meeting demands for improved organizational and workforce flexibility.<sup>6</sup>

Growth in both the manufacturing and service sectors created an increased demand for female labour.<sup>7</sup> Women's labour market participation in Australia grew from 48.8 per cent in 1976 to 52.4 per cent by 1990.<sup>8</sup> Indeed 60 per cent of the 1.6 million new jobs created between 1983 and 1990 went to women. The growth of employment in the public and private services sectors also saw an increase in part-time work, which was reflected in the increasing proportion of women working less than 35 hours per week.<sup>9</sup> In 1973, part-time work made up 10 per cent of total employment and had increased to 18 per cent in 1990.<sup>10</sup> However the growth in female part-time employment was much more rapid. In 1973 around 24 per cent of employed women worked part-time, compared to 40 per cent by 1990.<sup>11</sup>

One of the most significant features of women's growing labour market participation was the increased engagement of mothers with dependent children. This meant that the issue of how best to support workers in reconciling their work and family demands became an increasingly prominent policy issue in Australia in the 1980s.<sup>12</sup> The proportion of mothers with dependent children in paid work increased from 43 per cent in

<sup>4</sup> Sawyer, M., *Femocrats and Ecorats: Women's Policy Machinery in Australia, Canada and New Zealand*, Occasional Paper 6, United Nations Research Institute for Social Development; and United Nations Development Programme, Geneva, 1996, page 5.

<sup>5</sup> Carmody, H., *Workers with Family Responsibilities, Sharing the Load*, Papers from the 1990 National Women's Consultative Council conference on Workers with Family Responsibilities, Office for the Status of Women, Canberra, 1990, page 47.

<sup>6</sup> Ibid.

<sup>7</sup> "Australia Country Paper", Labour Standards for Women in Australia: statements made by the social partners to the ILO Asia/Pacific Regional Symposium on Equality for Woman Workers, Department of Industrial Relations, Canberra, 1991, page 47.

<sup>8</sup> Ibid.

<sup>9</sup> In Australia, while most contracts of employment provide that full-time hours are 38 hours per week, the Australian Bureau of Statistics counts part-time employment as employment of less than 35 hours per week.

<sup>10</sup> *Part Time Employment: the Australian experience*, Productivity Commission, Melbourne, 2008, page XIX.

<sup>11</sup> Ibid.

<sup>12</sup> Hayes, A.; Weston, R.; Qu, L. and Gray, M., *Families then and now: 1980-2010*, Facts Sheet, Australian Institute of Family Studies, Commonwealth of Australia, Melbourne, 2010, page 5.

1981 to 55 per cent in 1990, with much of that growth in part-time work. In 1981, a total of 19 per cent of mothers were working full-time and 24 per cent working part-time. In 1990, a total of 25 per cent were working full-time and 30 per cent part-time.<sup>13</sup>

By the late 1980s there was growing concern that increasing female participation in paid work was also associated with increasing sex segregation across occupation and industry, and in the case of part-time work, with casualization.<sup>14</sup> In 1990, Australia had the highest incidence of occupational sex segregation among Organisation for Economic Co-operation and Development (OECD) countries,<sup>15</sup> with 55 per cent of women employees concentrated in just two occupational groupings: clerks, and salespersons and personal service workers.<sup>16</sup> The casualization of part-time work also grew and by 1988, 68 per cent of part-time jobs were casual, with no job security and no access to paid leave entitlements.<sup>17</sup>

#### – *Political will and policy environment*

One of the key enabling factors for ratification of Convention No. 156 in 1990 was growing political commitment to gender equality. This was particularly evident at the federal government level, and in the 1980s there was a steady increase in representation of women in the federal Parliament, from around 3 per cent in the House of Representatives in 1980 to around 7 per cent by 1990. Female representation increased more rapidly in the Senate, from around 10 per cent in 1980 to 25 per cent in 1990.<sup>18</sup> There was also a slow increase in the numbers of women in elected positions in the Australian Council of Trade Unions (ACTU), and in 1987 the ACTU Congress elected five women onto its executive body.<sup>19</sup> However during the same period, the representation of women in management at the enterprise level was minimal, with women making up only around 10 per cent of middle management and between 1 and 5 per cent of senior management.<sup>20</sup>

Strategic lobbying of government by feminist organizations, such as the Women's Electoral Lobby (WEL) formed in 1972, also succeeded in placing women's policy demands centre-stage during the federal election campaign of 1972.<sup>21</sup> The Whitlam Labor Government, elected in 1972, has been described as "bent on reform and eager to take on new areas of social responsibility [in the] the context of a buoyant economy [which] provided a favourable opportunity structure for experimenting with the machinery of government."<sup>22</sup> Lobbying by groups such as WEL and the increasing political

<sup>13</sup> Ibid.

<sup>14</sup> "Australia Country Paper" in *Labour Standards for Women in Australia: statements made by the social partners to the ILO Asia/Pacific Regional Symposium on Equality for Woman Workers*, Department of Industrial Relations, Canberra, 1991, page 48.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid, page 42.

<sup>17</sup> *Earnings, Benefits & Union Members*, Cat. No. 6310.0, Australian Bureau of Statistics, Canberra, 1988.

<sup>18</sup> Maddison, S., and Partridge, E., *How well does Australian democracy serve Australian women?* Democratic Audit of Australia, Report No. 8, Australian National University, Canberra, 2007, page 60.

<sup>19</sup> Australian Council of Trade Unions, see [www.actu.org.au/About/Tradeunions/default.aspx](http://www.actu.org.au/About/Tradeunions/default.aspx)

<sup>20</sup> Sinclair, A. and Marriott, F. "Women in Management – Advantage through Adversity", *Asia Pacific Journal of Human Resources*, vol. 28, no. 2, 1990.

<sup>21</sup> Sawyer, M., 1996, page 4.

<sup>22</sup> Ibid.

representation of women meant that at least some government reform efforts were directed to what were seen as women's interests.

International developments, such as the United Nations Decade for Women (1976-1985), played an integral part in creating a responsive policy environment in Australia. The country's growing international engagement on gender equality issues was evidenced by its ratification in 1973 of the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). By the time of the Hawke Labor Government in 1983, there was increasing government commitment to the importance of international labour standards in shaping domestic labour law.<sup>23</sup> In June 1983 – the same year that Australia ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – Prime Minister R.J. Hawke announced at the 69th Session of the International Labour Conference in Geneva that his Government was committed to ratifying Convention No. 156.<sup>24</sup>

In the 1980s, Australia established several different mechanisms to ensure that government policy and initiatives were monitored for their impact on women, which in turn highlighted the growing concern about the difficulties of combining work and family responsibilities.<sup>25</sup> One of the most important mechanisms was the establishment in 1984 of the National Women's Advisory Council, which would later be known as the National Women's Consultative Council (NWCC) to provide an important channel for communication with women in the community.<sup>26</sup> Since its inception, the National Women's Consultative Council had urged the Government to ratify Convention No. 156 because of its concerns about women workers carrying an unfair burden in juggling work and family responsibilities.<sup>27</sup>

Another key government mechanism was the creation in 1983 of the Office of the Status of Women (OSW) in the Department of Prime Minister and Cabinet. The year 1984 saw introduction of the Women's Budget Program and establishment of the Women's Research and Employment Initiatives Program, administered by the Women's Bureau of the Department of Employment, Education and Training.<sup>28</sup> Several women's policy mechanisms established during this period were also concerned with better integration of state and federal government policy. One such example was the Australian Women's Employment Strategy, which was developed in 1988 by the Department of Employment, Education and Training. The Strategy set out, for the first time, eight national goals for improving women's employment outcomes, which linked federal and state gov-

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<sup>23</sup> This is evident from Prime Minister Hawke's address to the 69th Session of ILO in 1983, where he referred to the ILO as "the social conscience of world development" strongly supporting the conventions and recommendations to "enhance employment opportunities and promote human rights", cited in Landau, E., *The Influence of ILO Standards on Australian Labour Law Practices*, Industrial Relations Research Centre, University of New South Wales, Sydney, 1990, page 8.

<sup>24</sup> Reference in 1989 Australian Council of Trade Unions Working Women's Policy, see [www.actu.org.au/Images/Dynamic/attachments/5157/Australian Council of Trade Unions Congress1989\\_Working\\_Womens\\_Policy.pdf](http://www.actu.org.au/Images/Dynamic/attachments/5157/Australian_Council_of_Trade_Unions_Congress1989_Working_Womens_Policy.pdf)

<sup>25</sup> See Sawyer, M., 1996.

<sup>26</sup> *National Agenda for Women: Implementation Report*, Office for the Status of Women, Department of the Prime Minister and Cabinet, Australian Government Publishing Service, Canberra, 1991, page 13.

<sup>27</sup> *International Labour Organisation – Convention 156: Workers with Family Responsibilities*, National Women's Consultative Council, Australian Government Publishing Service, Canberra, 1990.

<sup>28</sup> Establishment of the Bureau represented the achievement of a decades-long campaign by women's non-government organizations. See Andrew, M., "Meagre Harvest or Just Poorly Documented? Tracking women's movement legacies through government records": <http://law.anu.edu.au/COAST/events/APSA/papers/79.pdf>

ernment jurisdictions. The second of these goals was to improve “working conditions and arrangements for workers with family responsibilities”. Progress on this goal was to be assessed – by the combined state and federal Departments of Labour Advisory Committee’s Working Party on Women and the Labour Force – in terms of the provision of maternity and parental leave, and increases in accessible and affordable childcare.<sup>29</sup>

– *Legislative framework*

In 1990, it was claimed that Australia lagged behind many other developed countries with respect to “social legislation”, which aimed to enable women to combine child-bearing with a career.<sup>30</sup> However, in fact, there had been some legislative and regulatory action taken during the 1970s and 1980s towards this end, including the extension of labour law protection to new parents and the introduction of separate anti-discrimination laws in both federal and state jurisdictions.

The first formal provision for maternity leave was contained in the Australian Public Service Maternity Leave (Australian Government Employees) Act 1973. This was followed by a “test case”<sup>31</sup> taken before the Australian Conciliation and Arbitration Commission (ACAC) in 1978-1979, in which the ACTU argued for a standard maternity leave entitlement in order to extend this provision to private sector employment. In 1979, the ACAC granted 12 months’ unpaid maternity leave entitlement to all permanent women workers on the birth of their child, with a guarantee of return to their job after this leave, which became part of employment conditions in arbitrated awards that provided for specific employment conditions in different industries.<sup>32</sup> In 1985, these provisions were extended in the Adoption Leave Decision by the Australian Conciliation and Arbitration Commission after a further test case bought by the Australian Council of Trade Unions.<sup>33</sup> This was followed by the 1990 Parental Leave Test Case decision, which combined provisions for (unpaid) maternity, paternity and adoption leave and extended the provisions from women to both parents.<sup>34</sup>

A number of legislative reforms were pursued at the federal level by the Whitlam Labor Government (1972–1975), the Fraser Liberal National Coalition (1975–1983) and the

<sup>29</sup> “Australian women’s employment strategy”, Australia Department of Employment, Education and Training; and Australia Department of Employment, Education and Training Women’s Bureau, Australian Government Publishing Service, Canberra, 1988.

<sup>30</sup> Young, C., *Balancing Families and Work: A Demographic Study of Women’s Labour Force Participation*, Australian Government Publishing Service, Canberra, 1990, page 2.

<sup>31</sup> The “test case” had been a uniquely Australian phenomenon in which the ACAC and the Australian Industrial Relations Commission – usually in response to an application from the Australian Council of Trade Unions – had held public hearings to consider evidence for and against proposed changes in standard award conditions and then handed down a judgment that often would vary these standard award conditions. See Cooney, S.; Howe, J. and Murray, J., “Time and money under work choices: Understanding the new Workplace Relations Act as a scheme of regulation”, *University of New South Wales Law Journal*, vol. 29, 2006, pages 229-230. When they were held a test case generally excited national interest and, apart from submissions from the relevant industrial parties, enabled a range of interest groups including women’s civil society organizations to formally put their views to the Australian Conciliation and Arbitration Commission/Australian Industrial Relations Commission.

<sup>32</sup> *Maternity Leave Test Case* (1979) 218 CAR 121. In Australia, industry awards are legally-binding employment regulations determined by industrial tribunals. They set out the minimum rates of pay and conditions of employment that apply to the majority of employees in a particular industry or occupation.

<sup>33</sup> *Adoption Leave Test Case* (1985) 298 CAR 321.

<sup>34</sup> *Parental Leave Test Case* (1990) 36 IR 1.



Hawke Labor Government (1983–1996). Following Australia’s ratification of CEDAW in 1973, the Sex Discrimination Act 1984 (SDA) was enacted to give effect to certain provisions of this Convention, which is attached as a schedule to the Act. It was passed after much controversy and political debate<sup>35</sup> and prohibited sexual harassment in employment as well as discrimination on the grounds of sex, marital status and pregnancy, in the areas of employment, education, goods and services, accommodation, land, clubs and the administration of Commonwealth laws and programs. However, it should be noted that since 1975 state-based anti-discrimination laws have prohibited discrimination in the area of employment on the grounds of sex and marital status,<sup>36</sup> with discrimination based on pregnancy also becoming a prohibited ground in many jurisdictions by the time the SDA was enacted. The Human Rights and Equal Opportunity Commission (HREOC), now the Australian Human Rights Commission (AHRC) has responsibility for the management of formal complaints lodged both under the Act and other federal anti-discrimination laws via a confidential conciliation process – a mechanism also employed in state-based anti-discrimination jurisdictions.<sup>37</sup>

The Affirmative Action (Equal Opportunity for Women in the Workplace) Act 1986 (AAA) was even more controversial during its passage in Parliament.<sup>38</sup> The AAA was introduced following a 12-month pilot programme with 28 private sector companies and three higher educational institutions.<sup>39</sup> The AAA required all private sector employers with 100 or more employees to actively promote the employment opportunities of women. This requirement also applied to higher education institutions and various other bodies such as unions, charities and private schools. This was to be done through an “eight step” affirmative action programme or strategic plan designed to remove discriminatory employment barriers and take action in the particular workplace to promote equal opportunity for women.<sup>40</sup> Employers covered by the Act were required to report annually on their programme and progress to the Director of the Affirmative Action Agency.<sup>41</sup>

## › Social dialogue

One of the most important ways that gender equality and work and family responsibilities were kept on the industrial relations agenda was via the ACTU’s growing formal commitment to these issues. In 1977 after some pressure from female unionists, the ACTU adopted the Working Women’s Charter, which sets out priority actions for the union

<sup>35</sup> For a full account see Thornton, M. and Luker, T., “The Sex Discrimination Act and Its Rocky Rite of Passage” in Thornton, M. (ed.), *Sex Discrimination in Uncertain Times*, ANU E Press, Canberra, 2010.

<sup>36</sup> Earlier state anti-discrimination laws in Australia that proscribed discrimination on the grounds of sex included the Sex Discrimination Act 1975 (South Australia); the Equal Opportunity Act 1977 (Victoria) and the Anti-Discrimination Act 1977 (New South Wales).

<sup>37</sup> For an explanation of the anti-discrimination conciliation mechanism in Australian jurisdictions, see Ronalds, C., *Discrimination Law and Practice*, Federation Press, Sydney, 2008, pages 176-195.

<sup>38</sup> See Braithwaite, V. and Bush, J., “Affirmative action in Australia: A consensus based dialogic approach”, *National Women’s Studies Association Journal*, vol. 10, 1998, pages 122-125.

<sup>39</sup> Ibid, page 123.

<sup>40</sup> Ibid, page 117.

<sup>41</sup> The Affirmative Action Act was replaced by the Equal Opportunity for Women in the Workplace Act 1999 (Cth) (EOWWA). A Bill to replace the EOWWA is currently before federal parliament. The proposed legislation, to be called the Workplace Gender Equality Act, will extend coverage to men and will acknowledge pay equity and caring responsibilities of both men and women as central to gender equality.

movement concerning women workers. These included equal pay for work of equal value, provision of affordable and adequate childcare, and strategies to address the needs of workers with family responsibilities, including comprehensive maternity protection.<sup>42</sup> This was followed by the successful Maternity Leave Test Case, also pursued by the ACTU (mentioned above). In 1984, the ACTU adopted an Action Program for Women Workers whose strategies included comprehensive maternity protection and parental leave, and provision of adequate and reasonably priced childcare facilities.<sup>43</sup>

During the 1980s there was increasing awareness among employers and government agencies of the value of women's labour force participation, and of industrial obstacles to meeting the rising demands by women, particularly for part-time work and flexible work.<sup>44</sup> Employers and government agencies recognized a range of barriers that included: an inadequate supply of childcare in Australia; gender-biased human resource policies and organizational cultures; inflexible personnel policies; as well as working time and job design arrangements that were structured around traditional full-time male employment.<sup>45</sup> Recommendations for change from employers included increasing flexible working arrangements to accommodate women's caring responsibilities such as part-time work, new shift patterns, job sharing, teleworking, and annualized hours.<sup>46</sup> Changes to industry awards were also sought, particularly around working time arrangements, as rigid provisions were seen as inhibiting productivity and the ability to provide flexible working arrangements for employees, while meeting the needs of business.<sup>47</sup>

There is some evidence in the late 1980s of greater human resource activity within large enterprises as part of compliance with the AAA, which led to increased enterprise-based initiatives around flexible working hours, job sharing and leave to care for sick family members.<sup>48</sup> However, major employer bodies were more reluctant to endorse the formal regulation of flexible working arrangements where this might lead to new rights for workers, such as in the 1979 Maternity Leave Decision, or to the introduction of additional compliance requirements such as through the Affirmative Action Act.<sup>49</sup> Employer bodies argued that such regulation would have a negative economic impact and likely have disruptive effects on employers.<sup>50</sup>

<sup>42</sup> See reference to the 1977 charter at: [www.actu.org.au/Images/Dynamic/attachments/5157/ACTUCongress1989\\_Working\\_Womens\\_Policy.pdf](http://www.actu.org.au/Images/Dynamic/attachments/5157/ACTUCongress1989_Working_Womens_Policy.pdf)

<sup>43</sup> See reference to this programme at: [www.actu.org.au/Images/Dynamic/attachments/5157/ACTUCongress1989\\_Working\\_Womens\\_Policy.pdf](http://www.actu.org.au/Images/Dynamic/attachments/5157/ACTUCongress1989_Working_Womens_Policy.pdf)

<sup>44</sup> Carmody, H., *Workers with Family Responsibilities*, Sharing the Load: National Women's Consultative Council conference on Workers with Family Responsibilities, Office for the Status of Women, Canberra, 1990.

<sup>45</sup> Ibid.

<sup>46</sup> Callander, E., *Flexible Working Hours*, Sharing the Load: National Women's Consultative Council conference on Workers with Family Responsibilities, Office for the Status of Women, Canberra, 1990.

<sup>47</sup> Ibid.

<sup>48</sup> Braithwaite, V. and Bush, J. "Affirmative action in Australia: A consensus based dialogic approach", in *National Women's Studies Association Journal*, vol. 10, 1998, page 126.

<sup>49</sup> Ibid, pages 122-125.

<sup>50</sup> For example, see employer arguments in the Maternity Leave Test Case on page 4 at: [www.airc.gov.au/kirbyarchives/decisions/1979maternityleave.pdf](http://www.airc.gov.au/kirbyarchives/decisions/1979maternityleave.pdf)

## › Research

In the 1980s, growing awareness of the findings of international and Australian-based research provided a firm evidence basis for the federal Government to take action aimed at increasing women's labour participation, and consider action to support workers with family responsibilities. In 1989 an Australian Bureau of Statistics (ABS) survey drew attention to barriers to the increased participation of women with caring responsibilities in the labour market. In that survey the majority of women not in the labour force gave "family reasons" as the main reasons for not currently working. These reasons included: choosing to look after young children, not being able to find suitable childcare, and caring for an ill family member.<sup>51</sup>

Sex-disaggregated data on "time use" in productive and reproductive work, available in the Australian Bureau of Statistics 1987 Pilot Time Use Survey, revealed a sharp gender division of labour in paid and unpaid work. The survey analysis, published by OSW, showed that married women in paid work spent over twice the amount of time – as did employed married men – minding and caring for children, and for sick and disabled family members.<sup>52</sup> A wide range of research undertaken under the Women's Research and Employment Initiatives Program (mentioned above) also contributed to a growing knowledge base about vocational skills and training-related barriers to women's full participation in the labour market.

## › Implementation and beyond

On the same day in 1990 when the federal Government ratified Convention No. 156, the NWCC held a conference that brought together government, union and employer representatives in order to plan for implementation.<sup>53</sup> The 22 years since have seen profound changes not only in the nature of the labour market but also in the dynamics of community-based and political support for assisting women and men to better balance their work and family responsibilities.

### – *Immediate post-implementation action*

At the National Women's Consultative Council conference, the federal Government announced it had already taken steps towards implementation of measures to give effect to aspects of the principles underlying Convention No. 156. These included the following.

- ▶ introduction of a Family Allowance Supplement, designed to minimize work disincentives for low-income families
- ▶ provision of better childcare – particularly related to working parents
- ▶ availability in the Commonwealth Public Service of parental leave and flexible working hours

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<sup>51</sup> *Persons Not in the Labour Force Australia*, Cat. No. 6220.0 1988, Australian Bureau of Statistics, cited in Wolcott, I., *The World of Work and Family Life: A Balancing Act*, National Women's Consultative Council Conference on Workers with Family Responsibilities, Office for the Status of Women, Canberra, 1990.

<sup>52</sup> Bittman, M., *Juggling Time – How Australian Families Use Time*, Office of the Status of Women, Department of Prime Minister and Cabinet, Canberra, 1991.

<sup>53</sup> *Sharing the Load: Papers from the 1990 National Women's Consultative Council Conference on Workers with Family Responsibilities*, Office for the Status of Women, Department of the Prime Minister and Cabinet, Canberra, 1991.



- ▶ active support of the ACTU Parental Leave Case, then before the Australian Industrial Relations Commission
- ▶ establishment of consultative mechanisms between employers' and workers' organizations in order to devise measures to give effect to the Convention<sup>54</sup>

#### – *Community education*

The 1990 National Women's Consultative Council conference, which was a first step in the gradual process of awareness-raising about Convention No. 156, was followed up by an OSW community education programme on "Sharing the Load", with an allocation of AUD\$ 100,000 per annum for three years.<sup>55</sup> The programme aimed to encourage attitudinal and behavioural change to address the inequitable share of family responsibilities undertaken by women workers. The OSW developed an innovative poster campaign with well-known media and sporting personalities, who stated their commitment to sharing domestic tasks,<sup>56</sup> and the NWCC published a user-friendly community education booklet on the significance of ratification of Convention No. 156 for workers. The booklet aimed to maximize the potential for implementation of Convention No. 156 and set out key facts on workers with family responsibilities in Australia. These covered employment participation the gender division of labour, and the fact that 122,000 Australians in the paid workforce were also caring for severely-handicapped dependents. The booklet explained what an ILO Convention is, and most importantly how it could be used by individuals, employers, unions and government. The booklet also provided examples of how Convention No. 156 and its articles might apply in Australia, along with suggestions drawn from Recommendation No. 165.<sup>57</sup>

#### – *Government policy mechanisms*

At the time of ratification, the federal Government established two key policy mechanisms to support implementation of Convention No. 156 and to promote gender equality in the labour market. These mechanisms included establishment of the Work and Family Unit in the industrial relations portfolio in order to continue policy development on conditions and practices that enabled both parents to combine family responsibilities with paid work.<sup>58</sup> An annual budget of AUD\$ 200,000 for three years was allocated to assist with development of an implementation strategy for Convention No. 156 across national government policies and programs. The Unit also actively promoted work and family issues among employers and unions, including flexible working arrangements such as part-time and casual work, job sharing, home-based work, family leave arrangements, career break schemes and employer-supported childcare.<sup>59</sup> Part of the Unit's activities was to monitor changes at work for those with family responsibilities and identify prob-

<sup>54</sup> Ibid, page 2.

<sup>55</sup> Ibid, page vii.

<sup>56</sup> For further examples and full documents contact authors for details.

<sup>57</sup> See *International Labour Organisation Convention 156, Workers with Family Responsibilities*, National Women's Consultative Council, Australian Government Publishing Service, Canberra, 1990.

<sup>58</sup> Sawyer, M., "The Commonwealth Sex Discrimination Act: Aspirations and Apprehensions", in *20th Anniversary of the Sex Discrimination Act Conference*, University of Sydney, Sydney, 2004, page 15.

<sup>59</sup> *National Agenda for Women: Implementation Report*, Office for the Status of Women, Department of the Prime Minister and Cabinet, Australian Government Publishing Service, Canberra, 1991, page 36.

lems that might arise. To this end in 1990-1991, it allocated AUD\$ 96,500 for the Australian Institute of Family Studies to conduct a survey of workers' leave patterns and arrangements in order to show how they coped with family matters at the workplace.<sup>60</sup>

The federal Government also established an Equal Pay Unit in the industrial relations portfolio, which made an important link between the issue of pay equity and the issue of combining work and family. The Equal Pay Unit provided policy advice and had responsibility for conducting and commissioning research on pay equity matters. In 1990-1991, the Equal Pay Unit coordinated six research projects totaling AUD\$ 157,000 and provided a *Pay Equity for Women in Australia Report 1990*, prepared by the National Women's Consultative Council.<sup>61</sup>

At the state and territory levels, governments established work and family policy mechanisms as well as offices of women's policy. For example, in Victoria much emphasis was placed on encouraging businesses to consider implementing work and family policies and practices.<sup>62</sup> This approach was also taken by the New South Wales Government with its *1995 Flexible Work Practices – Policy and Guidelines*.<sup>63</sup> Some state governments also established grant programmes to pilot innovative enterprise-level initiatives, such as the Better Work and Family Balance Grants Program established in Victoria. These were aimed at assisting businesses and organizations of less than 200 employees to adopt practices to improve the work and family balance of employees,<sup>64</sup> while other state-based initiatives included awards for good practice.<sup>65</sup> Employer awards for “best practice” family-friendly workplace initiatives have also been implemented at the federal level since 1992; these are administered in the industrial relations portfolio and sponsored by business groups.<sup>66</sup> In addition, since 2001 the Equal Opportunity for Women in the Workplace Agency has given awards to encourage innovation, including for family-friendly workplaces, as part of its Business Achievement Awards.<sup>67</sup>

State and federal government commitment to establishing specific work and family policy units has waxed and waned over time, with the federal Work and Family Unit abolished in 2003. However, in 2009 the federal Government established the Fresh Ideas for Work and Family Grants Program to support small businesses in implementing practices that help employees balance their work and family obligations as well as improve employee retention and productivity.<sup>68</sup>

<sup>60</sup> Ibid.

<sup>61</sup> Ibid, page 33.

<sup>62</sup> For a recent example of a publication from the Working Families Program, see [www.business.vic.gov.au/busvicwr/\\_assets/main/lib60072/work&family.pdf](http://www.business.vic.gov.au/busvicwr/_assets/main/lib60072/work&family.pdf)

<sup>63</sup> See [www.dpc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0017/19331/Flexible\\_Work\\_Practices\\_Policy.pdf](http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0017/19331/Flexible_Work_Practices_Policy.pdf)

<sup>64</sup> See <http://ways2work.business.vic.gov.au/about-ways2work/the-working-families-program/better-work-and-family-balance-2005>

<sup>65</sup> See the Victorian Government's Fair and Flexible Employer Recognition Awards program at: <http://ways2work.business.vic.gov.au/employers/awards,-grants-and-programs/employer-recognition-program>

<sup>66</sup> Such as the awards sponsored by the Australian Chamber of Commerce and Industry and by the Business Council of Australia. See the 2004 award winners at: [www.workplace.gov.au/NR/rdonlyres/960AC8A2-29F5-486F-98A0-C89E3D5FE2E0/0/WFAWinningWorkplaces2004.pdf](http://www.workplace.gov.au/NR/rdonlyres/960AC8A2-29F5-486F-98A0-C89E3D5FE2E0/0/WFAWinningWorkplaces2004.pdf)

<sup>67</sup> See award winners from 2001 to 2010 at: [www.eowa.gov.au/Business\\_Achievement\\_Awards/Previous\\_Awards.asp](http://www.eowa.gov.au/Business_Achievement_Awards/Previous_Awards.asp)

<sup>68</sup> See [www.deewr.gov.au/WorkplaceRelations/FreshIdeas/Pages/default.aspx](http://www.deewr.gov.au/WorkplaceRelations/FreshIdeas/Pages/default.aspx)

– *Changing labour markets*

Over the last two decades the Australian labour market has changed dramatically. The ageing of the workforce and the need to increase participation and benefit from government investment in education, especially in the increased educational attainment of women, have driven ongoing policy interest in women's participation in paid work. This participation has continued to increase; by 2009 women made up 45.4 per cent of the Australian workforce, with their labour market participation reaching 59.3 per cent.<sup>69</sup> One of the most significant changes within this trend is in the proportion of married women in the workforce with dependent children, which increased from 41 per cent in 1981 to 63 per cent in 2009.<sup>70</sup> The employment participation of women with children under five years old has also increased. For mothers who had a partner and whose youngest child was under five years old, employment rates grew from 30 per cent in 1984 to 52 per cent in 2009. For single mothers in this category, employment rates grew from 19 per cent in 1981 to 27 per cent in 2009.<sup>71</sup>

Much of this increased participation has been in part-time work. Using an OECD comparison, a significant “motherhood gap” remains in Australia with the proportion of 35 to 44 year-old women participating in full-time work barely changing since 1990.<sup>72</sup> One major reason identified for this relatively low participation rate is the tax transfer system with high effective tax rates and a high net cost of childcare, which especially discourages mothers from paid work or from extending part-time hours.<sup>73</sup>

– *Legislative and policy changes*

Perhaps the greatest impact of Australia's ratification of Convention No. 156 has been the development of a comprehensive federal and state legislative framework in industrial relations, labour law and anti-discrimination jurisdictions. Provisions protecting and supporting workers with family responsibilities have been progressively improved over time.

– *Industrial regulation*

In 1993, the federal Industrial Relations Act 1991 was amended so that one of its explicit aims became preventing and eliminating discrimination including on the basis of sex, family responsibilities and pregnancy. The amendments also required the Australian Industrial Relations Commission (AIRC) to take Convention No. 156, which was appended to the Act, into account in its deliberations. The amendments opened the way for employees to pursue claims, particularly where their employment had been terminated on such grounds. The amendments also provided a statutory basis for the 12 months' unpaid parental leave that until that point had been enshrined in separate

<sup>69</sup> Baird, M.; Charlesworth, S.; Cooper, R. and Heron A., *Women, Work and the Global Economic Downturn*, Department of Families, Housing, Community Services and Indigenous Affairs, Canberra, 2011. See pages 1-2 at: [www.fahcsia.gov.au/sa/women/pubs/general/Documents/women\\_work\\_global\\_economic\\_downturn\\_rpt.pdf](http://www.fahcsia.gov.au/sa/women/pubs/general/Documents/women_work_global_economic_downturn_rpt.pdf), pages

<sup>70</sup> “Families then and now – 1980-2010”, Fact Sheet, Commonwealth of Australia, Melbourne, 2010, page 5.

<sup>71</sup> *Ibid*, page 6.

<sup>72</sup> Daley, J., “Game Changes: Economic Reform Priorities for Australia”, Grattan Institute, 2012, see page 39 at: [http://grattan.edu.au/static/files/assets/3e1bdca4/Game\\_Changes\\_Revised.pdf](http://grattan.edu.au/static/files/assets/3e1bdca4/Game_Changes_Revised.pdf)

<sup>73</sup> *Ibid*, page 42.

arbitrated industry awards. The Industrial Relations Act was succeeded by the Workplace Relations Act 1996 (WRA). One of its aims was to assist employees in balancing their work and family responsibilities effectively through the development of mutually-beneficial work practices with employers, as well as to prevent and eliminate discrimination on a range of grounds including family responsibilities. The Act also provided that the AIRC must perform its functions taking account of Convention No. 156 in a way that furthered the Act's aims on dealing with family responsibilities.<sup>74</sup> Convention No. 156 was included as a schedule to the WRA and both termination of employment on the grounds of family responsibilities and/or parental/maternity leave was also proscribed.

The current Fair Work Act 2009 includes ten National Employment Standards<sup>75</sup> two of which continued the protections for workers with family responsibilities and introduced a "right to request flexible work arrangements."<sup>76</sup> These standards include ten days paid personal/carer's leave per annum and two days unpaid carer's leave for ongoing or permanent employees as required, with two days compassionate leave (unpaid for casuals) as required. The Fair Work Act 2009, which extended protections in the WRA, also provides protection for employees against "adverse action" – including discrimination based on sex, pregnancy and against workers with family responsibilities – across all aspects of employment including hiring, promotion, training and dismissal.<sup>77</sup>

Convention No. 156 also continued to be invoked by those arguing for further improvements in working conditions for workers with family responsibilities. After the 1990 Parental Leave Test Case outlined above, Australia's obligations under Convention No. 156 continued to be a consideration in claims made by the ACTU in test cases and in decisions by the Australian Industrial Relations Commission. These decisions included the following.

The Family Leave/Personal Carer's Leave Decisions of 1995-1996 provided employees a maximum of five days family leave (later renamed personal carer's leave) per year, to be taken from the total pool of sick and bereavement leave available under arbitrated industry awards. It also provided that in addition to the five days leave, employees could make arrangements at the workplace to use a range of other provisions to attend to family responsibilities including annual leave entitlements, time-off in lieu of overtime payments, rostered days off and unpaid leave.<sup>78</sup>

<sup>74</sup> See summary of the Workplace Relations Act provisions in respect to workers with family responsibilities in *"Striking the Balance – Women, men, work and family: Discussion Paper"*, Human Rights and Equal Opportunity Commission, Sydney, 2005, pages 89-90.

<sup>75</sup> For the ten National Employment Standards, see [www.fairwork.gov.au/employment/national-employment-standards/pages/what-are-the-10-nes-entitlements.aspx](http://www.fairwork.gov.au/employment/national-employment-standards/pages/what-are-the-10-nes-entitlements.aspx)

<sup>76</sup> This "right to request" provision remains weaker than that available in New Zealand, United Kingdom, Germany and the Netherlands, as it is restricted to parents with under school-age children and there is no right of appeal if the employer refuses to grant the request. See Charlesworth, S. and Campbell, I., "Right to Request Regulation: Two New Australian Models," *Australian Journal of Labour Law*, vol. 21, no. 2, 2008. However a Green Party's Bill is currently before Parliament, which would extend the right to request to all employees and provide an appeal mechanism. See [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ee/betterworklife/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ee/betterworklife/index.htm)

<sup>77</sup> Chapman, A., *Australian Anti-Discrimination Law, Work, Care and Family*, Working Paper no. 51, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne, 2012, page 5.

<sup>78</sup> The Family Leave/Personal/Carer's Leave Decision (1995/1996) was in two parts: March 1996 (1996) 66 IR 138 and April 1996 (1996) 66 IR 176.

The Parental Leave for Casual Employees Decision in 2001 extended the protections of the unpaid parental leave provisions to casual employees with regular and systematic employment for an ongoing period of at least 12 months.<sup>79</sup>

The Reasonable Hours Decision in 2002 recognized the right of an employer to require an employee to work “reasonable” overtime. However this was to be subject to the employee’s right to refuse any overtime that is unreasonable, with regard to a number of factors including the employee’s family responsibilities.<sup>80</sup>

The Family Provisions Decision in 2005 provided a right for employees on parental leave to request an extra 12 months’ unpaid parental leave (in addition to the existing 12 months entitlement) and to return from parental leave on a part-time basis until the child reaches school age. The parental leave clause developed by the Australian Industrial Relations Commission to be inserted into arbitrated industry awards obliged employers not to refuse such requests unless they had reasonable grounds.<sup>81</sup> However the impact of this decision was limited by the “WorkChoices” amendments to the Workplace Relations Act in 2005, which meant the AIRC no longer had the ability to vary arbitrated awards in line with this decision.<sup>82</sup>

In addition to such legislative developments, the Fair Work Ombudsman (FWO), who has the responsibility to investigate workplace complaints and enforce compliance with the Fair Work Act, has undertaken both general campaigns to promote the entitlements of workers with family responsibilities as well as specific campaigns aimed at assisting pregnant workers and workers with family responsibilities. The FWO has produced information kits for pregnant workers<sup>83</sup> and a work and family best practice guide for employers and employees.<sup>84</sup>

These developments in the federal industrial relations jurisdiction were also taken up in several state industrial relations jurisdictions. In most Australian jurisdictions there have been provisions to assist workers with family responsibilities included in enterprise bargaining agreements, and in collective negotiations over industry awards. However, today industrial relations regulation is generally centralized at the federal level, with most state and territory jurisdictions only retaining some coverage for some specific groups of state or territory public service employees.

#### – *Anti-discrimination laws*

Before enactment of specific provisions in the state, territory and federal anti-discrimination jurisdictions, complaints that raised issues of work/family discrimination were

<sup>79</sup> *Casual Employees Parental Leave Test Case*, Australian Industrial Relations Commission, PR904631, 31 May 2001.

<sup>80</sup> Reasonable Hours/Working Hours Decision 2002, 114 IR 390.

<sup>81</sup> Family Provisions Decision, 2005, 143 IR 245.

<sup>82</sup> Murray, J., “The AIRC’s Test Case on Work and Family Provisions: the end of dynamic regulatory change at the federal level?”, *Australian Journal of Labour Law*, vol. 1, no. 3, 2005.

<sup>83</sup> The Fair Work Ombudsman national information campaign aimed at helping women avoid pregnancy discrimination at work. See [www.fairwork.gov.au/media-centre/media-releases/2010/07/Pages/20100707-Pregnancy-discrimination-campaign.aspx](http://www.fairwork.gov.au/media-centre/media-releases/2010/07/Pages/20100707-Pregnancy-discrimination-campaign.aspx) Also see *Work & Family Best Practice Guide*, Fair Work Ombudsman, at: [www.fairwork.gov.au/BestPracticeGuides/01-Work-and-family.pdf](http://www.fairwork.gov.au/BestPracticeGuides/01-Work-and-family.pdf)

<sup>84</sup> See “Free Advice for free information and advice for working parents”, Fair Work Ombudsman, at: [www.fairwork.gov.au/media-centre/media-releases/2012/05/pages/20120517-pregnancy-expo-sydney.aspx](http://www.fairwork.gov.au/media-centre/media-releases/2012/05/pages/20120517-pregnancy-expo-sydney.aspx)



typically lodged on the grounds of sex or pregnancy. Following ratification of Convention No. 156, most anti-discrimination jurisdictions moved to directly protect workers with family responsibilities. Today all state and territory jurisdictions prohibit discrimination on the grounds of parental status, carers' status, and carers' responsibilities and/or family responsibilities.<sup>85</sup>

Despite the broad coverage of Article 1 of Convention No. 156, the Sex Discrimination Act was amended in 1992 to prohibit only direct discrimination on the ground of family responsibilities in respect to dismissal from employment.<sup>86</sup> In effect this has limited claims of discrimination against workers with family responsibilities under the Sex Discrimination Act to women, who unlike men are able to argue that they have been indirectly discriminated against on the grounds of sex because they are more likely to have primary carer responsibilities.<sup>87</sup> After persistent lobbying by the Human Rights and Equal Opportunity Commission, civil society organizations and unions, as well as a 2008 federal Senate Inquiry into the Sex Discrimination Act, further amendments were made to it in 2011 prohibiting direct discrimination against male and female employees on the ground of family responsibilities, in all areas of employment. Breastfeeding was also made a separate ground of discrimination. These amendments partially implemented recommendations from the Senate Inquiry.<sup>88</sup>

At the state and territory levels there has been some innovative legislative action with New South Wales and Victoria being the most advanced. In New South Wales carer discrimination provisions, introduced in 2001 in amendments to the state's Anti-Discrimination Act 1997, placed an obligation on employers to reasonably accommodate care-givers' related needs for alternative work arrangements. This coincided with extensive mandatory training of legal practitioners about discrimination law, including the carers' amendment. This training included tribunal members who were legal practitioners in order to ensure a more expert assessment by tribunal and commission members of employer and employee claims.<sup>89</sup> Of 140 claims decided in the first two years after introduction of the amendment, only one was appealed.<sup>90</sup>

In Victoria in 2008, amendments to the state's Equal Opportunity Act 1995, now the Equal Opportunity Act 2010, expanded the range of what constitutes discrimination

<sup>85</sup> Charlesworth, S., "Law's response to the reconciliation of work and care: the Australian case" in James, C.G. and Busby, N. (eds), *Families, Care-giving and Paid Work: Challenging Labour Law in the 21st Century*, Edward Elgar, Cheltenham, 2011.

<sup>86</sup> Explanatory Memorandum, Human Rights and Equal Opportunity Legislation Amendment Bill (No 2) 1992 (Cth). This amendment gave effect to Article 8 of ILO Convention No. 156, which obliges Australia to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

<sup>87</sup> See the 2008 federal Senate Standing Committee on Legal and Constitutional *Report of Inquiry into the Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* at: [http://www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf)

<sup>88</sup> Page 151 of the 2008 report of the federal Senate Inquiry on *Effectiveness of the Sex Discrimination Act 1984 in eliminating discrimination and promoting gender equality* recommended both that the prohibition on discrimination on the grounds of family responsibilities under the Act be broadened to include indirect discrimination and discrimination in all areas of employment, and a positive duty be imposed on employers to reasonably accommodate requests by employees for flexible working arrangements to accommodate family or carer responsibilities.

<sup>89</sup> Hegewisch, A., *Flexible working policies: a comparative review*, Research Paper 16, Equality and Human Rights Commission, Manchester, 2009, pages 40-41.

<sup>90</sup> *Ibid*, page 41.

against parents or carers in employment and employment-related areas.<sup>91</sup> The amendments provide that employers are not to unreasonably refuse to accommodate responsibilities that a person has as a parent or carer and who are offered employment, or an employee or a contract worker. In determining whether a refusal to accommodate family responsibilities is unreasonable, all relevant facts and circumstances must be considered; including not only circumstances of the business but also those of the employee as well as the nature of the arrangements.<sup>92</sup>

– *Work and family policy initiatives*

Two major areas of policy action and debate since ratification of Convention No. 156 have been about provision of childcare and the long struggle for a national paid parental leave (PPL) scheme, which was finally realized in 2011.

Federal Government data indicates that over the past 22 years, the provision of childcare services in Australia has gone through substantial change. In 1991 there were some 4,100 services, the majority of which were community not-for-profit providers. In 2010, there were 13,638 services with a far larger proportion of private providers. Over that same period the number of children in childcare increased from 256,326 in 1991 to 871,107 in 2010. Increasing childcare use is seen to have directly supported women's labour force participation.<sup>93</sup>

Since 1991, a move to a market model has seen a shift from the government supply of non-profit children's services to individualized demand subsidies. This shift began during the Keating Government and intensified under the Howard Government with the move from providing operational subsidies for community-based non-profit centres, to private for-profit provision with childcare subsidies paid directly to parents.<sup>94</sup> Today the focus in childcare policy is less on the provision of childcare places to meet the needs of working parents, and more about the provision of early childhood education.<sup>95</sup> The funding of childcare continues to be an issue of significant political debate, as the demand for affordable quality childcare outstrips its provision.

A national paid maternity or parental leave scheme had been on the agenda of Australian women's organizations for more than 40 years before it was finally implemented in 2011. Both the Human Rights and Equal Opportunity Commission and the ACTU continued to lobby actively for a national scheme after the ratification of Convention No. 156. After three Human Rights and Equal Opportunity Commission inquiries in 1999, 2000 and 2007 – which all recommended a government-funded scheme – in 2009 the Rudd Labor Government asked the Productivity Commission to inquire into the feasibility of such a scheme.

<sup>91</sup> Charlesworth, S., "Law's response to the reconciliation of work and care: the Australian case" in James, C.G. and Busby, N. (eds), 2011.

<sup>92</sup> Chapman, A., *Australian Anti-Discrimination Law, Work, Care and Family Working Paper No. 51*, Centre for Employment and Labour Relations Law, University of Melbourne, Melbourne, 2012.

<sup>93</sup> "State of Child Care in Australia Today", Office for Early Childhood Education and Childcare, Department of Employment Education and Workplace Relations, Canberra, 2010, see [www.mychild.gov.au/documents/docs/statechildcareaus.pdf](http://www.mychild.gov.au/documents/docs/statechildcareaus.pdf)

<sup>94</sup> Chappell, L.; Brennan, D. and Rubenstein, K., "A Gender and Change Perspective on Intergovernmental Relations" in Kildea, P.; Lynch, A. and Williams, G. (eds) *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012, page 241.

<sup>95</sup> *Ibid*, page 242.

The Productivity Commission noted in its report that Convention No. 156 (along with other conventions) was relevant to its inquiry,<sup>96</sup> and it endorsed a statutory paid parental leave scheme that provided leave for a total of 18 weeks paid at the national minimum weekly wage.<sup>97</sup> As part of the 2009-10 Budget, the Government announced its intention to introduce a paid parental leave scheme, which was based closely on that proposed in the Commission's final inquiry report. The scheme, which commenced in January 2011, provides AUD\$ 590 a week before tax for eligible working parents at the rate of the national minimum wage.<sup>98</sup> To be eligible for paid parental leave, a worker needs to be the primary carer of a newborn or recently adopted child; have worked for at least ten of the 13 months prior to the birth or adoption (including as a casual/seasonal worker or self-employed worker); and have a taxable income of less than AUD\$ 150,000 per annum.<sup>99</sup>

Based on another recommendation of the Productivity Commission, the federal Government has recently introduced legislation to expand the scheme from 1 January 2013, with a new entitlement for working parents known as "dad and partner pay". This will provide eligible working fathers or partners including adopting parents and parents in same-sex couples, with two weeks' pay, also at the rate of the national minimum wage.

– *Shifts in work and family policy*

Work and family policy issues have been on the federal Government policy agenda since the ratification of Convention No. 156, with Prime Minister Howard famously declaring in 2002 that work and family was a "barbeque-stopper",<sup>100</sup> that is to say an important concern for ordinary Australians in everyday life. A legislative framework has been established and incrementally improved in both the industrial relations and anti-discrimination jurisdictions over the last 22 years. It provides explicit protection against discrimination of workers with family responsibilities and sets minimum employment standards that include carers' leave entitlements.

However, there have been some shifts in broader work and family policy through the period of the Keating Government (Labor 1991-1996) and in particular, through the periods of the Howard Government (Coalition 1996-2007) and Rudd/Gillard Governments (Labor 2007-current) with varying political commitment to ongoing implementation of Convention No. 156. These shifts in work and family policy relate mainly to the specific policy emphasis of different governments. One of the main areas of difference in policy has been over the most effective way to provide "family-friendly" or flexible work arrangements at the enterprise level, with a greater emphasis on voluntary initiatives of

<sup>96</sup> *Report of the Inquiry into Paid Parental Leave: Support for Parents with Newborn Children*, Productivity Commission, 2009. See page 14 at: [www.pc.gov.au/projects/inquiry/parental-support/report](http://www.pc.gov.au/projects/inquiry/parental-support/report)

<sup>97</sup> *Ibid.*

<sup>98</sup> See [www.fahcsia.gov.au/sa/families/progserv/paid\\_parental/Pages/default.aspx](http://www.fahcsia.gov.au/sa/families/progserv/paid_parental/Pages/default.aspx)

<sup>99</sup> For details on eligibility see page 2 at: [www.humanservices.gov.au/spw/customer/publications/resources/8581/8581-1211en.pdf](http://www.humanservices.gov.au/spw/customer/publications/resources/8581/8581-1211en.pdf)

<sup>100</sup> On 18 July 2002, the Prime Minister said the debate over policies to assist families with children to better balance their work and family responsibilities was the "biggest ongoing social debate of our time; I call it a barbeque stopper." Cited in Von Doussa, J., "Barbequed or Burned-Flexibility in Work Arrangements and the Sex Discrimination Act", *University of New South Wales Law Journal*, vol. 27, no. 3, 2004, page 892.

employers and enterprise “best practice” on the one hand, and on the other a greater reliance on regulatory initiatives to provide for improved conditions across industry.<sup>101</sup>

During the Howard Government the broad work and family policy approach was based on a rhetoric of “choice” and individual responsibility, with the Government’s role seen as standing back and allowing families, individuals and, indeed, employers to make choices that they believed were right for them.<sup>102</sup> This meant there was a greater reliance on the business case for change than on labour market policy and regulation, with larger companies encouraged to introduce “family-friendly” policies. One of the ways of providing such encouragement was via the promotion of best practice case studies and work and family awards. However in a 2002 assessment of Australia’s achievements in the area of work and family, the OECD described the penetration of family-friendly policies at the enterprise level as “highly uneven”, with few inroads made into spreading such practices to small employers or employers of low-skilled workers.<sup>103</sup>

Despite such areas of difference, Labor and Coalition Governments and oppositions all proved reluctant to take action on a national paid maternity or parental leave scheme until 2009, as noted above. Interestingly, the Coalition Opposition now has a parental leave policy that supports a more generous scheme than the one introduced by the current Labor Government; the former provides for 26 weeks of leave at full replacement earnings.<sup>104</sup> Another area of overlap, as noted above, is broad agreement about the need for the federal Government to contribute to the cost of childcare to support working parents. Indeed there has been surprisingly little disagreement over the last decade about mechanisms for doing so and the respective roles of government and the market in providing that support.

## › Social dialogue

Generally, different views have been held by unions and employer groups about how to best support workers with family responsibilities, with a different weight given to the role of labour standards as a basis for that support. There has also been some debate between the social partners about what action is necessary for Australia to meet its obligations under Convention No. 156. For example, while the ACTU has argued that a rights-based approach to implementation of Convention No. 156 is vital, employer groups have maintained that the reasonable business needs of individual enterprises must be taken into account in providing for flexible work arrangements.<sup>105</sup> Nevertheless there has been substantial consensus between the social partners on the crucial role that workplace-level negotiations have to play in providing more family-friendly workplaces.

In the years that followed ratification of Convention No. 156, unions while – stressing the need for improved minimum standards via test cases and award negotiations – placed

<sup>101</sup> Campbell, I. and Charlesworth, S., *Background Report: Key Work and Family Trends in Australia*, Centre for Applied Social Research, RMIT University, Melbourne, 2004.

<sup>102</sup> See van Acker, L., “Howard’s Social Policies Concerning Relationships, Work and Families”, paper presented to Australasian Political Studies Association Annual Conference, 24-26 September 2007, Monash University, Melbourne.

<sup>103</sup> *Babies and Bosses – Reconciling Work and Family Life: Australia, Denmark, The Netherlands*, vol. 1, OECD, Paris, 2002, page 200.

<sup>104</sup> See [www.liberal.org.au/Latest-News/2010/08/03/Real-Action-on-Paid-Parental-Leave.aspx](http://www.liberal.org.au/Latest-News/2010/08/03/Real-Action-on-Paid-Parental-Leave.aspx)

<sup>105</sup> For example, see the Australian Chamber of Commerce and Industry submission in the Family Provisions Test case, pages 33-35 at [www.e-airc.gov.au/familyprovisions/stories/storyReader\\$17](http://www.e-airc.gov.au/familyprovisions/stories/storyReader$17)

increasing emphasis on securing improvements in working conditions through enterprise bargaining.<sup>106</sup> Both individual unions and the Australian Council of Trade Unions produced guides on bargaining for “work and family balance”.<sup>107</sup> The federal and state Governments also produced guides, often in consultation with unions and employers, to encourage enterprise-level negotiation and consultation on the best way to accommodate workers with family responsibilities while meeting the business requirements of particular enterprises.<sup>108</sup> Government departments, in their role as employers, also produced guides to assist their employees and managers in negotiating flexible work practices.<sup>109</sup>

Government grants have been provided to encourage innovation and a collaborative approach between the social partners. One notable example is the above-mentioned Victorian Government’s “better practice” grant programme, which encouraged social dialogue and joint employer and union initiatives at the enterprise level to assist workers with family responsibilities.<sup>110</sup> One such grant led to a joint best practice manual for supporting work and family balance, which was produced by the Australian Services Union and the Victorian Hospitals Industrial Association for use in community services-sector workplaces.<sup>111</sup>

The development of more sophisticated and responsive human resources practices has also had an impact at the enterprise level, by linking better work and life balance with organizational sustainability and the importance of a positive, supportive organizational culture.<sup>112</sup> Importantly the gap between policy and practice has been a recent focus of human resources efforts in this area.<sup>113</sup>

## ► Research and evaluation

Since ratification of Convention No. 156, research on work and family reconciliation in Australia has burgeoned. This research, and that produced internationally and in cross-national comparison with Australia, has been crucial in providing the evidence-based evaluation of various policy measures as well as providing the basis for advocacy and ongoing reform.

One example of a research collaboration after ratification of Convention No. 156 is that between the Australian Bureau of Statistics (ABS) and the Office for Women (OFW) in the

<sup>106</sup> At its 1991 Congress, the Australian Council of Trade Unions endorsed a Workers with Family Responsibilities Strategy, which called on unions to address work and family issues in enterprise negotiations. Cited in Wolcott, I., “Achieving a Family Supportive Workplace and Community”, *Family Matters*, no. 37, 1994, page 72.

<sup>107</sup> For example, see Mathews, I., *Work and family issues: guidelines for enterprise bargaining*, Australian Council of Trade Unions, Melbourne, 1992.

<sup>108</sup> For example, see [www.business.vic.gov.au/busvicwr/\\_assets/main/lib60072/work&family.pdf](http://www.business.vic.gov.au/busvicwr/_assets/main/lib60072/work&family.pdf) and [www.dpc.nsw.gov.au/\\_data/assets/pdf\\_file/0008/25595/Success\\_with\\_Flexible\\_Work\\_Practices.pdf](http://www.dpc.nsw.gov.au/_data/assets/pdf_file/0008/25595/Success_with_Flexible_Work_Practices.pdf)

<sup>109</sup> For example, see *Managers Guide*, Victorian Department of Education, 1998 at: [www.aeufederal.org.au/Women/2004FWCFWM.pdf](http://www.aeufederal.org.au/Women/2004FWCFWM.pdf)

<sup>110</sup> For example see [http://ways2work.business.vic.gov.au/\\_data/assets/pdf\\_file/0018/204435/ClubsVIC.pdf](http://ways2work.business.vic.gov.au/_data/assets/pdf_file/0018/204435/ClubsVIC.pdf)

<sup>111</sup> See [www.asu.asn.au/media/family&worklifebalance-manual08-2006.pdf](http://www.asu.asn.au/media/family&worklifebalance-manual08-2006.pdf)

<sup>112</sup> For example *Social Impact Report*, Westpac Bank, 2002 showcased the Banks’ provision of paid maternity leave and support for breastfeeding and the provision of employer-based childcare. See [www.westpac.com.au/docs/rtf/about-westpac/Westpac\\_Social\\_Impact\\_Rpt.rtf](http://www.westpac.com.au/docs/rtf/about-westpac/Westpac_Social_Impact_Rpt.rtf), page 21.

<sup>113</sup> A good example of such an approach is *The Case for Work/Life Balance: Closing the Gap Between Policy and Practice*, 20:20 Series, Hudson, 2005. See [www.hudson.com](http://www.hudson.com) and [http://au.hudson.com/Portals/AU/documents/Hudson2020\\_Work-Life.pdf](http://au.hudson.com/Portals/AU/documents/Hudson2020_Work-Life.pdf)

production of the *Australian Women's Year Book*, published in 1994 and 1997.<sup>114</sup> Since 2011 the OFW (formerly the Office for the Status of Women) and the Commonwealth, State, Territory and New Zealand Ministers' Conference on the Status of Women have funded an ABS publication entitled *Gender Indicators, Australia*, which provides sex disaggregated data including on work and family balance.<sup>115</sup> The production of this publication is informed by an advisory group which includes representatives of OFW, academics in the field of work and family, and women's civil society groups.

Academic researchers have also been important in identifying particular issues faced by workers with family responsibilities and possible options to help better support them. Their research ranges from an analysis of time-use data<sup>116</sup> to employment conditions and social policy at the labour market, industry and enterprise levels. Such research also includes evaluations of policies and practices that seek to support workers in better balancing work and care.<sup>117</sup> Some specific issues identified through academic research include the following.

- ▶ links between the availability of family-friendly working conditions and labour market participation<sup>118</sup>
- ▶ gaps between family-friendly policy and practice<sup>119</sup>
- ▶ gender issues in uptake of flexible work options, including the poorer uptake of such options by men<sup>120</sup>
- ▶ broader business and rights-based case for family-friendly initiatives at the workplace level<sup>121</sup>
- ▶ job quality trade-offs in uptake of family-friendly benefits<sup>122</sup>

International research has proved useful in providing a perspective on developments in Australia and on innovative policy options that have resonance in the national context.<sup>123</sup>

<sup>114</sup> For 1997 see [www.ausstats.abs.gov.au/ausstats/free.nsf/0/604FDB6B0BF107CBCA2572250004956C/\\$File/41240\\_1997.pdf](http://www.ausstats.abs.gov.au/ausstats/free.nsf/0/604FDB6B0BF107CBCA2572250004956C/$File/41240_1997.pdf)

<sup>115</sup> See [www.abs.gov.au/ausstats/abs@.nsf/mf/4125.0](http://www.abs.gov.au/ausstats/abs@.nsf/mf/4125.0)

<sup>116</sup> For example, see Bittman, M., "Parenthood without penalty: time use and public policy in Australia and Finland", *Feminist Economics*, vol. 5, no. 3, 1999; and Craig, L. and Powell, A., "Nonstandard work schedules, work-family balance and the gendered division of childcare", *Work, Employment and Society*, vol. 25, no. 2, 2011.

<sup>117</sup> For example, see Peacock, B., *The Work/Life Collision. What Work is Doing to Australians and What to Do About It*, Federation Press, Annandale, 2003; and Brennan, D., "Babies, budgets and birthrates: work and family policy in Australia, 1996-2006", *Social Politics: International Studies in Gender, State and Society*, vol. 14, no. 1, 2007.

<sup>118</sup> For example, see Baird, M. and Whitehouse, G. M., "Introduction to special issue, 'Taking care: work and family policy issues for Australia'", *Australian Bulletin of Labour*, vol. 33, no. 2, 2007.

<sup>119</sup> For example, see Gray, M. and Tudball, J., "Access to Family Work Practices: Differences within and between Australian Workplaces", *Family Matters*, no. 61, 2002.

<sup>120</sup> For example, see Bittman, M.; Hoffman, S. and Thompson, D., "Men's Uptake of Family-Friendly Employment Provisions", Policy Research Paper 22, Department of Family and Community Services, Canberra, 2004.

<sup>121</sup> For example, see Charlesworth, S.; Hall, P. and Probert, B., *Contexts and Drivers of Equal Employment Opportunity and Diversity Action*, Informit Publishing, RMIT University, Melbourne, 2005.

<sup>122</sup> For example, see Chalmers, J.; Campbell, I. and Charlesworth, S., "Part-Time Work and Caring Responsibilities in Australia: Towards an Assessment of Job Quality", *Labour & Industry*, vol. 15, no. 3, 2005.

<sup>123</sup> Frequently cited studies include *Babies and Bosses: Reconciling Work and Family Life, Volume 1: Australia, Denmark and the Netherlands*, 2002; *Babies and Bosses: Balancing Work and Family Life, OECD Policy Brief*, OECD, Paris, March 2005; Fagan, C.; Hegewisch, A. and Pillinger, J., *Out of Time: Why Britain Needs a New Approach to Working-Time Flexibility*, Trades Union Congress, London, 2006; Hegewisch, A., *Flexible working policies: a comparative review*, Research Paper 16, Equality and Human Rights Commission, Manchester, 2009.

In 2004 a group of Australian work and family researchers formed a policy network, the Work+Family Policy Roundtable, which aims to propose, comment upon, collect and disseminate such research to inform and promote evidence-based public policy on work and family issues in Australia.<sup>124</sup> The Roundtable has produced *Election Benchmarks* for the periods leading up to the 2007 and 2010 federal elections. It also regularly makes submissions to state and federal Government inquiries and contributes to Australian work and family policy debates.<sup>125</sup>

Ongoing monitoring and evaluation of Australia's progress in supporting workers with family responsibilities, together with proposals for reform, also takes place through national inquiries. Many of these have been conducted by the Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission) and by the Senate and House of Representatives Committees of federal Parliament. These inquiries provide an opportunity for community, civil society organizations, unions and employers as well as academics to have a direct input into the policy process. Relevant inquiries conducted over the last 22 years include the following.

- ▶ 1992: House of Representatives – Inquiry into Equal Opportunity and Equal Status for Women in Australia
- ▶ 1999: Human Rights and Equal Opportunity Commission – Inquiry into Pregnancy Discrimination<sup>126</sup>
- ▶ 2002: Human Rights and Equal Opportunity Commission – Proposal for a National Paid Maternity Leave<sup>127</sup>
- ▶ 2005-2007: Human Rights and Equal Opportunity Commission – Women, Men, Work and Family Inquiry<sup>128</sup>
- ▶ 2008: House of Representatives – Work and Family Inquiry<sup>129</sup>
- ▶ 2008-2009: Senate – Inquiry into Effectiveness of Sex Discrimination Act<sup>130</sup>
- ▶ 2009: Productivity Commission – Inquiry into Paid Parental Leave<sup>131</sup>
- ▶ 2009: House of Representatives – Inquiry into Pay Equity and Associated Issues related to Increasing Female Participation in the Workforce<sup>132</sup>

## ► Reflections on ratification and implementation

Australia's experience of ratifying and then implementing Convention No. 156 has been a positive one. There were a wide range of factors that contributed to both the decision

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<sup>124</sup> See [www.familypolicyroundtable.com.au](http://www.familypolicyroundtable.com.au).

<sup>125</sup> For example, see Work and Family Policy Roundtable, *Election Benchmarks 2010* at: [www.familypolicyroundtable.com.au/images/userfiles/file/Benchmarks-2010.pdf](http://www.familypolicyroundtable.com.au/images/userfiles/file/Benchmarks-2010.pdf)

<sup>126</sup> See [www.hreoc.gov.au/sex\\_discrimination/publication/pregnancy/report.html](http://www.hreoc.gov.au/sex_discrimination/publication/pregnancy/report.html)

<sup>127</sup> See [www.hreoc.gov.au/sex\\_discrimination/paid\\_maternity/pml2/index.html](http://www.hreoc.gov.au/sex_discrimination/paid_maternity/pml2/index.html)

<sup>128</sup> See [www.hreoc.gov.au/sex\\_discrimination/its\\_about\\_time/index.html](http://www.hreoc.gov.au/sex_discrimination/its_about_time/index.html)

<sup>129</sup> See [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=fhs/.workandfamily/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=fhs/.workandfamily/report.htm)

<sup>130</sup> See [www.aph.gov.au/binaries/senate/committee/legcon\\_ctte/sex\\_discrim/report/report.pdf](http://www.aph.gov.au/binaries/senate/committee/legcon_ctte/sex_discrim/report/report.pdf)

<sup>131</sup> See [www.pc.gov.au/projects/inquiry/parental-support/report](http://www.pc.gov.au/projects/inquiry/parental-support/report)

<sup>132</sup> See [www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=ewr/payequity/report.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=ewr/payequity/report.htm)



to ratify and the successful implementation, which have been highlighted in this case study. Several of the most important factors are outlined below.

– *Success factors for ratification*

A number of success factors that underpinned Australia's decision to ratify Convention No. 156 have been outlined earlier. One of the most significant was the effective coalitions that had been built from the late 1970s through to ratification. These included coalitions between civil society groups, government-funded women's consultative groups, women unionists, and dedicated government agencies. This meant that effective lobbying could be used in a number of critical moments over time. Groups such as the Women's Electoral Lobby could apply political pressure during federal elections, while the National Women's Consultative Council was able to act as a conduit – between the community, international developments around gender equality, and the government – both by raising issues of concern to women and informing and raising awareness in the community about relevant action being taken by the federal Government. The Australian Council of Trade Unions kept the issue of workers with family responsibilities on the social dialogue agenda, while staff within government bureaucracies in agencies such as the Office for the Status of Women provided evidence about the barriers faced by women workers, thus keeping the issue of workers with family responsibilities on the policy agenda.

A second and related success factor was the comprehensive and integrated strategic approach taken by the federal Government across a number of policy areas. These included policy on employment, childcare, education and training, which also laid the groundwork for effective and early implementation of Convention No. 156. Importantly, this strategic cross-government approach strengthened links between action being taken at the federal, state and territory levels which helped to build on and inform the commitment of successive federal Governments in the lead up to ratification.

› **Key factors in successful implementation**

One of the success stories in implementation of Convention No. 156 in Australia has been the establishment of a legislative framework that draws on the wide-ranging legal reform in both industrial relations and anti-discrimination jurisdictions previously mentioned. Starting in the early 1990s and continuing up to the present time, legislative initiatives have been introduced in both industrial relations and anti-discrimination jurisdictions at the state, territory and federal levels in a process of phased and incremental reform. Today many workers with family responsibilities have some protection against discrimination in most areas of employment. In particular, while issues of sex discrimination are predominantly still seen in Australia as the province of the anti-discrimination jurisdiction, concerns about workers with family responsibilities have been mainstreamed as a central industrial relations issue. This process was aided by the explicit reference to Convention No. 156 in the aims of successive industrial relations laws since 1993. This has not only assisted in enterprise-level bargaining, but has helped enable unions and employers to debate – and ultimately the Australian Industrial Relations Commission and Fair Work Australia – to decide how the principles of Convention No. 156 are to be interpreted in the Australian context.



A second success factor lies in the undertaking and effective use of evidence-based research by all the stakeholders as previously mentioned. Academic research as well as research by lobby groups has been used to make the links between better supporting workers with family responsibilities and broader social and economic outcomes, which has been important in shaping the policy debate. One recent example is a study by Diversity Council Australia, an independent business think-tank. This study found that introducing more flexible arrangements to enable women to reduce time they spent out of the workforce due to child bearing, child-rearing and other caring responsibilities could reduce the gap between men and women's earnings and potentially increase economic activity by up to 9 per cent.<sup>133</sup>

### › Challenges and obstacles overcome

One potential barrier to Australia's ratification of ILO conventions lies in the federal system of government, which historically has required all state and territory governments to agree to ratification of international treaties and conventions. The consultative process between the federal, state and territory governments has been "underpinned by an understanding that conventions are ratified only when law and practice in all jurisdictions is adjudged to be in conformity with the requirements of the convention concerned, and that all jurisdictions have formally signified their agreement to ratification."<sup>134</sup> While commitment to ratification of Convention No. 156 was announced in 1983, delays were at least partly due to state objections. These objections were on the grounds that the Convention would require policies enabling men as well as women to combine family responsibilities with paid work and supporting friendly work practices and conditions that would enable men to take a more equal role in unpaid care work.<sup>135</sup>

In fact, the federal Government has the legal capacity to ratify conventions without the need for agreement by all state and territory governments.<sup>136</sup> After some pressure from women's groups including the National Women's Consultative Council,<sup>137</sup> and because the law and practice in all Australian jurisdictions was considered to be generally in compliance with requirements of Convention No. 156, it was ratified in 1990 without the formal agreement of New South Wales and the Northern Territory. By the time the Convention came into force in 1991, this agreement had been secured.

Another potential challenge overcome was initial resistance not only by some state governments but also by some politicians to policy and legal reform that was seen to challenge traditional gender roles.<sup>138</sup> Nevertheless by the late 1980s, political controversy over such issues – which had accompanied the introduction of the Sex Discrimination

<sup>133</sup> *Understanding the Economic Implications of the Gender Pay Gap in Australia*, Diversity Council Australia, Sydney, 2009. see [www.dca.org.au/Performance/Publicationsandresources/Genderpaygapreport.aspx](http://www.dca.org.au/Performance/Publicationsandresources/Genderpaygapreport.aspx)

<sup>134</sup> Creighton, B., "The ILO and the Protection of Fundamental Human Rights in Australia", *Melbourne University Law Review*, vol. 22, 1998, page 256.

<sup>135</sup> Sawer, M., "The Commonwealth Sex Discrimination Act: Aspirations and Apprehensions", *20th Anniversary of the Sex Discrimination Act Conference*, University of Sydney, Sydney, 2004, page 15.

<sup>136</sup> Chapman, A., "The Declining Influence of ILO Standards in Shaping Australian Statutory Provisions on Unfair Dismissal" *Monash University Law Review*, vol. 29, no. 1, 2003, page 114.

<sup>137</sup> Sawer, M., "The Commonwealth Sex Discrimination Act: Aspirations and Apprehensions", *20th Anniversary of the Sex Discrimination Act Conference*, University of Sydney, Sydney, 2004, page 15.

<sup>138</sup> *Ibid.*

Act in 1984 and of the Affirmative Action Act in 1986 – had largely died down without the social upheaval that some had predicted. Together with the growing international focus of the federal Government and the personal commitment of Prime Minister Hawke to the ILO as an institution, eventual agreement by state and territory governments to ratification in 1990 of Convention No. 156 was largely inevitable.

– *Challenges remaining*<sup>139</sup>

The implementation process since 1990 has been an on-going one, and during that time there have been both significant shifts in the labour market and in policy approaches to workers with family responsibilities. Two ongoing challenges in Australia stem from changes in a globalized labour market and regulation of the employment relationship, as well as shifts in the importance accorded to gender equality as an objective in work and family policy.

Over the last 22 years there have been profound changes in the global and national economic context and in the Australian labour market. With changing economic conditions and globalization, the main emphasis of government policy has been on integrating Australia more firmly into world markets, with labour market reforms directed at increasing labour market “flexibility”.<sup>140</sup> There has been a fragmentation of the standard full-time permanent employment relationship, with increases in casual and part-time work as well as fixed-term contracts and dependent contracting arrangements, now estimated to comprise some 40 per cent of all employment.<sup>141</sup> Today the Australian labour market operates not as one homogeneous system but as a series of distinct, albeit interconnected parts, and there remain very different patterns for men and women.<sup>142</sup> Such patterns also reflect differential contract status and hours of work, with casual and part-time work more likely to be found in industries and occupations in which women workers predominate. This means that many workers do not have the job security or predictability of hours so crucial to managing work and family responsibilities. Thus the fragmentation of the labour market remains an ongoing challenge in ensuring that all workers with family responsibilities have access to decent working conditions.

Another challenge lies in the policy shift from the early years of implementation, where gender equality in both the household and the workplace was an explicit focus of government policy on workers with family responsibilities, as reflected in the Office for the Status of Women “Sharing the Load” campaign. There has been a gradual “disappearing” of this policy objective over much of the last 15 years, with increasingly fragmented policy structures making it difficult to involve both non-government gender

<sup>139</sup> The CEACR is tracking Australia's application of Convention No. 156 in an observation noting with interest many of the legislative developments examined in this study and requesting details on practical information. See *International Labour Conference, 101st Session, 2012: Report III (Part 1A)*, pages 481-483.

<sup>140</sup> Campbell, I., “Australia: Institutional changes and workforce fragmentation”, in Lee, S. and Eyraud, F. (eds), *Globalization, Flexibilization and Working Conditions in Asia and the Pacific*, Chandos, London, 2008.

<sup>141</sup> “The future of work in Australia: dealing with insecurity and risk”, Australia Council of Trade Unions, 2011, see [www.actu.org.au/Images/Dynamic/attachments/7472/Future%20of%20work%20industrial%20options%20paper.pdf](http://www.actu.org.au/Images/Dynamic/attachments/7472/Future%20of%20work%20industrial%20options%20paper.pdf)

<sup>142</sup> Baird, M.; Charlesworth, S.; Cooper, R. and Heron, A., “Women, Work and the Global Economic Downturn”, 2011, see pages 1-2 in [www.fahcsia.gov.au/sa/women/pubs/general/Documents/women\\_work\\_global\\_economic\\_downturn\\_rpt.pdf](http://www.fahcsia.gov.au/sa/women/pubs/general/Documents/women_work_global_economic_downturn_rpt.pdf).

policy experts and women's rights organizations.<sup>143</sup> The lack of an explicit gender focus has meant that much government work and family policy has assumed a gendered distribution of work and care. As a consequence, the price paid by many women in poorer job quality in order to juggle work and caring responsibilities has not been seen to be a policy problem, but instead a reflection of the "choices" exercised by parents.<sup>144</sup>

More recently, countervailing views about the importance of gender equality as a policy objective have come out of the 2005 to 2007 Human Rights and Equal Opportunity Commission and the 2009 House of Representatives inquiries mentioned above. There are also some indications that government policy is now more focused on recognizing the importance of uptake by men of flexible work arrangements to achieving gender equality outcomes.<sup>145</sup> However, one of the strongest barriers to a more gender-equitable understanding of what supporting workers with family responsibilities might mean in policy terms are the conservative social norms that still persist in Australia about mothers as primarily "carers" and fathers as primarily "workers."<sup>146</sup>

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<sup>143</sup> Chappell, L.; Brennan, D. and Rubenstein, K., "A Gender and Change Perspective on Intergovernmental Relations" in Kildea, P.; Lynch, A. and Williams, G. (eds), *Tomorrow's Federation: Reforming Australian Government*, Federation Press, Sydney, 2012, page 233.

<sup>144</sup> See generally Brennan, D., "Babies, Budgets, and Birthrates: Work/Family Policy in Australia 1996–2006", *Social Policy*, vol. 14, no. 1, 2007.

<sup>145</sup> This is reflected in the proposed Workplace Gender Equality Act to replace the current Equal Opportunity for Women in the Workplace Act 1999. Further, the Office for Women has recently commissioned and published a report on the range of initiatives used in OECD countries that support men to engage in caring and unpaid domestic labour. See [www.fahcsia.gov.au/sa/women/pubs/economic/stocktake\\_support\\_men/Pages/default.aspx](http://www.fahcsia.gov.au/sa/women/pubs/economic/stocktake_support_men/Pages/default.aspx)

<sup>146</sup> Van Egmond, M.; Baxter, J.; Buchler, S. and Western, M., "A stalled revolution? Gender role attitudes in Australia, 1986–2005", *Journal of Population Research*, vol. 27, no. 3, 2010.

## CHILE

BY CARINA LUPICA<sup>1</sup>

### › Introduction

Chile ratified Convention No. 156 on 14 October 1994. In doing so the country committed itself to adopting a series of measures to give practical effect to the principle of equal opportunities and treatment for women and men workers with family responsibilities as compared to all other workers.

From 2006 onwards daycare centres and kindergartens have been created under the child welfare scheme *Chile Crece Contigo* (Chile is Growing with You), which has contributed to implementation of Convention No. 156 in two ways. First the State assumed responsibility for childcare, which showed that such care was no longer perceived only as a family responsibility but as a social issue. Second, by guaranteeing access to care services for low-income families, the scheme helped to broaden opportunities available to women in the social sector and to prepare their entry into the labour market.

The establishment of postnatal parental leave when the Maternity Protection Scheme was reformed in 2011 was another positive step toward extending the joint responsibility of society including the State and enterprises, as well as of men and women, in providing care within the family.

After describing these two initiatives, an analysis will be provided about the factors that facilitated their implementation. This case study focuses specifically on these initiatives, as they provide practical examples of action by Government as well as examples that incorporate the interrelated responsibilities of the State, enterprises and families.

### › Child welfare scheme

The *Chile Crece Contigo* scheme, established in 2006, uses an inter-sectoral approach to help ensure the full development of boys and girls. The scheme's main objective is to promote a network of accessible services and benefits in order to guarantee that all families, especially the poorest and most vulnerable, have access to these services which span from pregnancy checkups for the mother to the child's entry into school.<sup>2</sup>

The scheme has three components. The first is the Bio-psychosocial Development Support Programme (PABD), which covers families who are registered in the public health scheme; it includes personalized assistance during the child's development. The second component is access to daycare centres and kindergartens for children from the poorest segments of the population. The third comprises access to a range of social benefits and programmes for the child's family; these include the possibility of employment

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<sup>2</sup> See [www.crececontigo.gob.cl](http://www.crececontigo.gob.cl)

in municipalities, preferential access to programmes for improved housing and living conditions, and free legal aid services.

The scheme provides universal services such as the PABD, which is an education programme to teach adults about ways to care for their children and stimulate their development. The programme also offers educational classes for these parents in order to encourage their children’s motor skills, and cognitive and social development. Parents who enroll their children in these activities receive targeted benefits, with priority to the most vulnerable families with the lowest incomes or with parents in “high risk” situations. Benefits include the Single Family Allowance (SUF),<sup>3</sup> access at no charge to daycare centres<sup>4</sup> and kindergartens<sup>5</sup> or to non-conventional nursery schools of a recognized high-standard, preferential access to public services,<sup>6</sup> and assistance from other facilities for children with special needs or disabilities.

The objectives of the free daycare centres, which accept children who are at least 84 days old up to two years old, and kindergartens for children between three and eight years old are threefold. First, they seek to promote social equity through early stimulation of children’s cognitive abilities and their acquisition of necessary social skills in order to be able to pursue later studies on an equal footing with others. Second, the centres support the emotional growth of the children, and third they help families overcome poverty by enabling mothers to complete their studies and find paid work.

There are two forms of childcare in Chile. The first comprises a regular system of municipal institutions, which may or may not be subsidized by the State, and the second comprises daycare centres and kindergartens under the direction of the National Kindergartens Board (JUNJI)<sup>7</sup> and Integra Foundation (INTEGRA),<sup>8</sup> both of which are State-controlled. In 2011 the JUNJI and INTEGRA accounted for 34.9 per cent

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<sup>3</sup> Pregnant women are entitled to the Single Family Allowance from the fifth month of pregnancy and from the birth of the child until its 18th birthday, provided the father and/or mother have no other welfare coverage and are members of a low-income family. These requirements are verified against the social welfare datasheet.

<sup>4</sup> Access to daycare centres and similar facilities is open to children if the adult responsible for them is working, studying or seeking work and is from a low-income household. These are also open to children who are not in this socio-economic category but who require special care or are in particularly vulnerable circumstances, such as where the responsible adult is psychologically disturbed or the child has special needs.

<sup>5</sup> Full-time or extended-time access to kindergartens is open to children if the adult responsible for them is working, studying or seeking work and is from a low-income household; part-time access to a kindergarten is also available to children whose mothers do not work outside the home.

<sup>6</sup> Examples are incorporation in the *Chile Solidario* social welfare system, remedial education, support for labour insertion as a dependent or independent worker, better housing and living conditions, mental health care, family development support, prevention of intra-family violence and child abuse and the provision of care for victims.

<sup>7</sup> The mandate of the National Kindergartens Board (JUNJI), which is attached to the Ministry of Education, is to provide quality early-age education for children under four years who live in vulnerable circumstances. This is done through the creation, supervision and certification of daycare centres and kindergartens administered directly by JUNJI or by third parties. Since the launching of *Chile Crece Contigo*, a fundamental part of the JUNJI mandate has been to extend coverage of daycare centres by incorporating more young children, at a very early age and who are from the poorest segments of the population, into the educational system.

<sup>8</sup> The Integra Foundation is a private not-for-profit body that promotes childhood wellbeing. INTEGRA kindergartens are usually open from 8:30 to 16:30 although a large proportion stay open until 20:00. Children are given breakfast, lunch and an afternoon snack, with additional snacks for children who benefit from the extended-day programme. Priority is given to children of women who are looking for paid work and are heads of household or adolescents.

of children enrolled in the network of the Ministry of Education (MINEDUC)<sup>9</sup> and for 77.2 per cent attending daycare centres.<sup>10</sup>

Since *Chile Crece Contigo* began, assistance provided for children in daycare centres and kindergartens has increased steadily. In the past five years, registration of children attending MINEDUC daycare centres more than doubled from 36,876 in 2006 to 75,594 in 2011. Over the same period, registration of children in kindergartens increased by 15 per cent from 541,339 in 2006 to 615,551 in 2011.<sup>11</sup>

According to research conducted in 2008 by the Chile-based *Universidad Católica and Universidad Alberto Hurtado*, the availability of daycare centres has had a positive impact on the labour market participation and family well-being of women whose children attended these.<sup>12</sup>

To begin with, these women considered the daycare centres essential if they were to be engaged in paid work or education. Of those surveyed, 63.4 per cent stated that without the daycare centres they would have been obliged to give up their job or stop studying. The daycare centres had also made it easier for women in vulnerable households to join the labour market and improve their family's socio-economic circumstances.

A total of 59.6 per cent of women with children in the daycare centres engaged in paid work after giving birth while 54.5 per cent had worked before pregnancy and 35.6 per cent had worked during pregnancy. Of those who did not engaged in paid work prior to pregnancy, 36 per cent joined the labour market after giving birth.

Among women engaged in paid work while their children attended a daycare centre, 45.2 per cent earned at least 50 per cent of the total family income, and 24.1 per cent earned 75 per cent or higher. Moreover 90.2 per cent of women with children in a daycare centre while they worked described their income as indispensable for meeting family expenditures. Without this income, it is estimated that poverty in Chile would be 34 per cent higher than the 65.9 per cent rate among households interviewed and with children in daycare.

For these reasons the *Chile Crece Contigo* daycare centres have been of critical importance for labour market access by women from low-income families and therefore greatly contributed to their families' wellbeing. Without the daycare centres, most women with children could not have participated in the labour market and so their household incomes would have suffered accordingly.

## › Postnatal parental leave

On 17 October 2011 the Government adopted Act No. 20.545, which modified the Maternity Protection Scheme and established postnatal parental leave. The Act entitles pregnant women workers to six weeks' paid maternity leave prior to childbirth and

<sup>9</sup> This figure includes municipal schools, private state-subsidized schools, and private non-subsidized schools. No data are available on private daycare centres.

<sup>10</sup> Consolidated enrolment statistics for nursery schools, November 2011, MINEDUC.

<sup>11</sup> Idem. For years prior to 2011, enrolment statistics are those of the MINEDUC Research Centre.

<sup>12</sup> *Efectos en la situación laboral, familiar y arraigo al trabajo de madres trabajadoras y estudiantes que utilizan las salas cuna*, ProUrbana, Programa de Políticas Públicas de la Universidad Católica de Chile y Observatorio Social de la Universidad Alberto Hurtado, Santiago, 2008.

12 weeks after. Fathers – including those of an adopted child – are entitled to five days’ paid leave. Men must take this leave either consecutively following the birth (not counting the weekly rest day) or on separate days during the first month following childbirth, as per Article 195.

The Act also introduces for working women a new entitlement of 12 weeks postnatal parental leave following the postnatal maternity leave. During this additional leave, women receive an allowance calculated on the same basis as their maternity leave. This entitlement can be shared with the father of the child if both parents are working, and at the mother’s discretion. Either can opt for postnatal parental leave from the seventh week of the leave and for as many weeks indicated. Weeks taken by the father – for which he is entitled to a stipulated allowance based on his salary – must terminate before the end of the postnatal parental leave period; in this case he is entitled to the stipulated allowance based on his salary, as per Article 197.

The postnatal parental leave stipulates that if both parents are paid workers, (i) the woman can decide whether to take the complete postnatal leave of 12 weeks, with full days taken off from work and an allowance equal to 100 per cent of her salary up to a maximum of 66 Unidades de Fomento (UF) which is the adjustable economic rate based on inflation. Or she can take 18 weeks leave with an allowance equal to 50 per cent of her salary, with half-days taken off from work; (ii) if the mother decides to take 12 weeks leave on a full-days basis, she can share up to six weeks of it with the father. Or should she decide to take 18 weeks leave on a half-day basis, she can share up to 12 weeks on a half-day basis with the father; (iii) if the father takes postnatal leave his allowance is based on his salary up to a maximum of 66 UF; (iv) the father is entitled to protection from dismissal for twice the period that he takes on a full-day basis and to a maximum of three months if on a half-day basis, counting from the start of the period of leave; and (v) the five days of paid leave for the father on the birth of his child continues to apply.

<b>Maternity, paternity and postnatal parental leave</b>			
<b>Maternity leave</b>		<b>Paternity leave</b>	<b>Postnatal parental leave (can be shared between the father and mother)</b>
<b>Prenatal leave</b>	<b>Postnatal leave</b>		
Six weeks	12 weeks	Five days following birth	12 weeks on a full-day basis, of which the last six can be shared with the father 18 weeks on a half-day basis, of which the last 12 can be shared with the father

As of 17 October 2011 when the law entered into force, all registered dependent or independent woman workers – including temporary or contract workers, and own-account workers such as market sellers and traders – who had made a minimum number of contributions to the welfare scheme were entitled to postnatal parental leave. Between November 2011 and May 2012, such leave was granted to 59,724 workers, of whom 57,483 or 96.2 per cent had requested postnatal parental leave on a full-day basis and 2,241 or 3.8 per cent had requested it on a half-day basis. Although women were the

vast majority – some 98 per cent – 132 men used their entitlement under the new law to take some of the weeks that working women were allowed to share with them.

To sum up, the establishment of postnatal parental leave has provided a legal instrument that encourages men to more actively care for their newborns; this is a fundamental step toward changing attitudes and behaviours so that family responsibilities, especially care of children, are more equally shared by men and women.

### › Contributions toward implementation of Convention No. 156

The introduction in Chile of the two above-mentioned good practices – both of which also contribute to more equitable opportunities and treatment for women in the labour market – are concrete examples of implementation of Convention No. 156. Among the ways in which these two good practices support workers with family responsibilities are the following.

- ▶ Recognize persisting inequalities between children of different socio-economic backgrounds (*Chile Crece Contigo*): Support women and men with family responsibilities in order that they have more equitable access to the labour market as well as more equitable treatment and opportunities. Among other benefits, such workers' earning capacities are improved, and a more inclusive workforce contributes to national development (postnatal parental leave).
- ▶ Political will of national Presidents: Both initiatives became priorities on the political agenda of the country's Presidents. In March 2006 President Michelle Bachelet began her term of office at the same time as initiatives were taken to launch *Chile Crece Contigo*. President Sebastián Piñera, who began his term in March 2010, had included provision of postnatal parental leave as part of his Government's platform.
- ▶ Social consensus and active participation of women's organizations: During the design of both good practices, the two successive Presidents invited specialists from various disciplines, sectors and organizations to contribute their expertise. In the case of *Chile Crece Contigo*, the post of Presidential Adviser for the Reform of Policies on Children was created,<sup>13</sup> and in the case of postnatal parental leave a Presidential Advisory Committee on Women, Work and Maternity<sup>14</sup> was set up with active support of ILO.<sup>15</sup>
- ▶ Development of institutions in Chile to promote early childhood and working mothers: Over the past 20 years, education and care of children under six years of age has received priority attention in Government programmes. In the case of postnatal parental leave, Chile broke new legislative ground in terms of maternity protection.<sup>16</sup>

<sup>13</sup> The Adviser's proposals were submitted to President Bachelet together with a report on the future of Chile's children, which was entitled *El futuro de los niños es siempre hoy*. See [www.oei.es/inicial/politica/politica\\_infancia\\_chile.pdf](http://www.oei.es/inicial/politica/politica_infancia_chile.pdf)

<sup>14</sup> The experts worked for three months and submitted their final proposals to President Piñera on 30 July 2010. See [www.ciedessweb.cl/ciedess/attachments/article/70/NUEVO-Informe-Final-Comision-MTM-MGC-marzo-2011Chile.pdf](http://www.ciedessweb.cl/ciedess/attachments/article/70/NUEVO-Informe-Final-Comision-MTM-MGC-marzo-2011Chile.pdf)

<sup>15</sup> The ILO Regional Gender Specialist, Ms. María Elena Valenzuela, took part in the Presidential Advisory Committee on Women, Work and Maternity.

<sup>16</sup> The most notable legislative provisions in favour of maternity include: protection of working women from dismissal during pregnancy and for up to one year after the end of maternity leave; healthcare for pregnant women ("During pregnancy, women workers who are normally engaged in work that is deemed by the authorities to be prejudicial to their health shall be transferred, without a reduction in wages, to another position where the work is not prejudicial to their condition".); a prohibition on employers requesting a pregnancy test, i.e. a prohibition on making access to a job, promotion and renewal of a woman's contracts dependent upon her not being pregnant; and extension of maternity leave to 18 weeks, one of the longest in the region as well as among developed countries in general.



- ▶ Identification of new social needs and demands: The Government recognized the importance of eradicating poverty among families by increasing parents' – especially women's – access to the labour market (*Chile Crece Contigo*). However, Chile had few provisions to ensure the promotion of men's participation in unpaid family responsibilities. Paternal leave was for only five days, optional, and paid for by the employer. In addition, protection against dismissal applied only in the event of the mother's death. At the same time, it was found that requests for leave on account of the serious illness of children under one year old were very common among working women<sup>17</sup> but declined considerably with the introduction of postnatal parental leave. For example in 2011 there were 221,751 instances of such leave – an average of 20,000 leave instances per month – while between January and May 2012 there were only 36,790 instances of such leave or an average of 7,000 per month.<sup>18</sup>
- ▶ Mass communication and public information campaigns: Through television, radio, the print media and brochures, the two Presidents of Chile helped to raise public awareness about the good practice initiatives described in this case study.<sup>19</sup>

The challenge taken up by Chile in implementing the *Chile Crece Contigo* scheme and postnatal parental leave is highly significant. Not only did this involve promoting new policies for workers of both sexes concerning family responsibilities, but the country's legal standards were updated in order to support their implementation. It was also necessary to ensure that the responsibility for providing family care was shared by the State, employers and by working men and women.<sup>20</sup>

An important goal throughout has been to promote equitable treatment and opportunities, as well as respect for women and men's autonomy, increase women's access to paid work, and encourage men to be more involved in care within their family. It is hoped that these good practices in Chile can serve as an incentive and example for other countries that are in the process of implementing Convention No. 156.

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<sup>17</sup> In accordance with section 199 bis of the Labour Code, when the health of a child under the age of 18 requires parental care because of a serious accident or a terminal or grave illness, a working mother is entitled to leave of absence for a number of hours equal to ten normal days of work per year, taken at her discretion on a full-day or partial-day basis or a combination of both. To exercise this right, the worker must justify her request by presenting a medical certificate. If both parents are dependent workers either of them can, at the mother's discretion, take advantage of such leave.

<sup>18</sup> Social Security Superintendency (SUCESO) of Chile.

<sup>19</sup> These include the "*Estamos Conectados*" and "*Empate*" campaigns for active paternity, *Chile Crece Contigo's* campaign "*Apego MINSAL*", and the President's letter "*Comprometidos con la vida*" on postnatal parental leave.

<sup>20</sup> See CEACR Observation of Chile's application of Convention No. 156 in *International Labour Conference, 101st Session, 2012: Report III (Part 1A)*, pages 491-492.

# THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

BY MS. MARIJA RISTESKA<sup>1</sup>

## › Introduction

The Government of The former Yugoslav Republic of Macedonia “inherited” the ratified Convention No. 156 on Workers with Family Responsibilities from the previous Socialist Federal Republic of Yugoslavia. When the political system changed in 1991, so did the legal framework to allow for major developments such as capital transformation. Today the entire policy framework on labour relations, family protection, child protection and social protection is new. For this reason it is interesting to examine whether the specific needs of workers with family responsibilities are well-recognized in the new legislation, what successive governments since 1991 have done to promote the principles and values of Convention No.156, and the impact on workplaces and workers.

This case study, which will take these issues into account, will also identify both good practices and challenges to full implementation of Convention No. 156 in The former Yugoslav Republic of Macedonia. The period just after the country’s independence also comprised another parallel process of political and economic transformation: the process of European integration. Since the 1990s the country has strived to become a member of the EU, and the country established an official relationship with the European Union in 2001 when a Stabilization and Association Agreement was signed. As of 2001 the country’s “Europeanization” received an impetus, especially in alignment of national legislation with that of the European Union. In this regard The former Yugoslav Republic of Macedonia reinforced the concept of “non-discrimination” and adopted new ones such as on “equal opportunities”, which are relevant for implementation of Convention No.156. Thus this study will also outline the economic and political contexts that are relevant to the current stage of implementation of Convention No. 156.

## › Setting the scene for implementation

Since 1991 the country has significantly transformed its economic and political system, and many policy changes have affected implementation of Convention No. 156.

### – *Economic context and labour market changes*

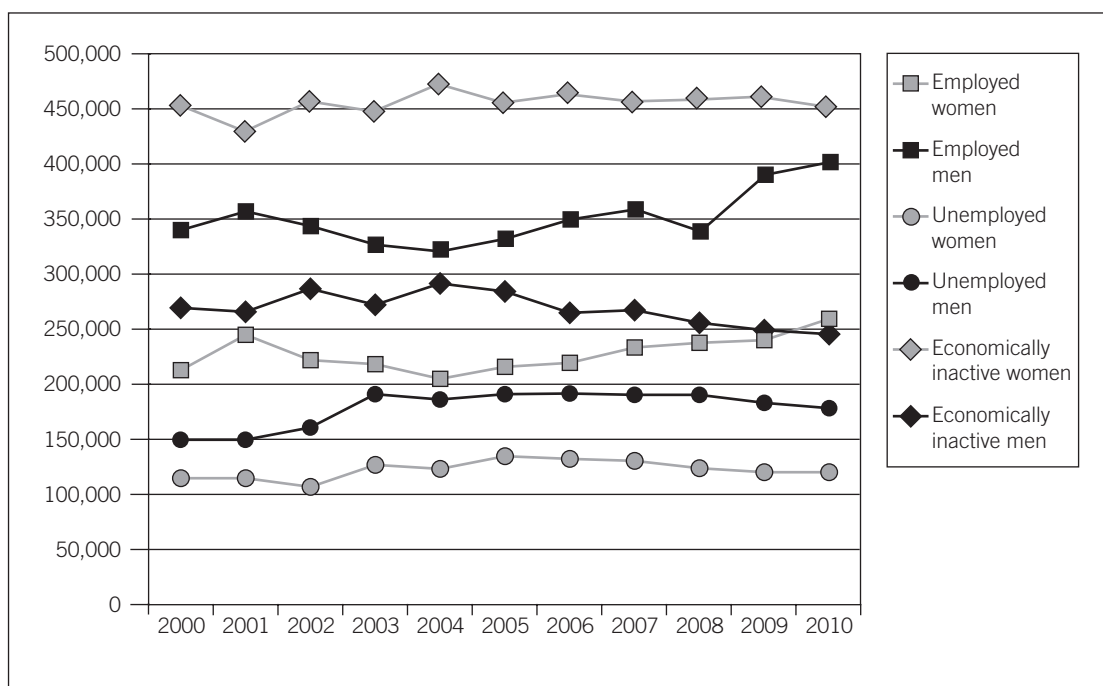
As the country transitioned from a centrally-planned to market economy, privatization of state-owned companies was accompanied by huge job losses and massive closure of companies. New jobs were not created, and citizens attempting to avoid poverty were pushed to accept either low-paid or even unpaid jobs in the informal economy or to emigrate. In the next decade the country experienced a slight economic growth but which had no implications on jobs growth or labour productivity. However it did lead to high unemployment rates such as in 2005 at 37.3 per cent and the lowest labour market participation rates in Europe. In the last three years some progress has been

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achieved, with the employment rate increasing from 37 per cent in 2004 to 43 per cent in 2009 (see table below).<sup>2</sup>

### Employment-related statistics by sex



Source: *Labour Force Survey Report (2000-2006)*, State Statistical Office (graph generated based on absolute numbers)<sup>3</sup>

#### – Women in the labour market

In the country, economic inactivity is most evident among women as a group and among persons aged 15-24 and 55-64 years. However, the rate of female non-participation is higher than that of males except for women with higher or university education. Economic inactivity among women is dependent on education level. Women with secondary and tertiary education are from 24 per cent to 50 per cent more likely to participate in the labour force than those with only a primary education or less.<sup>4</sup> However, the Centre for Research and Policy Making found that among rural women especially there is no evidence uneducated women who participate in the labour market are less likely to be unemployed. Quite the contrary – the unemployment rate for rural women with a high school diploma or college-education is 40 per cent, whereas for those with an incomplete primary education it is 22 per cent. Rural women with a primary or lower

<sup>2</sup> Labor market indicators are for the working age population as defined by ILO and Eurostat (i.e. individuals 15 to 64 years of age).

<sup>3</sup> See <http://makstat.stat.gov.mk/pxweb2007bazi/Database/Statistics%20by%20subject/databasetree.asp> and *Women and Men in Macedonia 2008* ([www.stat.gov.mk/Publikacii/Gender2008.pdf](http://www.stat.gov.mk/Publikacii/Gender2008.pdf)) for comparison of 2006 data, *Women and Men in Macedonia 2010* ([www.stat.gov.mk/Publikacii/Gender2010.pdf](http://www.stat.gov.mk/Publikacii/Gender2010.pdf)) for data from 2007 to 2009. The 2010 data were based on a Press Release on LFS IV/Q Preliminary Results ([www.stat.gov.mk/PrikaziSoopstenie\\_en.aspx?rbrtxt=98](http://www.stat.gov.mk/PrikaziSoopstenie_en.aspx?rbrtxt=98))

<sup>4</sup> Angel-Urdinola, D., and Macias, V., *FYR Macedonia, Labour Market Profile 2004-2007 – A Policy Note*, World Bank, Washington DC, 2008.

secondary education who are actively seeking paid work also stand a lower chance of being unemployed at 32 per cent, than women with higher levels of education. This indicates very few opportunities in paid work for educated women in rural areas, who often migrate to urban areas where their chances for such work might be higher.<sup>5</sup>

Another gender gap can be observed when comparing the total number of employed males in 2009 which was 61.8 per cent, compared to employed females which was 38.1 per cent. Women also outnumber men in the “unpaid family worker category”. Such work consists of household tasks, child- and eldercare, and/or helping out in a small family business, usually in the agricultural sector. Women’s disproportionate share of such work suggests that gender stereotypes about societal roles still prevail (see table below). This is also demonstrated by their predominance in jobs in health care, social work and education.<sup>6</sup>

#### Employment in 2009 by status and sex

	Total	Employee	Employer	Self-employed	Unpaid family worker
<b>Men</b>	389,332	269,092	25,193	69,100	25,946
<b>Women</b>	240,569	183,939	7,275	10,953	38,403

Source: State Statistical Office, 2010

#### – Political environment

One of the key opportunities for implementing Convention No. 156 is growing political commitment to gender equality in central and local level Government. The former Yugoslav Republic of Macedonia is a signatory party to the key international legal instruments on women’s human rights. These, along with the EU integration process requirements, are an important driving force for the many positive gender-related changes that have been adopted including legislation, policies and institution-building.

A national gender policy encompasses a strategy for equal opportunities, about which consultation is taking place prior to expected adoption by the end of 2012. A strategy for equality and non-discrimination, which was adopted in 2012, does not specifically address workers with family responsibilities. The national gender machinery, which spans both central and local Government, comprises several institutions. The Department on Equal Opportunities, established in 2007 within the Ministry of Labour and Social Policy, is made up of two units: one on gender equality, and the other on prevention and protection against any type of discrimination. Gender focal points, known as Coordinators on Equal Opportunities, are appointed in line Ministries. In addition the Parliamentary Commission on Equal Opportunities, established in 2006 under the Law on Equal Opportunities within the Parliament, monitors from a gender perspective legal regulations that are proposed by the Government. This monitoring takes place through

<sup>5</sup> Risteska, M., Lazarevski, G., and Mickovska, A., *Baseline study of rural women in Republic of Macedonia*, UN Women, Skopje, 2012.

<sup>6</sup> Kazandziska, M.; Risteska, M. and Schmidt, V., *Gender pay gap in FYR Macedonia*, ILO, Budapest, 2012.

public hearings and oversight hearings. The Parliamentary Commission also proposes new laws on improving gender equality. Some 75 Commissions on Equal Opportunities for Women and Men have been established across the country at local Government level. Members of the Commissions, each of which is headed by a Coordinator, comprise elected local municipal councilors from different political parties. The Commissions develop and adopt action plans on gender equality, which are based on each constituency's specific gender-related challenges and possible solutions.

In 2009 an Advocate/Attorney for Equal Opportunities was established to develop and apply a mechanism for identifying and tracking unequal treatment between women and men, including in the public and private sectors. The Advocate, who reports to the Ministry of Labour and Social Policy, coordinates with other departments including the Labour Inspectorate and Ombudsman on Inequalities at the Workplace. In addition the Anti-Discrimination Commission, established in 2010, is an independent seven-member body to which workers can file complaints. The Commission discusses such complaints, including those alleged to have taken place in the labour market, and it provides guidance on possible redress such as through the courts or other institutions.

These initiatives can also be attributed to women's increased participation in politics and decision-making. Increasing women's relatively low rates of representation in politics was the aim of a provision introduced in 2002 within the Law on Elections. The provision requires that "every third candidate on the ballot should be of the less-represented sex". This requirement contributed to the fact that prior to early elections in 2011, women held 35 per cent or 42 of 120 seats in Parliament. Women's representation on municipal councils also rose; as a result of the 2009 elections, there were 373 female council members, or 27 per cent, of the total of 1,391 although all of the elected Mayors were men.

– *Legislative framework*

To improve economic indicators and especially increase the number of employed, in 2005 the Government adopted a new policy framework, which is comprised of the Law on Labour Relations, Law on Employment and Insurance, the Employment Policy and the Action Plan for Employment. The framework aims to foster social dialogue and includes general and branch-specific collective agreements. However, measures that directly contribute to women's economic independence as well as supporting workers with family responsibilities are the measures taken in the areas of education, time-saving infrastructure and childcare wage policy. These laws were adopted in order to align national legislation with that of the European Union as well as to respond to the World Bank and International Monetary Fund's requests for improving the country's business environment. The policy framework intends to implement Convention No. 156, about which awareness among policy makers and the social partners is very low.

In this respect current legislative framework provisions contain different measures that aim to allow for better balance for workers between their paid and unpaid family responsibilities. The following section describes these provisions in the Law on Labour Relations, which was adopted in 1993 and revised in 1995, 1997, 1998 and 2000. It

was replaced in 2005, along with the Law on Child Protection,<sup>7</sup> Law on Social Protection,<sup>8</sup> and the Law on Social Care.<sup>9</sup>

Section 6 of the Law on Labour Relations prohibits work-related discrimination, both direct and indirect and including based on family status. Section 161 states that due to pregnancy and parenting, workers shall have the right to special protection including that the employer shall provide an environment for them to “smoothly align” and balance their family and professional responsibilities. Section 169 contains provisions on leave for care for ill children or other family members, as well as the option of part-time work for parents of a child with special education or development needs. Application of these rights is to be ensured by the Ministry of Labour and Social Policy, which is also responsible for ensuring application of Convention No. 156 and the its relevant national legal framework. The Basic and Appellate Courts have a role in enforcement, as well as a network of other institutions including the Commission for Protection from Discrimination, the Ombudsman, and the Advocate for Equal Opportunities.

– *Paid maternity and paternity leave*

One of the main mechanisms to allow for work and family life balance is the right to maternity and paternity leave, which is regulated by the Labour Relations Law in Section 165. It states that “the worker during her pregnancy, birth and parenting has a right to continuous paid leave of nine months”. For multiple children this is extended to one year. The salary for a parent on leave is 100 per cent. The same Section allows for the right to such leave for an adopting mother (or adopting parent if the mother cannot use the leave rights). This applies until the child is nine months old, or until the parents and child adapt to the new circumstances based on an affirmation by the adoption authorities.

The wording of this Section suggests that the carer for the child is the mother and if for whatever reasons she does not want to – or cannot take care of the child – only then can the father take up this responsibility. This bias reflects the existing gender division of labour in society in which women are expected to take care of the family and home, and men are the main breadwinners. The law reinforces such stereotypes rather than helping to transform them and promote a more equally-shared burden of family responsibilities.

In this respect the Law on Labour Relations is not very successful in helping to transform gender roles, but attempts to strengthen women’s role in the labour market and their economic independence. This is through ensuring their right to return to paid work before the end of maternity leave, along with the possibility of receiving 50 per cent of the welfare benefit for the remaining leave period.<sup>10</sup> In addition, for full-time working women who are also breastfeeding, provisions in Section 171 include the right to a paid 90-minute break during the working day for breastfeeding, until the child is one year old.

Section 169 of the Labour Relations Law contains provisions on leave for care of ill children or other family members, as well as the option of part-time work for a parent

<sup>7</sup> *Official Gazette*, no. 170/2010, Skopje, 2010.

<sup>8</sup> *Official Gazette*, no. 79/09, no. 36/11, and no. 51/11, Skopje, 2011.

<sup>9</sup> *Official Gazette*, no.79/2009, Skopje, 2009.

<sup>10</sup> Many experts see this as an additional stimulation for women to return to work before, as it could cover supplementary expenses for the care of the child during parents’ working hours.

of a child with educational or developmental problems. Women continue to be more numerous in using the part-time work arrangements; statistics show their share in 2010 was 7.6 per cent while the comparable share for males was 4.6 per cent. Even though no evidence-based research exists on this, it is safe to assume that women are more likely to be engaged in part-time employment as a result of their care responsibilities in the family. Such work tends to offer less social protection and lower wages, as well as diminished career prospects.<sup>11</sup>

– *Discrimination based on family status*

In the process of alignment of legislation with the European Union's antidiscrimination policy, the Labour Relations Law acquired Section 6. It defines direct and indirect discrimination and prohibits the employer from discriminating against job seekers or employees based on racial or ethnic origin, skin colour, sex, age, health conditions, disability, religion, political or any other affiliation, membership in trade unions, national or social origin, family status, property status, sexual orientation or any other reason. It states that "women and men must be provided with equal opportunities and equal treatment in terms of:

- 1) access to employment, including promotion and vocational and professional training at work; 2) working conditions; 3) equal payment for equal work; 4) professional schemes for social insurance; 5) absence from work; 6) working hours; and 7) termination of the employment contract. The principle of equal treatment entails prohibition of direct and/or indirect discrimination."

These anti-discriminatory provisions are reflected in four aspects of employment relations: the recruitment process, employment during parenthood, employment after birth, and termination of employment. Section 25 concerning the procedures for selection of candidates explicitly bans gender-related discriminatory requirements for any job.<sup>12</sup> However, the principle of equality in access to work (equality of opportunity) is not stated within the criteria for employment. The Law on Labour Relations has a special provision that prohibits inquiries by the employer on the marital or family status of women.<sup>13</sup> The Center for Research and Policy Making uses surveys to track if employers are making such inquiries in practice, and a survey in 2009 found that over 13 per cent of female respondents reported having been asked such questions. Almost 8 per cent reported they were not offered a job because of their plans to get married or have children. This is a strong indication that awareness-raising and information sharing about the Law are needed.

In order to prevent a worker's dismissal due to a family-related reason, discrimination is also prohibited when employment contracts are terminated. Section 77 of the Labour Relations Law allows for an "approved absence because of disease or injury, pregnancy,

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<sup>11</sup> Kazandziska, M., Risteska, M. and Schmidt, V., 2012.

<sup>12</sup> Law on Labor Relations, *Official Gazette*, no. 158, Skopje, 2010, approved version of the Law on Labour Relations, Section 25: "The public announcement for a job should not suggest that the employer gives preference to one gender over the other except if the gender is necessary for the job position that is advertised".

<sup>13</sup> The employer at the time of establishment of the employment contract shall not request data on the family or marital status and family plans, or submission of other documents and evidence that are not immediately related to the employment. The employer shall not condition the establishment of the employment contract with provision of the data mentioned above, or with signing a consent related to the termination of employment.

childbirth, parenthood, and care for a family member as one of the unfounded reasons for termination of an employment contract”. Moreover, in order to protect workers against discriminatory actions when returning from maternity leave as well as from paternity leave, the Ministry of Labor and Social Policy has introduced in Section 166 a provision stating that upon completion of parental leave, the worker must be returned to the same job or another appropriate job in accordance with the employment contract.

– *Kindergartens: community-based childcare services*

The former Yugoslav Republic of Macedonia provides institutional forms of childcare in a network of kindergartens. Section 10 of the Law on Child Protection states that “the care and upbringing, rest and recreation of children shall be organized and provided in public and private institutions for children”. The network of kindergartens or community-based childcare services is an important element of the Government’s policy on reconciliation of paid work and family responsibilities. The network offers childcare services while parents are at work; developed during the Socialist period, these were situated predominantly in urban areas where economic production was located. This trend has continued especially in Skopje since when new neighborhoods are built these include a kindergarten and a school. This also has been the case in other municipalities where, in accordance with the Law on Social Care,<sup>14</sup> local Governments may establish new kindergartens and other forms of community-based childcare services to address a growing need for such care provision. However, revenues for the new kindergartens should be raised by the municipalities themselves, which means that the economic development of a municipality directly impacts the number of kindergartens and other forms of community-based child care services at local Government level. This is illustrated by the fact that among 54 kindergartens in the current network of childcare facilities, the largest number are in urban areas of Skopje and in the East and the least are in rural areas of Polog with nine times less such facilities than Skopje. In addition, the cost of childcare in kindergartens is not aligned to income levels of nearby residents. While these amount to less than 10 per cent of the average monthly wage, in private kindergartens the cost can be up to 50 per cent of the average monthly wage.<sup>15</sup>

In 2002 most large private enterprises changed their working hours to 9:00 to 17:00, although publically-run kindergartens were slow to align their opening hours. However, the Telecom Company and Mobile Company, both semi-private and based in Skopje, made an agreement with the privately-run Izvorche Montessori Kindergarten to accept employees’ children as of 7:00 and to remain open until 18:00.

› **Greater understanding of equal treatment of men and women workers with family responsibilities**

The Law on Equal Opportunities (OG no. 6/2012) adopted in 2010 and replaced with a new one in 2012, puts forward the principle of equality of opportunity and treatment for men and women including in labour relations. Understanding is weak among employers and workers about the principle of equality of opportunity and treatment, and time-use

<sup>14</sup> Law on Social Care, *Official Gazette*, no. 79, Skopje, 2009.

<sup>15</sup> Mojsoska-Blazevski, N.; Najdova, J.; Stojkov, A.; and Asenov, L., *Labour Market in the Former Yugoslav Republic of Macedonia*, European Commission, city not cited, 2009.



surveys show most women perform “the complete burden” of maintaining households. In order to sensitize the social partners and help change the gender division of labour, since 2006 the Ministry of Labour and Social Policy has conducted a training programme on promoting the principle of equal opportunities. Among the training modules is one on women and men’s roles and responsibilities in the family, which highlights the importance of more equal sharing of these.<sup>16</sup>

This is especially important since housework including cleaning and cooking is performed almost always by women except in some rare cases when men do this work, especially if the wife is employed and he is unemployed. However, when both spouses are employed, women continue to carry the burden of domestic chores (see table below).<sup>17</sup>

However, such awareness raising and capacity building have not addressed the principle of equal opportunity and treatment of workers with family responsibilities. Furthermore, there is an absence of vocational guidance and training to enable workers with family responsibilities to become and remain integrated in the labour force, as well as re-enter after an absence due to those responsibilities. Such activities are especially needed to target employers who must create an environment for workers who have the right to equal treatment and opportunities in the workplace, regardless of their family responsibilities.

## › Social Dialogue

A priority of trade unions both during the transitional period and restructuring of companies in the 1990s was to keep their members’ jobs. In the next decade the unions were focused on renegotiating members’ job contracts through social dialogue. Such dialogue made it possible for general collective agreements in the private and public sectors although the issue of equal treatment for workers with family responsibilities has not been put on the table for discussion.<sup>18</sup> However these collective agreements (both general and in specific branches) do contain some provisions on balancing work and family responsibilities.

### – *Flexible working hours*

Section 38 of the general collective agreement for the private sector states that each branch collective agreement and enterprise-level agreements shall regulate the working time regime in the sector/company. Therefore, the branch and enterprise-level agreements include a separate chapter on working time. These chapters regulate starting and ending times and the ways work is organized in shifts. The branch collective agreements give the employer the right to organize work and change working time in accordance with production processes in the company. However working time should not exceed the legally-binding rule of eight hours per day and 40 hours per week.

The branch and enterprise level collective agreements allow companies to introduce flexible working hours. Some companies have formally introduced flexitime arrangements, so that workers with family responsibilities can drop off children at school or do

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<sup>16</sup> Interview on 4 June 2012 with Ms. Elena Grozdanova, State Advisor on Equal Opportunity and Antidiscrimination in the Ministry of Labour and Social Policy, Skopje.

<sup>17</sup> See for example the Time Use Survey produced by the State Statistical Office in 2009.

<sup>18</sup> Interview on 6 June 2012 with Mr. Angel Dimitrov, President of the Employers Association of Macedonia, Skopje.



errands outside of working hours. Most of these arrangements comprise a start time of between 8:00 and 10:00, and an ending time between 16:00 and 18:00, respectively.

– *Working shifts and travel for work*

Some companies (especially in the production sector) organize working time in shifts. The Labour Relations Law and general collective agreement for the private sector allow for three shifts whereas two are categorized as daytime work and one as night time work (work conducted between 22:00 and 6:00). Even so, there is no specific provision in any of the collective agreements or company-level policies that allows for reconciling paid work and family responsibilities, although most companies have informal practices. For example if a worker or manager has family responsibilities of any kind, he or she can exchange their shift with a co-worker or another supervisor.<sup>19</sup> However, similar flexibility does not apply in situations where women or men must travel for their work. There is no evidence in the collective or branch agreements on a provision that allows reconciling work and family responsibilities during such travel, although some benefits such as travelling with children are in provisions of agreements such as in the wine-producing and information technology industries – but only for highly-qualified staff.<sup>20</sup>

– *Statutory leave*

The general collective agreements regulate the different categories of leave to which a worker is entitled. In this regard, Section 42 of the general collective agreement in 2011 for the private sector spells out numerous family-related reasons that entitle a man or woman to up to seven working days' paid leave. These include for the worker's marriage (three days) or that of a child (two days), or death of the worker's spouse or child (five days). Section 43 concerns valid reasons for unpaid family-related leave, which can be approved by the employer for up to three-months depending on the enterprise's production process. Examples of these are caring for a sick family member and building or repairing a family dwelling. On the sectoral level, the branch collective agreements state that workers might have to take leave should the enterprise production process decrease; however the employer is required to take into account the family situation of workers concerned including those who are single parents.

## › Conclusions

Political commitment has not been focused on implementing the provisions of Convention No. 156 in a context of other competing challenges such as high inflexibility of the labour market, unemployment, and especially-low labour market participation rates of women. However, as part of efforts to accede to the European Union, The former Yugoslav Republic of Macedonia has adopted policies that aim to help promote reconciliation of paid and family responsibilities. However there is still much progress to make in the areas of Government policy and awareness raising and promotion of equal treatment of workers with family responsibilities.

<sup>19</sup> Interview on 6 June 2012 with Ms. Mare Ancheva, General Secretary of the Union of Industry, Energy and Mining, Skopje.

<sup>20</sup> Interview on 6 June 2012 with Mr. Angel Dimitrov, President of the Employers Association of Macedonia, Skopje.

# NIGER

BY MS. CATHERINE BELEMSIGRI<sup>1</sup>

## › Introduction

Niger, a landlocked Sahelian country of West Africa, is bordered by Mali, Burkina Faso, Benin, Nigeria, Chad, Libya and Algeria. The population is around 16,274,700 inhabitants, of whom 50.1 per cent are women.<sup>2</sup> Most of the population, just over 80 per cent, lives in rural areas where they are engaged in agriculture and raising livestock. According to the Ministry of Public Service and Labour there were 47,331 public sector officials and auxiliary staff as of May 2012 including 15,548 women or 32 per cent. In 2007 there were 54,010 employees in the private and semi-public sector, of whom 11,544 were women or 21 per cent. However the formal sector employed just 6 per cent of the total economically-active population, and only 5.3 per cent of all women workers in 2005 were salaried workers.<sup>3</sup>

Niger has been an ILO member since 1961 and ratified Convention No. 156 on 5 June 1985, which reflects the country's 25-year commitment to equal opportunities and treatment for working men and women with family responsibilities. A number of factors at the time contributed to ratification: the socio-cultural context, political will, laws and regulations in force, the international context and mobilization of trade unions and women's organizations. Since then a range of activities and measures have been introduced to improve working and living conditions and promote equal opportunities and treatment in employment.

In the absence of information on or lack of specific measures supporting men and women workers with family responsibilities, the information in this case study focuses on measures aimed at advancing gender equality more generally. The case study is included in the working paper to provide some examples of initiatives that can help to give voice to women's concerns, so that such issues can be better addressed through Government measures and social partners' initiatives, as well as ongoing challenges.

## › Ratification

At the time Niger ratified Convention No. 156, the country was under military rule which lasted from 1974 to 1987. Since there were no democratic institutions, the process of ratification was conducted only at the administrative level. There were very few civil society organizations, with only some trade unions and cooperatives and just one women's association and one Muslim association, among some others. Therefore the ratification battle was led mainly by women, who had to bear most family responsibilities and look after children. Likewise, it was women who suffered from discrimination in employment and occupation.

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<sup>2</sup> National Statistical Institute (INS), Niamey, 2012.

<sup>3</sup> According to the *Agence nationale pour la promotion de l'emploi* (ANPE).

– *Socio-cultural and political context*

From the social standpoint, relationships between women and men in Niger are built on the concept of the “stronger sex”, considered to be men, and the “weaker sex”, considered to be women. The inevitable result of this perception is an unequal gender division of labour in the public space including the labour market, and in the private space including the home and within families. The bulk of unpaid work and care for dependent children, a spouse and other family members is borne by women and not recognized for its true value by men, who believe such work doesn’t require much effort. A woman is seen essentially as a mother and a spouse, and for all intents and purposes this defines her role in society – when it does not justify her very existence. In fact some 97.4 per cent of women of childbearing age are in a marital relationship.<sup>4</sup>

The distribution of family responsibilities based on traditional gender roles impacts women’s employment. Given the very high fertility rate of 7.1 children for every woman in Niger, family responsibilities are enormous and leave women little opportunity for a career. Although this situation must have been taken into account when Niger ratified Convention No. 156, there are no official texts on the labour market or provisions that specifically address men’s family responsibilities or women’s role in the family and community. However there are occasional mentions in such texts of “wage-earning mothers” when referring to working women with family responsibilities.

Therefore, Convention No. 156 is perceived in Niger not so much as pertaining to the aim of promoting gender equality but rather as relevant to the aim of protecting the family by combating discrimination against working women.

At the time of ratification, Government authorities expressed their commitment to improving women’s living and working conditions and stated that ratification was as an important step in women’s involvement in the country’s development. President Seyni Kountché noted that women were completely absent from “the wheels of power” in Niger. He stated that “although in the political and juridical arena the Republic stipulates that all its children are equal before the law, without distinction as to origin, race, sex or religion, there are a number of institutional provisions that preclude women from certain prerogatives and functions, which in turn prevent them from pursuing many career paths and hamper the emergence of a Nigerien feminine elite”.<sup>5</sup>

Apart from his political determination to improve the living and working conditions of women, President Kountché considered himself a patriot who did everything he could to present a positive image of Niger to the world. His commitment was strengthened by the international context including the United Nations Decade for Women from 1976 to 1985.

To help remedy the situation, the regime was instrumental in creating in 1975 the Women’s Association of Niger. This was done on the eve of the first World Conference on Women, held the same year in Mexico City. The Association encouraged women to organize themselves in groups and to engage in income-generating activities by taking advantage of micro-credits along with training including in community-based initiatives and in management, as well as on reproductive health and nutrition. Thanks to the

<sup>4</sup> *Le Niger en chiffres*, INS, Niamey, 2010.

<sup>5</sup> Gnadou, B., *Femme en politique au Niger*, Niamey, 2008.

effort of the Association's first leaders, in 1981 Niger was able to establish the National Directorate for Promotion of Women.

In spite of these endeavours, no woman was part of the Government while the country was under military rule. The death in 1987 of President Seyni Kountché heralded a new political era, and for the first time in Niger a woman entered the Government as Secretary of State for Promotion of Women and Social Development.

– *Legislative framework*

Niger ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) on 23 March 1962 and the Equal Remuneration Convention, 1951 (No. 100) on 9 August 1966. Since then several laws and regulations have been introduced to facilitate the application of these Conventions, including the following.

- ▶ Collective Labour Agreement of 1972
- ▶ Labour Code Ordinance No. 96-039 of 29 June 1996
- ▶ Decree No. 2006-58 PRN/MFP/T of 8 March 2006, which fixed a new hourly rate for the minimum guaranteed inter-occupational wage (SMIG)
- ▶ Decree No. 2006-59 PRN/MFP/T of 8 March 2006, which fixed a new hourly rate for the minimum wage by inter-occupational category of workers governed by the collective inter-occupational agreement
- ▶ Declaration of the Supreme Council for the Restoration of Democracy (CSR) of 18 February 2010

Decree No. 65–116 of 18 August 1965 established rules for management of the family benefits scheme. The term “dependent child” refers to: children born from the beneficiary's marriage provided that it is registered with the civil registrar; children that the beneficiary's wife has had from a previous marriage, provided the death of her spouse has been officially registered or their divorce has been pronounced by a court of law, except if the children remained dependent upon her previous spouse or if the latter contributed to their upkeep; and children who have been adopted by the married worker or through an adoptive legitimation in accordance with civil law.

The phrase “other direct members of the family who have manifested the need for care and support” refers to orphans who have been placed in the charge of the beneficiary or of his spouse's charge by decision of a court of law, and natural children whose parentage with the beneficiary or his spouse has been legally recognized.

Laws and administrative regulations that apply to the provisions of Convention No. 156 are the following.

- ▶ Constitution of 25 November 2010
- ▶ Act No. 2003–034 of 5 August 2005, which establishes the National Social Security Fund as a public social establishment
- ▶ Labour Code Ordinance No. 96-039 of 29 June 1996
- ▶ Decree No. 65–116 of 18 August 1965, which establishes rules for management of the family benefits scheme
- ▶ Inter-occupational Collective Agreement of 15 December 1972

– *Increased awareness among unionized women activists*

While participation of women in trade unions is relevant to promote the principle of Convention No. 156, the following examples are not directly linked with implementation of the Convention. However these examples help illustrate the challenges to overcome in order that women's representation and thus voice are strengthened, so that issues of concern to them can be raised and addressed including as workers with family responsibilities.

The first trade union leaders were essentially men, and even today women's representation is very weak in both workers' organizations and in employers' organizations. Of 12 trade union federations, only one is headed by a woman; men head both of the two employers' organizations. Women are rarely represented in key decision-making posts within unions, and most often occupy posts concerning "women's affairs" or "women workers". A positive development is growing trade union membership among women, for example the creation of a women teachers' union as well as women's departments within unions.<sup>6</sup>

› **Challenges and obstacles**

During military rule, freedom of expression was limited even though there were occasional opportunities to exchange views with the authorities. Social movements were kept under control, and strikes by workers and students were repressed severely. The economic context, which was impacted especially by frequent droughts in 1975 and 1984, was not conducive to immediate implementation of the specific measures included in Recommendation No. 165.

– *Implementation*

Since 1975 when the first International Year for Women was observed, awareness about sex discrimination has grown and become a major issue in Niger. This is because, among other things, more and more women in the country have become aware of their rights and how these affect their own families and children. For this reason women have become more involved in pressing for their human rights to be taken into account, especially in legislation and in measures to enforce the law.

A full understanding of the concept of gender, as well as its relevance to development, has been a long time in coming. The gender and development (GAD) approach, in which power relations between the sexes are addressed as a critical step in achieving equitable and sustainable development, has slowly overtaken since the 1990s the former women in development (WID) approach. The WID approach, which emerged around the world in the 1960s, placed emphasis on remedial measures to increase women's involvement in development without addressing or transforming the underlying and unequal power relations with men. Despite progress in recognizing the importance of using the GAD approach, there is still a tendency in Niger to assume that "gender" equals "women". Connected to this is the fact that not enough attention has been given yet to

<sup>6</sup> Maina, K.C., *Etude sur le rôle et la place de la CNDS dans la dynamique de dialogue social* (working title), ILO, Dakar, forthcoming.

also addressing “men and masculinities” issues as part of the equation in promoting gender equality.

For the above reasons, initial steps taken toward implementing Convention No. 156 have focused on discrimination that working women suffer in workplaces and the impact of that on their children, especially their welfare but also concerning working parents’ extra responsibilities in the family and home. Some examples of these steps are described the next section.

– *Institutional, legislative and administrative framework*

CONSTITUTION

Reforms on 25 November 2010 to the 1999 Constitution include Article 8, which guarantees equality under the law for all citizens and without distinctions based on sex, ethnicity or social and religious background. Article 22 addresses discrimination against women and girls as well as handicapped persons, violence, and equitable representation in public institutions under the national policy on gender with the enforcement of quotas. Article 33 stipulates that all citizens have the right to work. It lays down the conditions for effective exercise of that right and for guaranteeing workers a just remuneration for their services or production, and states that no person can be discriminated against in his or her work. Article 171 refers to international treaties and agreements and states that from the moment of their publication, regularly ratified treaties and agreements take precedence over national legislation, provided they are duly applied by the other party.

In Section 2 of the Labour Code Ordinance No 96-039 of 29 June 1996, a worker is defined as “any person of either sex or any nationality whom for remuneration places his or her occupational activity under the direction or authority of another physical or moral, public or private person”.

Section 5 states that “subject to the explicit provisions of the Code or any other law or regulation protecting women and children or any other provision governing the status of non-nationals, no employer may give consideration to the sex, age, national ascendancy, race, religion, colour, political or religious opinion, social origin, handicap, membership or not of a trade union or union activity of any worker in respect of recruitment, performance and distribution of work, occupational training, advancement, promotion, remuneration, entitlement to social benefits, discipline or termination of a contract of work. Any provision or act to the contrary shall be null and void.” However there is no reference to family responsibilities.

Section 119(4) of the Labour Code provides for supplementary annual leave for women with dependent children but that the same leave is not available to men. While special measures of protection or assistance taken to reduce inequalities between men and women that target women alone are not necessarily discriminatory, the aim of national policies under Convention No. 156 is to promote full coverage of both men and women workers in all programmes concerning workers with family responsibilities.<sup>7</sup>

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<sup>7</sup> Niger – CEACR, direct request, 2008.

Act No. 2007-26 of 3 July 2007 establishes general statutes of the public service. Section 10, which deals with equality of access, provides that “access to employment in the public service is open, on an equal footing and without distinction, to any Nigerien citizen who meets the requirements for each post”.

#### EDUCATION AND AWARENESS RAISING

Educational and awareness-raising activities in general, which are organized by the Government through the Ministry of Public Service and Labour and trade union federations, are more concerned with the ILO Fundamental Conventions.<sup>8</sup> Activities in this regard are being undertaken in the context of PAMODEC, launched in 1998 to support implementation of the ILO Declaration on Fundamental Principles and Rights at Work.

An example of referring to Convention No. 156 in an action plan is that of the Workers' Trade Union Federation (USTN), although this has only been in the context of women workers. Its Department for Women Workers and the National Committee of Women Workers (CONAFET) hold awareness-raising and information sessions each year on International Women's Day, and on 13 March which in Niger is National Women's Day. The session on 8 March in 2012 focused on Discrimination Against Women Workers<sup>9</sup> and used Convention No. 111 as a point of reference. These educational activities have also addressed workers in the informal economy since formation of their own organizations in 2007 when the General Federation of Informal Economy Trade Unions of Niger was founded. Educational activities have also been undertaken with employers through the Federation of Employers' Organizations of Niger (FOP/Niger), with which they are affiliated.

#### ADOPTION OF A QUOTA LAW

Because of women's low level of representation in decision-making bodies, the Ministry for Promotion of Women and Protection of Children proposed a law on quotas which was finally adopted in 2000. Act No. 2000-008 of 7 June 2000 institutes a system of minimum quotas for the “under-represented sex” in elective posts (10 per cent), government posts (25 per cent) and state administration posts (25 per cent). Because of the context in which the Act was adopted, it has come to be known as “The women's law” and is considered to have helped women accede to positions of responsibility.

Before the Quota Act, in 1987 there was just one woman in a position in Government, in 1989 there were only five women among 93 Parliament members, and in 1992 there was only one woman elected to Parliament of a total of 113. After the Quota was adopted, in 2004 there were 13 women elected to Parliament of a total of 113. In 2005 there were six women ministers in the Government out of a total of about 30. In 2007 there were eight women in Government positions, and in 2011 there were 14 women of 113 elected to Parliament. Before a reshuffle the same year, there were six women ministers of a total 26; after the reshuffle there were five women ministers among a total of 23.

The Quota Act is not a definitive solution to women's more equal representation at the political level, and its scope is limited since it does not apply to the private and infor-

<sup>8</sup> For a list of these Conventions and ratifications by country, see [www.ilo.org/normlex](http://www.ilo.org/normlex)

<sup>9</sup> *Bulletin USTN MA'AYKACI*, Niamey, 1 May 2012.



mal economy nor in sectors and at community level. Obstacles remain, and appropriate strategies will have to be devised. However, there is an important link between the above-mentioned progress in improving women's increased representation in decision-making and leadership and what could be described as a concurrent improvement in women's working conditions as well as in the welfare of families.

## ► Social dialogue

One of the most important strategies for resolving problems faced by women workers in Niger is through social dialogue. Several such institutions are described here as the most relevant entry points for advancing gender equality more generally including by increasing women's participation in them, so that issues including workers with family responsibilities can be better addressed. Mainstreaming gender into social dialogue, and ensuring women's equitable representation in relevant groups and processes of such dialogue, is a major challenge in Niger.<sup>10</sup>

The National Social Dialogue Commission (CNDS), established by Decree No. 2000-159/PRN/MT/MA of 23 May 2000, is a standing tripartite body where the social partners can discuss issues related to any kind of dispute including in the workplace. The aim of the CNDS is to promote dialogue in Niger; when disputes are brought before the CNDS, it gives advice and/or makes recommendations to the parties concerned and to the authorities in order to resolve these. The CNDS has 28 members who are equally-distributed among the parties represented: Government, the most representative employers' organizations, the most representative workers' organizations, and representatives of civil society and cooperative associations. The CNDS played an important role during the 2005 civil society protests against the cost of living. However women are under-represented in member organizations to the CNDS (see below).

### Representation disaggregated by sex and status among members of the CNDS

Status	Men	Women
Representative	84.4 per cent	15.6 per cent
Substitute	75 per cent	25 per cent
Total members	80 per cent	20 per cent

Source: Maina, K.C., *Etude sur le role et la place de la CNDS dans la dynamique de dialogue social* (working title), ILO, Dakar, forthcoming.

The National Labour Council (CNT) was created by Decree No. 2012-076/PRN/MFP/T of 6 March 2012, which amended the previous Decree of 21 March 2007. The CNT is a standing tripartite body for consultation and permanent negotiations on labour and related social issues. Its aim is to create conditions for the "industrial peace" that are indispensable to consolidate democratic and republican institutions, as well as to

<sup>10</sup> See for example a discussion of women's representation and gender mainstreaming in social dialogue in Niger: Maina, K.C., *Etude sur le role et la place de la CNDS dans la dynamique de dialogue social* (working title), ILO, Dakar, forthcoming.

enable an economic recovery in Niger. CNT membership comprises representatives of Government, and of employers' and workers' groups, the latter of which are regularly-constituted trade union federations and non-affiliated coordinating trade unions. Two representatives of the CNDS attend National Labour Council meetings as facilitators. On 7 February 2012 a protocol of agreement was signed by the Government and the Workers Inter-union Federation of Niger (ITN); the agreement dealt with, *inter alia*, an increase in wages, the reduction in price per cubic metre of water and per kilowatt hour for low-income segments of the population, the principles governing reduction of the single tax on wages and salaries as from January 2013, and principles governing entitlement to the bonus and compensation scheme for all State officials. The various parties were satisfied with the discussions, which were described as "civilized relations with a Government of dialogue".

### › Education

Access to schools has been improved through their increased proximity to communities including new schools in rural villages and in urban districts. The Government has announced that education will be a priority, including using one-fourth of the national budget for this purpose over the next ten years. Education will be free-of-charge and compulsory up to the age of 16. However, there are no workplace daycare centres anywhere in the public, semi-public or private sectors, which negatively impacts especially women workers with family responsibilities.

### › Adoption of a national social welfare policy

Following a protracted series of negotiations, in September 2011 Niger adopted a national social welfare policy, which states the following.

"Niger's long-term objective is to meet the essential needs and services and to develop the full potential of every socio-occupational category of the population by means of a social welfare policy that creates the necessary equitable, decent and long-term conditions for the protection of society as well as its development and transformation. This is so it can meet all the climatic, environmental, social, political and economic challenges facing it and defend the people of Niger against every form of vulnerability that might hamper their production capacity and compromise the continued development of the country."<sup>11</sup>

Implementation of the policy is to be based on strategic priorities including food and nutritional security, social and employment security, basic social services, and infrastructure. Specific measures concerning what are described as vulnerable groups include appropriate laws and regulations. The policy also aims to contribute to creating conditions that are conducive to the implementation of Convention No. 156.

The strategic priorities of the social and employment security strategy are to consolidate existing progress in this area, extend social security coverage to segments of the population who are currently excluded, and develop a diversified social insurance scheme that extends to the informal economy. The policy should help improve enforcement of

<sup>11</sup> *Politique Nationale de Protection Sociale*, République du Niger, Niamey, September 2011.

Act No. 2008-10 of 30 April 2009 concerning the adaptation of Niger's mutual health insurance facilities. The basic social services and infrastructure strategy will extend the coverage of pre-school childcare services such as daycare centres and community kindergartens, seek to establish free care for all children up to five years of age, and facilitate and improve access to energy and drinking water.

Concerning the framework of laws and regulations, the strategy will be to draft and adopt a law on social welfare and to enforce labour legislation more systematically. From an institutional standpoint, a permanent inter-ministerial coordinating body has been set up in the Cabinet of the Prime Minister. This body will comprise primarily representatives of the Ministry for Population, Promotion of Women and Protection of Children, and of other technical ministries. Its mandate is to provide a unified framework for consultation, guidance, coordination and decision-making in the field of social welfare.

Effective implementation of the national social welfare policy is one of the demands that the Workers' Inter-union Federation transmitted to the Ministry of Public Service and Labour on 1 May 2012, which is when Labour Day is observed.

## › Good practices

### – *Political will*

As those responsible for the country's development became increasingly aware of the specific needs of women and men, as well as the close links of those needs with State policy and the country's development, these same persons have become more involved in elaboration of a national policy on gender. The policy states that its vision, "with the cooperation of all the actors involved, [is] to build a society in which there is no discrimination and where men and women, boys and girls, have the same opportunities to play their part in its development and to enjoy the benefits deriving from its growth".<sup>12</sup>

Thus two global objectives have been established. First, to create an institutional, socio-cultural, juridical and economic environment that is conducive to equality and equity for all women and men in Niger. The creation of such an environment calls for a change in citizen's mentalities and behaviors, in the approaches and methods of action adopted by institutions, and in the Government's political choices vis-à-vis the development-related problems that need to be resolved. Achieving these objectives will be not only a medium but long-term undertaking.

### – *Integrating gender into research*

The Ministry for Population, Promotion of Women and Protection of Children is in charge of implementing the national policy on gender; its success will depend on the efficiency of the institutions behind it. The various roles and responsibilities will be assumed by several actors, including the technical ministries. Based on an institutional analysis conducted in 2009, each of these – such as the Ministry of Public Service and Labour – has a six-member gender unit attached to its general secretariat.

The gender units provide expert assistance concerning training on gender issues and advocacy for equality between women and men. The units act as focal points for main-

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<sup>12</sup> *Politique Nationale de Genre*, République du Niger, Niamey, May 2008.

streaming gender into policies, programmes and all other relevant activities. Not all of the units have been as active as in the Ministry of Public Service and Labour. To address this, the Directorate for the Institutional Development for Promotion of Women and Gender organized on 27-30 December 2011 a self-assessment workshop to encourage the ministerial and regional units to implement programmes and use more proactive and dynamic strategies. This is no easy challenge since success will depend on increasing knowledge about and developing skills on mainstreaming gender and promoting women's empowerment within the technical ministries.

– *Demands of women's associations*

On 3 July 1995 women's associations in Niger created the Coordinating Body for Non-Governmental Organizations and National Women's Associations (CONGAFEN). The Body, which has 55 member organizations, aims to "serve as a discussion forum for civil society structures, which are better equipped for lobbying and advocacy on behalf of Nigerien citizens".<sup>13</sup> Its four areas of action comprise defending the rights of women and children, promoting a gender and development approach; advocacy, lobbying and social mobilization, and capacity building.

In 2001 CONGAFEN held a workshop on "Women of Niger and the Rights of the Family" in partnership with religious associations. Following the event, CONGAFEN commissioned a study on women workers and their juridical, political, social and economic status including the theme of gender-based violence.<sup>14</sup> In light of this study CONGAFEN organized a workshop on 16 February 2002, and its advocacy led to creation of a sex-disaggregated database on all categories of workers. Unfortunately the database, which was created in collaboration with the Ministry of Public Service and Labour, does not include a variable for "family responsibilities". Updating statistics is an ongoing activity in addition to CONGAFEN's advocacy programme, which in 2009 addressed gender-related barriers and violence as barriers to women's rights including in the labour market.

In August 2009 an analysis of the situation of women in the world of work was conducted with locally-based inputs; this led to an issues paper that was officially submitted to the Ministry of Public Service and Labour. Although the Government proposed that in situations where the woman was engaged in paid work and her husband was not, she would be recognized as the head of household in order to qualify to receive family benefits. However this status for such women is difficult to obtain for many reasons including opposition by her spouse.

– *Addressing gender-based violence*

Gender-based violence both reflects and reinforces inequalities between women and men, and is a major challenge for the goal of gender equality.<sup>15</sup> Such violence, of which women are a large majority of victims, is a form of discrimination that negatively impacts access to education and training, as well as to work. For this reason and although not

<sup>13</sup> Presentation by CONGAFEN, public event in Niamey on 13 May 2012.

<sup>14</sup> Bagnou, T., *La femme travailleuse, situation juridique, politique, sociale, économique et les violences fondées sur le genre*, CONGAFEN, Niamey, 2009.

<sup>15</sup> *ILO Provisional Record 13, Sixth item on the agenda: Gender equality at the heart of decent work (General discussion), Report of the Committee on Gender Equality*, page 13/78, para. 57(c).

directly linked with Convention No. 156, efforts have been made in Niger to tackle such violence as part of efforts to improve women's status and empower them, so that they can in turn obtain more voice and advocate for their needs.

A national survey on gender-based violence was conducted in 2008 through a three-month consultancy contract commissioned by the Ministry for Promotion of Women and Protection of Children through its gender equity project, with funding by the African Development Bank. The survey covered seven of Niger's eight regions and also examined good practices in tackling such violence in neighbouring countries such as Burkina Faso. The survey identified risk factors for violence against women and discussed subjects previously considered to be taboo. The survey laid the groundwork for sustained action in a socio-cultural context in which traditions discouraged many victims of violence from denouncing their persecutors. The survey was supplemented by another one in 2010 which was conducted by the National Statistics Institute. This more recent survey identified the typology of violence in Niger and showed that the most common form of violence in the country was conjugal violence and that it was widespread.

### ► Challenges and obstacles

Because women perform the overwhelming majority of unpaid work in the family and community, these factors also effectively hinder their equitable participation as well as access to opportunities and equal treatment in the labour market. Following are the most pressing challenges and obstacles that are hindering workers in reconciling paid work and family responsibilities.

- ▶ Persistence of the gender division of labour, with inequalities in the division of roles and responsibilities between women and men at every level in both the public and private spheres and in decision-making and positions of responsibility. Because they also assume all family responsibilities, women workers are perceived by employers as less reliable.
- ▶ Need to improve professional qualification of all workers, especially women
- ▶ Non-application of legislative texts, such as the Quota Act, and incompatibility of certain socio-cultural practices with the law
- ▶ Lack of awareness and knowledge among workers – both women and men – concerning their rights as embodied in Conventions ratified by Niger and in national labour laws
- ▶ Disputes among the large number of trade union confederations which can lead to weaker and unfocused demands including on supporting workers with family responsibilities
- ▶ Existence of several fundamentalist Islamic movements which can cause disputes over interpretation of religious texts and can constantly undermine measures aimed at promoting gender equality; for example, rejection of the personal code known as the Family Code, Niger's late ratification with reservations of CEDAW, and non-ratification of the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*
- ▶ Poor understanding about gender-related concepts and the women in development versus gender and development approaches, assumptions that "gender" concerns only "women", lack of sufficient debate about the gender division of labour within the family, and need for more capacity building on mainstreaming gender and pro-

moting gender equality and women's empowerment and recognition of these as critical to family well-being as well as community and national development

- ▶ The impact of HIV and AIDS on family caregivers, the overwhelming majority of whom are women and girls, and the ways this negatively impacts on their access to education and paid work. This is because in families affected by the disease, loss of income of a sick family member is often coupled with other family members – mostly females – forced to give up paid work or schooling in order to care for the family member.<sup>16</sup>
- ▶ Larger context in which women are often disproportionately negatively-impacted such as the unprotected informal economy, food shortages, demographic trends, insecurity in the sub-regions, and the global economic crisis
- ▶ Poor understanding of Convention No. 156 among the social partners, and among sectoral and State actors such as technical ministries that have responsibility for creating an enabling environment for implementation

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<sup>16</sup> For more details about HIV-related impacts on workers with family responsibilities, including on specific groups of women, men, and girls and boys, see Addati, L. and Cassirer, N., *Equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS*, Background Paper for Expert Group Meeting, United Nations, Geneva, October 2008.

## PARAGUAY

BY MS. CARINA LUPICA<sup>1</sup>

### › Introduction

In October 2007 Paraguay adopted Act No. 3338/07 concerning ratification of Convention No. 156. Thanks to active participation of the social partners, the ratification process was quick and took less than eight months after the Bill was submitted to Parliament. The Tripartite Commission on Equal Opportunities (CTIO), which leads the process, organized a successful lobbying strategy and provided technical inputs for a message that accompanied the Bill. The CTIO also conducted an information and awareness-raising campaign among employers' and workers' organizations as well as for the public and the media, which helped build commitment and support. The Government and representatives of employers' and workers' who were members of the CTIO coordinated their efforts so that all viewpoints could be addressed, political support across parties could be obtained, and parliamentary debate could be followed closely.

This case study aims to identify good practices and other factors that contributed to ratification by Paraguay of Convention No. 156, as well as obstacles overcome. This will be done by summarizing stages of the process, with a focus on the principle legislative antecedents and legal provisions, the context in which ratification took place, political will, milestones and critical moments, commitment of various sectors, human resources engaged, and strategies used including awareness raising and consensus building. The paper comprises five parts: the first describes inclusion in the political agenda of the importance of ratifying Convention No. 156; the second is on building consensus and tripartite initiatives; the third explains how Convention No. 156 was placed on the Parliamentary agenda; and the fourth part summarizes how Convention No. 156 was ratified. Some conclusions and lessons learned are presented in the fifth and final part.

### › Inclusion in the political agenda

One of the priorities on the agenda of the Secretariat for Women's Affairs was ratification of Convention No. 156. This was due to difficulties faced by women in reconciling their paid and family responsibilities.<sup>2</sup> Ratification was also relevant since Paraguay, like most countries of Latin America and the Caribbean, was experiencing growing heterogeneity of the family unit and transformation of gender roles as more and more women entered the labour market. These changes were notable especially from the mid-1990s, and by 2005 a total of 56.3 per cent of women over 15 years old were employed or actively seeking employment. As a result, the gender labour market participation gap had dropped from 38.3 per cent in 1997 to 29.1 per cent in 2005.<sup>3</sup> Despite this significant progress, women were encountering major difficulties from the standpoint of quality of employment since they were overrepresented in precarious work or self-

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<sup>2</sup> Interview on 11 June 2012 with Mr. Carlos Carmona, official in the Secretariat for Women's Affairs, Asunción.

<sup>3</sup> *Desafíos para la igualdad en el trabajo: Paraguay*, ILO, Santiago, 2007.

employment and limited to certain jobs such as domestic workers, or not remunerated for productive activities such as in family businesses. They also suffered wage discrimination and conflicts in reconciling paid and unpaid family tasks, the latter of which are performed overwhelmingly by women.<sup>4</sup>

Two factors facilitated inclusion in the Government's political and social agenda of the importance of ratifying Convention No. 156. First Paraguay's existing legislative and institutional framework had a number of good practices concerning promotion of gender equality and empowerment of women, such as the following.

- ▶ ratification in 1986 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- ▶ constitutional reform in 1992 which established the principle of equality between men and women, prohibited discrimination, and rendered the State responsible for removing obstacles to equality<sup>5</sup>
- ▶ section 134 of the Labour Code<sup>6</sup> required industrial and commercial enterprises employing more than 50 workers – irrespective of their sex – to provide rooms or daycare centres for employees' children under two years old<sup>7</sup>
- ▶ adoption of Act No. 34/92, which created the Secretariat for Women's Affairs<sup>8</sup>
- ▶ creation of other public bodies whose principal objectives included gender equity such as the Committees on Equity, Gender and Social Development in the Senate and Chamber of Deputies, the Gender Directorate of the Supreme Court of Justice, the Advisory Committee on Gender and Equity of the Municipal Board of Asunción, and women's secretariats in 17 departments across the country
- ▶ creation of joint bodies such as the Tripartite Equal Opportunities Commission

The regional context was also favourable to ratification of Convention No. 156, as many South American countries – Argentina, Bolivia, Chile, Peru, Uruguay and Venezuela – had already ratified it.

Based on ILO guidance, the Secretariat for Women's Affairs decided that the ratification process would be handled through the CTIO. This was because it had ILO technical support and had enjoyed a long experience with ILO in designing and implementing a programme launched in 1995 on Strengthening Institutionalization for Gender Equality,

<sup>4</sup> Echauri, C., and Serafini, V., *Igualdad entre hombres y mujeres en Paraguay: la necesaria conciliación entre familia y trabajo*. ILO, Chile, 2011.

<sup>5</sup> Article 48 of the Constitution establishes equal rights for men and women, Article 50 establishes equal rights and obligations of men and women in the family, Article 55 concerns the State's responsibility to create institutional mechanisms for exercising these rights, and Article 89 provides for equal rights in the workplace and maternity protection.

<sup>6</sup> The Labour Code of 1993 and its subsequent revision in 1995 (Act 496/95) provided men with certain rights related to their role as fathers such as parental leave (Article 62, paragraph j of the 1993 Labour Code) and the right to daycare or childcare for their children in their workplace (Article 134 of the 1995 Labour Code).

<sup>7</sup> This formulation, introduced in the 1995 reform, represents an improvement on the 1993 version since it establishes an obligation for the employer regardless of whether the worker is male or female.

<sup>8</sup> The Secretariat for Women's Affairs has ministerial rank and is the State institution responsible for coordinating the Government's policies on gender equality, in close cooperation with women's organizations. In 1997 an agreement was signed between the Ministry of Justice and Labour and the Secretariat for Women's Affairs in order to draw attention to gender issues on the part of senior staff, management, experts and other Ministry personnel. This included the themes of promoting equal opportunities for women in access to employment and their promotion to decision-making positions. The Secretariat was also responsible for formulating three national equal opportunities plans for women for 1997-2001, 2003-2007 and 2008-2017.



Poverty Eradication, and Employment Generation (GPE).<sup>9</sup> The CTIO was a credible technical institution attached to the Ministry of Justice and Labour. And most importantly its membership included representatives of different sectors and stakeholders within the Government as well as employers' and workers' organizations, all of which was conducive to tripartite action and building social consensus.

From the beginning the CTIO used a well-planned strategy developed with technical support of the ILO. The strategy began with a public awareness campaign, which was based on the assumption that women and men workers would welcome support in reconciling their work and family responsibilities.

The ratification campaign strategy comprised the following.

- ▶ strengthen the CTIO and help build social consensus
- ▶ design a public awareness campaign in favour of ratifying Convention No. 156 with the slogan "Making equality a reality"
- ▶ design awareness-raising workshops and a "training of trainers" activity including on how to lobby, for CTIO members to enable them to help promote Convention No. 156 and understanding especially about its objectives and provisions
- ▶ use other activities such as a Public Hearing in order to gain support and participation of stakeholders including from relevant sectors
- ▶ assist in formulating a strategy for supporting ratification, to be designed and implemented within each sector

The communications strategy included distributing ILO materials on the substance of Convention No. 156, and designing information materials. The latter included posters, stickers and a booklet with an overview of Convention No. 156 and an explanation about the ratification campaign. Workshops were also planned for representatives of television, radio and the press, especially journalists who covered Parliament, the economy, and women's issues.

– *Strategy concerning Parliament and drafting of Message to accompany the Bill*

ILO technical and financial support for selecting the tripartite CTIO team was crucial. ILO recruited a consultant with experience in working with the Ministry of Labour and with an extensive network of contacts including with employers and Parliamentarians.

On 8 March 2006, International Women's Day, the CTIO held the first seminar of a series to promote ratification of Convention No. 156. The seminar was inaugurated by the Minister for Women's Affairs and was closed by the Vice-Minister of Labour. ILO supplied materials on the substance of Convention No. 156 and its potential contribution to supporting Paraguayan workers in reconciling their work and family responsibilities and to helping to achieve gender equality in the world of work.<sup>10</sup>

Ratification of Convention No. 156 was also identified as one of the priorities of the Decent Work Agenda in Paraguay and in a collaboration agreement signed in November 2006 between the Ministry of Justice and Labour and the Secretariat for Women's Affairs.

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<sup>9</sup> In Paraguay, ILO was involved in technical cooperation assistance and activities from 1999 to 2003.

<sup>10</sup> See [www.oit Chile.cl/especial.php?id=196](http://www.oit Chile.cl/especial.php?id=196)

## › Conducting tripartite activities and building consensus

A number of simultaneous activities and meetings were organized to coordinate efforts and strengthen support for ratification of Convention No. 156.

### – *Working with the Government*

The Government was represented on the CTIO by the Secretariat for Women's Affairs<sup>11</sup> and by the Vice-Ministry of Labour, under which the CTIO functions. The Ministry comprises two Vice-Ministries: the Vice-Ministry for Justice and the Vice-Ministry for Labour and Social Security. The former carries more weight since it absorbs some 70 per cent of the budget of the Ministry of Justice and Labour. The direct support and involvement of the Minister of Justice and Labour was a critical factor in the ratification process. The Minister was very enthusiastic because he saw in the Convention an important instrument for protecting the family, which he felt was a priority. The Minister's commitment to the process was obtained through lobbying by the Secretariat for Women's Affairs and the Directorate for the Advancement of Women Workers, the latter of which is attached to the Vice-Ministry of Labour.

### – *Working with employers' organizations*

There is a saying in Paraguay that "the best worker is a worker who has no other commitments". In a cultural context such as this, securing the backing of employers for a Convention that advocates equal rights for women and men workers, whether or not they have family responsibilities, was no easy matter. Hence, obtaining the commitment of employers' organizations was crucial in the early phase of the process toward ratification. This was obtained through dialogue and explanation about how reconciling work and family responsibilities could improve productivity and global positioning of Paraguay's enterprises. Again, personal networks and connections played a vital role.

The strategy adopted vis-à-vis employers involved persuading two key actors: the Paraguayan Industrial Union (UIP) and the Production, Industry and Commerce Federation (FEPRINCO). Both had a membership that included a large number of the country's enterprises. Here too, personal networks and connections were an enormous help.

Members of the CTIO team interacted with representatives of the UIP on two levels. The team obtained the UIP President's commitment, as well as of the President of the Women's Committee. At the time, the latter was negotiating an agreement with the Secretariat for Women's Affairs to support women's microenterprises. This provided just the right window of opportunity for briefing the President about Convention No. 156.

Also during a meeting in September 2006, members of the CTIO team explained the benefits for women entrepreneurs of ratifying Convention No. 156. Members of the Women's Committee expressed concerns that subsequent legislation might complicate matters for their enterprises. They also had questions about the scope of maternity leave, paternity leave, and childcare, as well as about implications of legal requirements for entrepreneurs to rehire women who could take up to five years' family leave. And they queried the potential impact of new laws resulting from ratification in light of

<sup>11</sup> The Secretariat for Women's Affairs, an institution with ministerial rank, is directly attached to the Office of the President.

Paraguay's high unemployment rate, especially among young people. In response the CTIO consultant explained that the objective of Convention No. 156 was not to resolve problems of wages or unemployment. It aimed to help create an enabling environment for women and men workers to reconcile their paid and family responsibilities, and to promote more equal sharing of the latter by men and women. At the end of the meeting, women entrepreneurs agreed to support the ratification campaign.

Within FEPRINCO, there were two persons who were key to gaining support of employers: the President and a female member who was also President of the *Asociación de Profesionales y Empresarias del Paraguay*.

Several activities were held to inform employers and raise their awareness about issues related to Convention No. 156. During workshops it was stressed that application would be gradual and would help promote competitiveness and long-term sustainability.<sup>12</sup>

– *Working with workers' organizations*

From the start, workers' organizations collaborated enthusiastically with the CTIO team and participated in activities. These included large awareness-raising workshops for representatives of workers' organizations, as well as personal meetings held with leaders of the main confederations including the United Confederation of Workers (CUT), Authentic United Confederation of Workers (CUTA), National Confederation of Workers (CNT), and the Confederation of Public Employees' Trade Unions.<sup>13</sup> During these activities, the President of the General Confederation of Workers (CGT), who was also a member of the CTIO and the only woman among leaders of workers' organizations, played a catalytic role.

Women's civil society organizations did not take part directly in the ratification process, although many were represented by workers' organizations or in meetings with their leaders.

Once the tripartite constituents were on board, it remained for the President of the Republic to be involved. He would need to sign the Bill concerning ratification of Convention No. 156, in order for it to be submitted to Congress for final approval. This stage of the ratification process proved to be a turning point. The Secretariat for Women's Affairs convened a meeting on 6 February 2007 at the Ministry of Foreign Affairs to notify the Minister of Foreign Affairs of the proposal to ratify Convention No. 156 and to seek his endorsement. The meeting was attended by senior officials of the Secretariat for Women's Affairs, Ministry of Justice and Labour, Ministry of Foreign Affairs, and by the CTIO team. A representative of the Secretariat for Women's Affairs presented the information booklet on Convention No. 156 and explained the importance of ratification. After describing steps already taken, she stated that the purpose of the meeting was to obtain cooperation of the Ministry of Justice and Labour, Ministry of Foreign Affairs, and the Secretariat for Women's Affairs. This was needed if Convention No. 156 was to be ratified. She explained that almost all other countries of the Southern Cone had ratified Convention No. 156, of which Argentina was the most recent. The only two that had not were Paraguay and Brazil.

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<sup>12</sup> Interview on 13 June 2012 with Ms. Norma Villasanti de Almeida, member of the *Asociación de Profesionales y Empresarias del Paraguay* (APEP), Asunción.

<sup>13</sup> Interview on 13 June 2012 with Ms. Marta Dora Peralta, Head of the Women's, Department of CUT-Auténtica, Asunción.

In response to a question from the Minister of Foreign Affairs about possible reticence on the part of the public, the head of the CTIO team noted that the CTIO had conducted an awareness and information campaign to explain the advantages of ratifying Convention No. 156, and consensus had gradually been built with workers' and employers' organizations. She described how initial reticence of the UIP and FEPRINCO had been overcome. She also stressed that municipalities and civil society groups needed to be involved in developing a new approach to supporting workers with family responsibilities and in promoting the important role that was played in society by unpaid carers in families.

### **Principal grounds for the Bill on ratification of ILO Convention No. 156 Excerpts of the justification message**

#### *Content of Convention No. 156*

“From the standpoint of the National Tripartite Commission (CTIO), which examines and promotes women’s participation in the labour market, ratification of Convention No. 156 will provide suitable guidelines for national and local policies on employment, family and equity, while also helping to improve administrative structures, labour inspection, employment services, and vocational training”.

#### *Immediate relevance of Convention No. 156*

“More and more women are entering the labour market and assuming responsibility for the economic survival of their families, either as head of household or as joint provider with their spouse. In Paraguay 35 per cent of women are economically active, seven out of ten women between 24 and 34 years of age work away from home every day, and 24.6 per cent are heads of household. Other labour market problems include growth of the informal sector (63 per cent), higher unemployment among women (11.6 per cent) than among men (8.7 per cent), increases in [numbers of] domestic service [workers] (23 per cent) and self-employment (30 per cent), and new forms of employment associated with “new businesses” (purchasing centres, supermarkets, fast-food outlets, call centres) which require their employees to make family arrangements so they can work at weekends, take on variable working hours, and work special days and national holidays. At the same time, there are not enough childcare and family support facilities. This increases the tension between domestic and productive activities and calls for a rethinking of the role of family members. Men have not assumed their affective role along with their duty as family breadwinner. Convention No. 156 promotes measures to make it possible to reconcile people’s need and desire to work with their family responsibilities, which conforms to the principles of the Decent Work Agenda”.

#### *Measures to promote Convention No. 156*

“Convention No. 156 does not create new rights beyond those already embodied in Paraguay’s Constitution and Labour Code; the measures it prescribes are to be introduced gradually, depending on the situation of each country. Among the most important of these measures are: maternity and paternity leave arrangements that do not raise artificially the “cost” of female workforce; childcare leave that can be taken either by the mother or father; measures that contribute to occupational training, better access to employment and a higher income for workers with family responsibilities; the provision by public institutions (mainly municipalities) and by private enterprises, NGOs and community organizations of childcare facilities for infants (generally under two years of age); and community and family education to change gender stereotyping about women and men’s roles”.

As an outcome of the meeting, the Minister of Foreign Affairs proposed that a note requesting ratification of Convention No. 156 be drafted. The note, to be signed by the Secretariat for Women's Affairs and Minister of Justice and Labour, would be addressed to the Minister of Foreign Affairs. From that point all efforts were focused on drafting a justification message for accompanying the Bill to be submitted to Congress by the President of the Republic. The CTIO team drafted the message, with technical assistance of the ILO. This assistance was based on previous experience of ILO in supporting such ratification processes in Argentina, Chile and Uruguay.

On 23 February 2007, the Directorate for Multilateral Treaties sent a draft law to the General Directorate of the Cabinet of the Ministry of Foreign Affairs for transmission to Congress. The draft law was to be initialed by the Minister of Foreign Affairs and then submitted to the Office of the President of the Republic for his signature.

### ► **Placing Convention No. 156 on the Parliamentary agenda**

Informal networks and personal ties proved yet again to be an important factor in the strategy used concerning Parliament. The CTIO team organized a meeting in March 2007 with a Vice-Chair of the Committee on Foreign Relations, who was also a member of the Committee on Legislation and Constitutional Affairs. He suggested that the matter should be presented to the President of the Senate, and that preliminary meetings on the Bill should be set up with the Chairs of the Committees that would be examining it.

Contact was made also with the Gender Adviser in the Senate's Commission on Equity, Gender and Social Development. The Adviser played a key role in helping to win support of the President of the Commission, provided information about formal procedures in Parliament, and collaborated in developing a strategy to secure support from all political circles.

The potential debate in Parliament about ratification presented two difficulties. First, the political situation was delicate because the President of the Republic did not have a majority in Parliament. Second, members of the legislative chambers and of the working committees might change or be renewed before the draft law could be adopted.<sup>14</sup>

The Bill's passage through Parliament might take a long time since it concerned a Convention and therefore there was no deadline for the committees to reach a decision. For these reasons it was vital to devise and implement a strategy that would help a decision on ratification to be taken rapidly.

In order to place Convention No. 156 on the parliamentary agenda and obtain approval for its early ratification from all political circles, on 15 March 2007 an important awareness-raising seminar was held. This tripartite seminar, which took place in the Congress chamber, was attended by over 200 people. The significance of the event was evident in the fact that supporters of the Government and of the Opposition were seated at the same table. The organization of the seminar and invitations were handled jointly by the CTIO and ILO, in order to avoid any suggestion of partisanship. The seminar itself

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<sup>14</sup> Interview on 13 June 2012 with Ms. Sonia Brucke, Advisor for the Comisión de Equidad, Género, y Desarrollo Social del Senado de Paraguay, Asunción.

took the form of a Public Hearing,<sup>15</sup> in which it would be easier to reach consensus and compromise. Statements focused on the advantages to Paraguay of ratifying Convention No. 156. Three panels were selected, so that the various political actors and experts as well as public opinion could be represented.

As a result of the seminar, members of Parliament were convinced of the need to support a discussion about ratification of Convention No. 156. The choice of a Public Hearing for the seminar had another advantage: it made it possible to hear the views of civil society and all stakeholders involved especially Government, and employers' and workers' organizations. The President of the Senate's Commission on Equity, Gender and Social Development closed the seminar, which was key for obtaining commitment by the rest of the senators to ratification.

The Bill for ratification of Convention No. 156 was submitted by the President of the Republic and on 29 March 2007 was placed before the Senate, which is the chamber where international treaties must be approved initially. After a Bill is submitted to the Senate, it is discussed by several working committees before being voted upon in a plenary session of Congress. Once approved, a Bill is passed to the Chamber of Deputies since ratification of international treaties requires the approval of both Chambers.

The strategy used concerning Parliament was vital to securing the support of all political circles. Working together, those concerned devised a lobbying strategy, identified the working committees taking part in the ratification process along with relevant authorities, used personal contacts to arrange meetings and make alliances, and set timetables and chose spokespersons. A short speech was prepared since it was felt that Convention No. 156 was somewhat complex and it would be necessary to make the best of the available opportunity in the few short minutes that would be granted by the senators.

The strategy also involved compiling a list of legislation that would need to be reviewed once Convention No 156 was ratified since it was important that it be discussed in Parliament. This legislation included the Labour Code, Civil Service Act, and the Social Security Acts. Debate in Parliament focused on the contribution that ratification of Convention No. 156 could make to the country's laws and regulations, as well as its possible incompatibility with them. The more laws that might need to be amended, the more likely it was that Parliament would hesitate to approve the Convention. The CTIO, with ILO technical support, was able to dispel all of the Parliamentarians' doubts, and the President of the Congress had also helped to push for ratification.<sup>16</sup>

## › Ratification

Once ratification of Convention No. 156 was approved at the end of June by the Senate, it needed only to be ratified by the Chamber of Deputies. There the procedure was simpler and faster, because the Bill had already been approved by the Senate and an inter-

<sup>15</sup> When calling a public hearing, there must be a genuine desire to hear views of experts on the subject, users of the service concerned, and all citizens who may be directly or indirectly affected by the policy decision. Moreover, the organizers must have access to a multidisciplinary, comprehensive and up-to-date database of public and private institutions specializing in the subject of the hearing, so that appropriate invitations can be sent sufficiently in advance. The cost of doing so was borne by ILO.

<sup>16</sup> Convention No. 156 was examined by the following Senate working committees: Commission on Equity, Gender and Social Development; Committee on Foreign Relations and International Affairs; Committee on Constitutional Affairs; and the Committee on Legislation, Codification, Justice and Labour.

national Convention can only be ratified or rejected since there is no room for discussing amendments, as is the case for national legislation.

The Bill was approved by the Senate on 5 July 2007 and by the Chamber of Deputies on 4 October 2007. On 22 October 2007 Congress adopted Act No. 3338 on the Workers with Family Responsibilities Convention, 1981. In line with ILO procedures, on 21 December 2007 the Government informed the ILO Director-General about ratification, at which time the country was formally committed to implement all obligations set out in Convention No. 156 and to periodically report to ILO on measures taken in this regard. In 2009 the Government submitted its first report to the Committee of Experts on the Application of Conventions and Recommendations (CEACR), which made two direct requests for additional information.<sup>17</sup>

## › Conclusions

The ratification process for Convention No. 156 in Paraguay was relatively rapid and was by consensus and unanimous. It took just two years from the moment the idea was first broached to the adoption of Act No. 3338/07. The main factors that contributed to this success include the following.

- ▶ Leadership of the CTIO: The choice of the CTIO as the lead player was crucial to the credibility and legitimacy of the process, along with ILO involvement, promotion of tripartite dialogue and the public's support, establishing links between existing policy options and combined efforts of experts and politicians, and social mobilization of other actors involved in ratification.
- ▶ A detailed strategy from the start: The CTIO held specific activities, designed with technical support of the ILO, upon which other actors were able to build and contribute toward. This was essential in ensuring that all those concerned were able to speak with one voice and have their views accommodated, rather than conflicting and confused ideas being expressed.
- ▶ Awareness campaign and support of public opinion: The many information and awareness-raising activities helped to gain support of the various stakeholders. Equally important for shaping public opinion was involvement of the media, with whom the CTIO team found a strategic ally in efforts to persuade Government staff, politicians and Parliamentarians.
- ▶ The personal commitment and direct support of the Minister of Justice and Labour helped position ratification as a priority not only due to growing international momentum for supporting workers with family responsibilities, but as a tool for promoting the protection of families which he felt was a national priority.
- ▶ Informal networks and personal ties: In a relatively small country such as Paraguay, it was important to have access to key players and to convince them to work together. Such networks and ties helped the CTIO team to gain support of the leaders and senior

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<sup>17</sup> *Direct request (CEACR) – Adoption: 2009*, 99th Session of the International Labour Conference, Geneva, 2010; and *Direct request (CEACR) – Adoption: 2011*, 101st Session of the International Labour Conference, Geneva, 2012. Among other things the Committee of Experts sought more information on progress in the review of the country's laws and regulations, devising ways for workers with family responsibilities to reconcile their work and family life, promoting better sharing of responsibilities by men and women, creating greater public awareness of the issues involved so that all those with a family can exercise their responsibilities and participate fully in the labour market, including family responsibilities in collective bargaining, and on adopting or planning national policy measures in favour of equality so that workers with family responsibilities could exercise their right to work without being subjected to discrimination.

officials of FEPRINCO and UIP and of workers' organizations; the President of the Senate; Chair of the Senate Commission on Equity, Gender and Social Development; and the Minister of Foreign Affairs.

- ▶ Lobbying strategy in Parliament: This involved learning about formal parliamentary procedures, organizing a tripartite seminar as a Public Hearing to secure the commitment of different political actors, and engaging in highly-detailed and patient lobbying with party whips, working committees and members of Parliament.
- ▶ ILO support: Throughout the process of ratification, ILO provided technical and financial support including for the leadership role of the CTIO. Information materials published by ILO or jointly with others were also critical to outreach.

The process of ratification did encounter a number of challenges. The first was how to gain the support of the employers' sector. The second was how to handle the delicate political moment when Convention No. 156 was placed before Parliament, given that the President of the Republic did not hold a majority in Congress and time was short due to possible changes in membership of both Chambers and the Parliamentary committees.

For Paraguay there now remains the major challenge of introducing the necessary legislative and policy measures to implement Convention No. 156, especially taking into account trends in the labour market including a high proportion of workers in precarious and casual jobs, in small enterprises, and as domestic workers. Another important factor is that there are insufficient public care services for children and the elderly. However it is hoped that the positive experience of consensus achieved in ratifying Convention No. 156 will serve as an encouragement to make further progress in implementation.



## UKRAINE

BY MS. SVITLANA VODYANYK<sup>1</sup>

### › Introduction

Despite the fact that Convention No. 156 was ratified in 1999 by Ukraine, it is not possible to say 12 years later that problems faced by workers with family responsibilities have been resolved. In fact, given the strong post-Soviet influence on Ukraine and the significant amount of citizens living on low incomes, implementation of provisions in Convention No. 156 still requires considerable work on both political and legislative levels. In addition, widespread gender stereotyping still prevents women from fully participating in the labour market, as well as men from exercising the same rights provided by law to women in connection with their family responsibilities.

This case study discusses the main achievements by Ukraine in application of Convention No. 156, as well as ongoing challenges that may be faced by other countries and about which lessons can be learned.

### › Ratification

When Ukraine was part of the Union of Soviet Socialist Republics (USSR), the law stipulated that men and women were equal. In the USSR, women participated in all kinds of paid work including hard physical labour, and it was common for them to work full-time while raising children, looking after the household, and caring for elderly relatives.

Soviet centrally-planned economies required large-scale labour forces, which is one of the reasons that declining birth rates in the USSR led the Soviet Government in the 1970s and 1980s to increase maternity benefits. Although maternity protection was not specifically created to help reconcile work and family responsibilities, such protection was the only related measure in Ukrainian labour legislation prior to ratification of Convention No. 156.

Following the collapse of the USSR in 1991 Ukraine as an independent country became more influenced by progressive social movements, including for gender equality, which became the basis for related reforms in Ukraine. It committed to many international instruments and global treaties, many of which required eliminating discrimination due to family responsibilities or related issues of equality between women and men. Thus Ukraine's ratification of Convention No. 156 was considered a logical further step toward efforts to transform traditional gender-based roles and responsibilities of both men and women in order to help achieve gender equality.

### › Legal Framework: good practices and obstacles

Provisions of the Ukrainian Constitution, which was adopted in 1996, correspond to the country's international obligations. For this reason the Constitution provides that the State shall create conditions for citizens to fully realize their right to labour, guarantee

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equal opportunities in the choice of profession and types of paid work, and according to society's needs implement vocational education programmes and training of workers.

The Labour Code of Ukraine, adopted in 1971, guarantees equality of such rights for all citizens and without discrimination. The Code's Chapter 7 on "Employment of women" contains 15 articles that govern employment of women and men who care for children, and sick and/or disabled family members. Chapter 17 concerns workers' mandatory state social insurance and pensions.

Following ratification of Convention No. 156, Parliament introduced changes to the Labour Code, especially regarding rights of workers with family responsibilities. These included that not only women with such responsibilities should be entitled to relevant benefits – such as maternity leave and childcare allowances – but that men and other persons providing care for children or dependent family members should also be entitled to paternity and other similar types of benefits. However, despite this legislative progress, the principles of Convention No. 156 have still not been completely realized.

According to some experts<sup>2</sup> in the country, the current Labour Code and certain other labour-related laws are biased and inadequate since these impose a preference on women to perform family responsibilities, and only in certain cases are men entitled to the same benefits (see box below).<sup>3</sup>

#### **Social and legal aspects concerning workers with family responsibilities**

The Labour Code of Ukraine (1971) and Law "On Leaves" (1996) provide for the following.

- ▶ Prohibition on denying employment to women for reasons related to pregnancy or having small children. This guarantee applies **only to women**.
- ▶ A woman is guaranteed 70 days of maternity leave at full salary before and 56 days after childbirth. A woman may take additional leave until the child reaches three years old, with a guaranteed right to return to the same job after such leave expires. During this period the woman will receive allowances such as cash. Leave without pay until the child reaches six years old is also provided but is subject to medical justification. Similar benefits **may be provided to men or other family members** only if they themselves, and not the mother, are the child's main care-giver.
- ▶ In the event of a child's illness (or other close family member), **one working parent** has a right to paid "temporary disability" leave. This is for care of an ill child under 14 years old and covers a period not to exceed 14 calendar days.
- ▶ Prohibition to assign pregnant women and women with children under three years old to: night work; work requiring overtime; work during weekends; and business trips. **A man with a child of the same age may be granted these benefits** provided he is raising the child without the mother (or if the mother is undergoing long-term hospital treatment).
- ▶ An employer is required to apply lower standards of production or service to a pregnant woman and a woman with a child under three years old, or to transfer the woman to easier work. **Men with a child of the same age are not granted such benefits.**
- ▶ If required, employers must provide a part-time working day or week to a woman with a child under the age of 14 or a disabled child, as well as to **other persons who care for a child without the mother.**

<sup>2</sup> For example, see *Gender and Legal Expertise of the Labour Code of Ukraine*, Ministry of Justice of Ukraine, 2010 at [www.minjust.gov.ua/0/33455](http://www.minjust.gov.ua/0/33455)

<sup>3</sup> See Ukraine CEACR Observation and direct request published in 2012.

Payment for these part-time workers is based on the actual time worked (which means reduced take-home pay), but such workers have the right to keep all benefits and rights of regular full-time ones.

- ▶ Employers shall provide an additional ten days leave to women with two or more children under the age of 14 or with a disabled child. This guarantee also applies to men who are raising their child without the mother including if she is undergoing medical treatment, and to a guardian or foster parent.

According to statistics, participation in the labour market is relatively gender-balanced. However, most employed women are aged 40-49 years,<sup>4</sup> which is when children usually are old enough to require less attention. Thus, labour and social legislation has indirectly created a disincentive for employment of women aged 22-30 years since employers could expect that women in this group are most likely to marry and have children (the average age in Ukraine for giving birth is 25 years).<sup>5</sup>

In order to address women's needs for social protection – especially those not in the labour market due to family responsibilities including caring for children under six years old or with disabilities, and single mothers with children under 14 – an additional employment guarantee was introduced. The Law “On Employment” provides for job quotas for these categories of women in enterprises, institutions and organizations. Such quotas are set by the local authorities and comprise up to 5 per cent of the total number of jobs. Unfortunately, this mechanism is not effective since these jobs are mainly reserved in state-owned enterprises where workers tend to receive lower wages; most women are not interested in these and often refuse such employment.<sup>6</sup>

A significant milestone in establishing gender equality, including concerning supporting workers with family responsibilities, concerns the Law “On Gender Equality” adopted in 2005. It sets forth a number of provisions aimed at creating equal working conditions and opportunities for workers of both sexes<sup>7</sup> and establishes a good legal (de jure) basis for reconciliation of work and family life. However, most of its provisions need to be reinforced in practice (de facto) by significant revision in application and in line with international commitments.

#### – *Legislative reform*

In 2007 the Government began drafting a new Labour Code to replace the one in place during the USSR era. As a result the draft Labour Code comprises provisions that are

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<sup>4</sup> According to the State Statistics Committee of Ukraine

<sup>5</sup> *Decent Work Country Profile: Ukraine*, ILO, Geneva, 2011, see [www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_167363.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_167363.pdf)

<sup>6</sup> For example, according to the State Employment Service 18.9 thousand jobs were reserved for women in 2006, whereas only half of such jobs were taken.

<sup>7</sup> In particular, the Law of Ukraine “On Gender Equality” in Article 17 states: an employer shall create working conditions that would allow women and men to work on a parity basis and provide both with an opportunity to combine work and family responsibilities. Any discrimination by offering jobs only to women or men in job advertisements is prohibited, with the exception of specific jobs that can be performed only by persons of a certain sex. Employers shall not put different demands on employees based on their sex or give priority to one of the two sexes and shall not require information from them concerning their personal life and plans to have children.

new to Ukrainian legislation. In particular, and as envisaged by Convention No. 156, the concept of “workers with family responsibilities” has been introduced.

Unfortunately this draft, which is already under discussion in Parliament, does not reflect in full the principles of Convention No.156 and Recommendation No. 165. It also does not provide for a guarantee of the full scope of such rights to both male and female workers. Instead the draft retains the current Labour Code’s approach and is based on the assumption that workers who have family duties are mostly women, and only in rare cases men and other family members.<sup>8</sup>

Another initiative related to workers with family responsibilities is the draft Law “On Amending Certain Laws of Ukraine (Concerning Equal Rights and Opportunities for Women and Men in Employment)”.<sup>9</sup> This draft is important as it aims to provide quotas for parity between women and men’s representation in the lists of political parties, and in representation in local Government. However, since it still needs a number of improvements, there is a strong probability the draft Law will not be adopted any time soon. In addition, Parliament – in its new composition after the October 2012 election – is not likely to consider such quotas again soon.

– *Family-friendly government policies*

During the Millennium Summit, Ukraine committed to taking action aimed at eliminating discrimination against men and women workers with family responsibilities. The plan to achieve these goals was included in the Government-produced document on *Millennium Development Goals (2010)*, which identified main challenges and set forth a schedule for achieving the goals.<sup>10</sup>

The Government, taking into account Convention No. 156 and its other relevant international agreements, adopted a number of policies aimed at creating equal opportunities for women and men. These policies focused on helping such workers combine their paid and unpaid responsibilities through development of the system of social services.<sup>11</sup> Unfortunately, these policies were not reinforced by concrete actions with adequate funding, especially during the global economic crisis that impacted Ukraine. Thus – according to a report of the Ministry of Family, Youth and Sports – during 2007-2008 implementation of the State’s programme on gender equality was supported by more than three million Ukrainian Hryvnyas from the State and local budgets. However during the crisis in 2009, only one million Hryvnyas, or about US\$ 120,000 (after the depreciation of the national currency in 2009 due to consequences of the global economic crisis), were allocated from budget funds for the same purpose.<sup>12</sup>

<sup>8</sup> The CEACR is tracking this legislative reform, and in a direct request on Ukraine’s application of Convention No. 156 referred to it in *International Labour Conference, 201st Session, 2012: Report III (Part 4A)*, page 584. The CEACR notes that the draft Labour Code has not been adopted.

<sup>9</sup> This draft law (registration number 8487) was under consideration by Parliament at the time of writing.

<sup>10</sup> *Millennium Development Goals (Ukraine)*, Ministry of Economy of Ukraine, Kiev, 2010, see [www.undp.org.ua/files/en\\_52412MDGS\\_UKRAINE2010\\_REP\\_eng.pdf](http://www.undp.org.ua/files/en_52412MDGS_UKRAINE2010_REP_eng.pdf)

<sup>11</sup> These include: Order of the President of Ukraine, 26 July, 2005; Recommendations to the Parliament, 27 June, 2007; National Action Plan of the Cabinet of Ministers of Ukraine for the improvement of women’s status and implementation of gender equality in society in 2001-2005; and the State Programme on maintaining gender equality in Ukrainian society for the period until 2010.

<sup>12</sup> *Public monitoring of the State program on maintaining gender equality in Ukrainian society for the period until 2010*, Women’s Consortium of Ukraine Non-Governmental Organizations, Kiev, 2011.

A concept paper about the State's programme for promoting gender equality through to the year 2016 has been drafted; however at the time of finalizing this case study it had not been approved by the Government nor had relevant funding from the State budget been allocated.

Nevertheless, a certain number of Government-led policies aimed at promoting gender equality in all areas of life have been achieved, including concerning the support of workers with family responsibilities. Ukraine also declared, through Government Resolution 741, the year 2007 as "Year for Gender Equality in Ukraine" in order to show its support for the European Union's declaration of the same year as "European Year of Equal Opportunities for All". At the same time, the Government of Ukraine introduced an annual lesson within schools on "gender literacy".<sup>13</sup>

### ► Social protection of workers with family responsibilities

Women and men workers with family responsibilities are entitled to several types of benefits provided by social security legislation. These are paid by the State in order to help overcome the country's current demographic crisis of low birth rates and to provide proper conditions for children's healthy development. Among the benefits are a birth allowance,<sup>14</sup> which provides guarantees for a parent or guardian who permanently resides with the child, regardless of whether they continue to engage in paid work; maternity leave benefits,<sup>15</sup> which are paid regardless of whether a worker is insured under the general compulsory State social insurance system; parental leave benefits,<sup>16</sup> which are granted to one parent for three years if he or she decides to give up work in order to take care of a child or decides to work on part-time; and other types of benefits depending on the status of the parent or a family, such as a single mother or low-income family.

Despite problems of financing social services, the Government has invested significant funds – especially in recent years – in order to improve the status of workers with family responsibilities. For example in 2010 the State social allowance to families with children was granted to 2,625 persons and amounted to 18,262,400 Ukrainian Hryvnias.<sup>17</sup>

However, while such monetary allowances have improved families' conditions, the structure of benefits has raised concerns. According to some experts, social monetary benefits encourage parents – especially women – to remain outside the labour market rather than creating the conditions so that workers can successfully combine paid and family responsibilities.<sup>18</sup>

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<sup>13</sup> *Responses to the list of issues and questions with regard to the consideration of the combined 6th and 7th periodic reports: Ukraine*, UN Committee on the Elimination of Discrimination Against Women (CEDAW), New York, 2009, see [www.unhcr.org/refworld/docid/4b792f400.html](http://www.unhcr.org/refworld/docid/4b792f400.html)

<sup>14</sup> The amount of the state birth allowance depends on the number of newborn children in a family. As of 1 January 2012, this amounted to UAH 26,790 or about US 3,350 dollars for the first child; UAH 53,580 for the second child, and UAH 107,160 for the third and subsequent children.

<sup>15</sup> Maternity leave benefits are paid to working women for 126 days at a rate equal to 100 per cent of their previous earnings. Uninsured women receive an allowance of 25 per cent of the legally-established monthly minimum subsistence level.

<sup>16</sup> The parental leave amount is equal to the difference between 100 per cent of the subsistence minimum specified for able-bodied persons; as of 1 January 2012 this was UAH 1,073 and the family's average monthly gross income for the preceding six months, but not less than the guaranteed minimum of UAH 130.

<sup>17</sup> Statistics according to the Ministry of Social Policy.

<sup>18</sup> *Decent Work Country Profile: Ukraine*, 2011.

– *Childcare system*

Two consequences of the economic crisis of the 1990s were lower birth rates in Ukraine and the sharp decline in State-sponsored preschool institutions, the number of which decreased during 1990-2004 by 39.2 per cent. By 2004 only 14,900 such institutions still existed, and during 2000-2004 less than one million children were attending preschools.<sup>19</sup> However in 2008 the situation began improving, and by 2011 the number of children in preschools had risen to 1,333,000. Kindergartens – many of which had been shut down – are now being renovated and reopened. Additional educational institutions are being opened including preschool facilities, along with more services for children with special needs or disabilities.

However, Ukraine does not yet have a proper social support system for parents with small children. Lack of vacancies in preschool institutions and unavailability of any childcare facilities in some communities are among the most serious problems. Although in 2004 the Government introduced the draft Law “On State Support of Families in Raising Children”, its policy to date lacks a legislative plan for developing preschool education institutions: after eight years this draft has still not been adopted as law.

– *Elderly care*

Many of the aged in Ukraine are looked after – and indeed expect to be looked after – by their children, especially any who have not started their own families. Often these children have to care for their parents without medical or nursing assistance and using their own resources.<sup>20</sup>

State-run elderly care is not adequately developed and is only available to those who are immobile, seriously ill, mentally disabled or have no family (so-called solitary people). As of late 2008, public elderly care facilities housed 55,000 persons. However, since a large proportion of the total population of Ukraine is over 65 years old (about 13 per cent or more than seven million), the number of elderly care facilities is insufficient.

Some improvements have been achieved such as establishment of a network of nursing homes and special hostels, which provide healthcare, and household and leisure services – although the number of these is still too small. The Government recently introduced a system of monetary compensation to individuals who provide elderly care; elderly persons who require home-based care can obtain services and help from any individual, including a family member, who is entitled to this monetary compensation. However a deficiency in the system is that in order to receive such compensation, the carer cannot be employed.

For the above reasons in addition to needed and significant economic reforms, the social security system, healthcare, and care for the elderly must become of higher quality, more efficient and affordable.

<sup>19</sup> *Millennium Development Goals (Ukraine)*, Ministry of Economy of Ukraine, Kiev, 2010.

<sup>20</sup> *From Red to Grey – The “Third Transition” of Aging Populations in Eastern Europe and the former Soviet Union*, World Bank, Washington DC, 2007, see <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/ECAEXT/0,,contentMDK:21378474~pagePK:146736~piPK:146830~theSitePK:258599,00.html>

## ► Labour market challenges and proposed solutions

### – *Gender stereotyping*

According to many experts, Ukraine's transition to the market economy resulted in among other things women's under-representation in decision-making, their higher unemployment rates, and regression to traditional stereotypes regarding gender roles.

The majority of people in Ukraine believe that the most important social role of a woman is in the private sphere as mother and “housewife”. Women are expected to take care of the household, give birth and raise children, and maintain relations within the family. Men are expected to actively participate in the “public sphere”, achieve professional goals, and be responsible for their family's financial prosperity. The most significant part of a man's life is considered to be his career, and as a result he is expected to participate in family responsibilities in only a minor way which tends to alienate men from the private sphere. This often negatively impacts relationships with his children and other family members.<sup>21</sup> At the same time, labour and social security legislation is based on the assumption that men do not have family responsibilities to the extent that women do. Therefore it could be argued that the law provides more social guarantees to single mothers than to fathers who raise children alone. Indeed it is much more difficult for men to access such protection and assistance, as society considers a single mother to be more “normal” and a single father to be extraordinary.

### – *Paternity rights, parental leave and family responsibilities*

The relatively large share of adults who are classified as inactive in the Ukrainian labour market is due mostly to family responsibilities, with women making up a much higher number of adults classified as “inactive”. This situation may be linked to the fact that the amount of social benefits provided by the Government – to only one of the two parents of a child at birth – is significantly larger than the average wage in the country.<sup>22</sup> Accordingly many parents prefer to stay home, rather than work for a relatively small wage and receive social benefits while caring for their children (see table below).

There are high levels of sex segregation in the labour market, both across occupations and sectors. Most women are concentrated in mainly low-wage jobs including in health-care services, commerce, catering, education, and agriculture. The majority of men are employed in higher-paid sectors such as transport, construction, information technology, finance, and manufacturing.

Significant gender pay gaps have contributed to the feminization of poverty in Ukraine. In all sectors – even those where women predominate – their wages for performing the same or similar kind of work as that of men are much lower, at an average of 70 per cent of men's earnings. Discrimination against women in employment and barriers to their equitable share of decision-making positions, known as the glass ceiling, are common. Even in sectors dominated by women, they are under-represented in decision-making posts. As well within the public sector, women comprise over 70 per cent of the

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<sup>21</sup> For data about this see for example an information and education programme entitled Hearts at [www.hearts.in.ua/articles/heart\\_statistics/687.php](http://www.hearts.in.ua/articles/heart_statistics/687.php)

<sup>22</sup> In 2010 the average range of salary in Ukraine was UAH 1,916 to 2,629, while the state birth allowance to parents of a child was UAH 12,240 for the first child, UAH 25,000 for the second and UAH 50,000 for the third and subsequent children.

**Maternity leave and work and family responsibilities in Ukraine<sup>427</sup>**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Workers on leave to care for a child (% of registered number of employees) <sup>428</sup>	3.2	2.9	3.0	3.0	3.1	3.2	3.3	3.4	3.7	4.2	n/a
Women on maternity leave (% of registered number of employees)	0.9	0.7	0.6	0.6	0.6	0.5	0.5	0.5	0.6	0.5	n/a
Inactive population including due to care of children and other family members (% of the registered number of employees)	8.2	10.8	10.8	10.6	11.2	13.3	14.5	14.9	15.7	16.4	17.2
Male	1.6	2.3	4.7	5.2	5.4	3.9	5.6	6.2	6.2	7.1	7.7
Female	12.3	15.1	15.8	14.2	16.2	19.7	20.3	20.5	21.7	22.5	23.4
Children enrolled in preschool education (%)	40	41	48	49	50	51	53	54	57	56	n/a

Source: Household Survey on Population Activity in Ukraine 2000-2010, State Statistics Committee of Ukraine.

total number of civil servants but hold few highly-specialized and/or managerial positions. Women constitute the majority of lower-level positions in the public sector, which require lower qualifications and entail much less responsibility.

Women are also under-represented in politics. The previous Government included only two women Ministers, and in the current Government only the Minister of Health is a woman. Women make up only 7.4 per cent of Parliament members,<sup>25</sup> while they comprise in regional and district councils 12 per cent and 23 per cent of members respectively.<sup>26</sup> During 2010-2012, the Heads of regional State administrations included no women at all.

<sup>23</sup> Based on *Quality of Employment: Country Profile for Ukraine*, UNECE; ILO/and EuroStat, Kiev, 2009.

<sup>24</sup> Of those, on average only 2 per cent are men according to *Annual report of the Commissioner for Human Rights in Ukraine on protection of human rights and freedoms*, Kiev, 2011.

<sup>25</sup> In contrast to Ukraine, women across the EU occupy on average 22.6 per cent of parliamentary seats in their countries. For example in Sweden women hold 44.7 per cent, in Netherlands 40.7 per cent, in Finland 42.5 per cent and in Norway women hold 39.6 per cent of Parliamentary seats, according to Inter-Parliamentary Union data as of 31 May 2012. See [www.ipu.org/wmn-e/classif.htm](http://www.ipu.org/wmn-e/classif.htm)

<sup>26</sup> *Women's Work: Discrimination against Women in the Ukrainian Labor Force*, Human Rights Watch, Kiev, 2003.



## › Support to social partners

Non-governmental groups, non-profit foundations, and projects funded by international organizations have taken initiatives in Ukraine with Government and with workers' and employers' groups to help improve women's participation in the labour market.

An example of working with the social partners is a joint European Union and ILO project on "Gender Equality in the World of Work". During 2009-2011, the project provided training for representatives of the social partners, introduced gender mainstreaming to the Labour Inspectorate and launched a Women Entrepreneurs' Training Programme on Start and Improve Your Business. Among other things, representatives of workers' and employers' organizations developed gender equality plans. The plans, which included indicators to measure time-bound objectives, aimed to further mainstream gender into the policies, programmes and structures of the groups or departments. Participants also learned how to facilitate participatory gender audits.

As part of the communication component of a project on "Women and Children's Rights in Ukraine", contests were held in 2010 and 2011 on Equal Opportunities: the Best Employer. In 2008 and 2009 another two contests on Best Company for the Family were held by Women's Perspectives, a non-governmental group. These contests were organized in partnership with the Ministry of Labour and Social Policy and the Slovak Agency for International Development, known as SlovakAid. More than 200 Ukrainian companies took part in the contests and presented their good practices to demonstrate ways to support workers with family responsibilities.

The good practices included flexible working hours for employees with children under the age of 14 or those caring for sick relatives. These enabled employees to work from home and/or choose their working hours. Many companies also set up their own facilities for care of workers' children or provided financial assistance to Government-run institutions and departments that provide such facilities. Flexitime is also offered by some Ukrainian companies to certain categories of workers whose physical presence in the workplace is not mandatory.<sup>27</sup> Some companies use voluntary codes to identify problems related to sex discrimination and other forms of unequal treatment of workers including women and men with family responsibilities, and gender equality plans are being used to implement relevant measures to address these.

The social partners are also striving to promote the improvement of labour conditions for workers with family responsibilities. Since 2008, the Government and joint representative bodies of employers' and workers' organizations at national level have agreed to include family-related provisions in the General Agreement on Regulation of Basic Principles and Norms of Social and Economic Policy and Labour Relations. These provisions concern improving working conditions for women and men who care for children and sick or disabled family members. For example, the General Agreement envisages that sectoral agreements should contain provisions for establishing a one-hour reduced working week for women and workers caring for children under the age of 14 years or for disabled family members, providing such workers shall be entitled to full pay. Sectoral agreements and collective agreement should provide social protection measures for the elderly, and trade unions should promote women's representation in decision-making

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<sup>27</sup> *Practical Guide – Work-life balance in Ukraine: new competitive advantage for companies and employees*, Kiev, 2003, see [www.csr-ukraine.org/practical\\_guide\\_work-life\\_balance.html?lang=en](http://www.csr-ukraine.org/practical_guide_work-life_balance.html?lang=en)

positions at all levels. As a result, private enterprises have incorporated such provisions in their collective agreements. For example, some companies provide their workers with additional paid leave in case of a “significant family event” such as a worker or family member’s wedding, their child’s first day of school, and birth of a child or death of a close family member.

In turn, workers’ awareness has increased concerning the fact that the State provides a significant number of measures to protect their rights. For example, representatives of the Federation of Trade Unions of Ukraine noted what was described as a significant number of telephone calls from citizens, especially women, to a hotline made available in 2010 by the Federation with support of the EU-ILO project. As of end June 2012, some 750 callers had contacted the hotline concerning violation of their labour rights, including with respect to family responsibilities.

The latest report of the Commissioner for Human Rights in Ukraine highlighted the fact that 5,000 complaints were filed in 2011 by citizens whose rights in terms of gender equality had been violated; 3,809 of these were from women and 1,204 were from men. This large number of complaints suggests that a relatively high proportion of citizens are aware of their rights, and they have some degree of faith in being able to claim these. Unfortunately, statistics on complaints concerning violations related to workers with family responsibilities are not available.

Concerning the State Labour Inspectorate, the share of cases related to violation of workers’ rights as envisaged by Convention No. 156 is so far insignificant. This is because the majority of claims that labour inspectors deal with concerns employers’ failure to pay wages in a timely manner. However, representatives of the Labour Inspectorate have noted that regarding cases of employers violating rights of workers who are parents of small children or who care for sick or disabled family members, the State has an effective mechanism to restore rights of workers and impose sanctions to employers.<sup>28</sup> This will have to be assessed in future, given the low number of cases detected or submitted to the Labour Inspectorate in this regard.

## › Conclusions

Ukraine, as one of the countries that has ratified Convention No. 156, has achieved some success in promoting rights of workers with family responsibilities – although numerous weaknesses in implementation remain. Currently there is insufficient awareness about the legal aspects of ensuring equal rights for women and men, especially equal opportunities and treatment in the world of work and preventive ways to counter sex discrimination in society. In order to promote such progress in line with Convention No. 156, the Government needs to implement a widespread and effective information campaign to raise public awareness and change attitudes and behaviours.

Another important step is to raise awareness of workers’ and employers’ organizations on this issue. Unfortunately, social dialogue in Ukraine still needs to be strengthened. However, these organizations do have the capacity to promote reconciliation of work and family responsibilities. They can also provide their members with the knowledge and

<sup>28</sup> Interview in June 2012 with representatives of the State Labour Inspectorate of Ukraine, Kiev.

training required to help eliminate gender inequality in the labour market and promote reconciliation of such responsibilities.

The Government should take a strong stance on tackling discrimination against women in all areas of employment, and Parliament should adopt legislation establishing significant penalties for companies and Government agencies found to be involved in discrimination against workers with family responsibilities. Efforts should also be undertaken by the social partners to promote more equal sharing by men of unpaid household and family responsibilities.

There is also a need for the Ukrainian Government and society at large to realize that the main purpose of achieving balance between family life and paid work is not only to meet the objective of decent work and human rights. This will also help achieve positive results and a more efficient labour market and economy – which contribute to improved national competitiveness and prosperity.



## III. CONCLUSIONS

### Good practices

Following are some good practices that were identified by individual authors of the ten case studies; these are listed below first concerning ratification, and then under the most relevant provisions, of Convention No. 183 and Convention No. 156 respectively. For ease of reference, good practices related to government initiatives are followed by those related to workers and employers when these are identified. These practices, which are not complete and do not include those in other member States concerning ratification and application of the two Conventions, are listed here to share knowledge about such examples across regions and within different national economic, political and cultural contexts. Many are process-oriented and are listed under the most relevant provisions of the two Conventions; the full texts with preambles and all provisions of the two Conventions are accessible online.<sup>1</sup>

#### › Ratification of Convention No. 183 on Maternity Protection

##### GOVERNMENTS

##### **Capture momentum of social movements, and national and international commitments**

Morocco: A widespread social movement for equity and gender equality, which began in the 1990s in the country, coincided with efforts by the social partners to integrate fundamental principles and rights at work into the labour code. This momentum, also reinforced by international agreements such as the principles of Convention No. 183 and the Millennium Development Goals – especially on promoting gender equality and maternal health, and reducing child mortality – contributed to reform of the Caisse nationale de sécurité sociale in 2004 and decrees adopted in 2005 on applying the code for basic medical coverage. The social security and medical coverage changes helped strengthen the reformed legislative framework for maternity protection.

##### **Link interface of work-family conflict with maternity protection**

Benin: A white paper on the theme of women at the heart of dynamic social change highlights the ways that unpaid work connected to pregnancy is a barrier to women's professional advancement and access to decision-making positions. The paper, published two years prior to ratification by Benin of Convention No. 183, also discusses the ways that lack of support for workers with family responsibilities – such as absence of childcare facilities – negatively impact women who are still breastfeeding but desire to return to paid work.

<sup>1</sup> See [www.ilo.org/normlex](http://www.ilo.org/normlex)

### **Address men and masculinities issues in national debates**

Benin: A white paper published two years prior to ratification of Convention No. 183 highlighted traditional socio-cultural practices that perpetuate attitudes and behaviours about the sort of work that men can perform. The paper observed that men still tend not to be involved in family life and domestic responsibilities, which are left entirely to women.

### **Conduct a national law and practice “study of conformity”**

Benin: When the bill authorizing ratification was placed before Parliament, a technical evaluation was carried out to verify whether national law and practice complied with provisions of Convention No. 183. This “study of conformity” showed that national legislation, regulations and practice were such that the timing was favorable for ratification. The study included examining the extent to which maternity protection was already embodied in a number of provisions of the Labour Code, Social Security Code, general rules and relations governing permanent State officials, and the General Collective Labour agreement. It also analyzed whether the principal requirements of Convention No. 183 – namely maternity protection, employment protection and non-discrimination, entitlement to benefits, and health protection – were covered by Benin’s existing legislation, which was the case.

## **› Implementation of Convention No. 183 on Maternity Protection**

### **SCOPE**

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#### ARTICLE 1

For the purposes of this Convention, the term *woman* applies to any female person without discrimination whatsoever and the term *child* applies to any child without discrimination whatsoever.

### GOVERNMENTS

### **Provide coverage for all including women who are foreign nationals or stateless**

Moldova: Under the Constitution all citizens enjoy protection of equal rights and freedoms whether physically in the country or abroad. The law provides the same rights and obligations to foreign nationals and stateless persons with a work contract in Moldova including with an employer who is an individual or legal entity. Thus persons are entitled to enjoy equal rights, freedoms and obligations as citizens in the field of labour including leave and medical assistance, and benefits and pensions within the framework of mandatory health insurance and social security.

#### ARTICLE 2

1. This Convention applies to all employed women, including those in atypical forms of dependent work.
2. However, each Member which ratifies this Convention may, after consulting the representative organizations of employers and workers concerned, exclude wholly

or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature.

3. Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, list the categories of workers thus excluded and the reasons for their exclusion. In its subsequent reports, the Member shall describe the measures taken with a view to progressively extending the provisions of the Convention to these categories.

## GOVERNMENTS

### **Provide equal protection and coverage to adopting mothers**

Moldova: In compliance with Recommendation No. 191 and according to national law and practice, adoptive parents enjoy the same rights and have access to the same protection system related to leave, benefits and employment.

## SOCIAL DIALOGUE

### **Establish dedicated tripartite bodies**

Sri Lanka (Convention No. 103): The National Labour Advisory Council is a tripartite body convened by the Minister of Labour. Both employers' and workers' organizations actively participate in Council discussions, as well as those before the CEACR on application of Convention No. 103 on Maternity Protection (revised). The Lanka Jathika Estate Workers' Union, which represents women workers on plantations, has raised issues of discrimination in relation to uniform application for all women of Convention No. 103. The Free Trade Zone Workers' Union and the General Workers' Union, which represent women working in export processing zones, have endorsed CEACR comments and have proposed a paternity leave of three days, and extension of coverage to women with time-bound contracts, as well as those in the informal economy and domestic work. The Employers' Federation of Ceylon, the main representative organization for employers, has made submissions on the need for the State to provide cash payments for maternity without relying on the employer to do so.

## **HEALTH PROTECTION**

### ARTICLE 3

Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

## GOVERNMENTS

### **Avoid penalizing part-time pregnant women and inform workers of rights**

Moldova: Part-time hours do not affect a pregnant woman's rights concerning calculation of the duration of annual paid leave, calculation of total length of service, or other labour rights. The Labour Code prohibits the following types of work for pregnant women: night shifts, overtime, work on days off or on official holidays, and work in continuous shifts. Mothers with children younger than six years or disabled children can be assigned such work only with their written approval, and the employer is obliged to inform these women in writing that they have the right to refuse such work. Women who are pregnant can be sent on duty travel only with their written consent, and the employer is obliged to inform them about their right to refuse such travel.

### **MATERNITY LEAVE**

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#### ARTICLE 4

1. On production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to a period of maternity leave of not less than 14 weeks.
2. The length of the period of leave referred to above shall be specified by each Member in a declaration accompanying its ratification of this Convention.
3. Each Member may subsequently deposit with the Director-General of the International Labour Office a further declaration extending the period of maternity leave.
4. With due regard to the protection of the health of the mother and that of the child, maternity leave shall include a period of six weeks' compulsory leave after childbirth, unless otherwise agreed at the national level by the government and the representative organizations of employers and workers.
5. The prenatal portion of maternity leave shall be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reduction in any compulsory portion of postnatal leave.

## GOVERNMENTS

Benin: The Labour Code Act of 1998, in Article 170, paragraphs 2-3, stipulates: «All pregnant women are entitled to maternity leave, which shall begin six weeks prior to the expected date of birth and end eight weeks after birth. Such leave may be extended by four weeks in the event of a duly established illness resulting either from the pregnancy or from childbirth. In all cases, should the birth take place before the expected date, the rest period shall be for the duration of the 14 weeks to which the worker is entitled. Should the birth take place after the expected date, the worker shall not return to work until eight weeks after childbirth”.

Moldova: According to the Labour Code of 2003, employed women and apprentices enjoy a paid maternity leave of 126 days. This includes 70 days of prenatal leave and 56 days of postnatal leave. In the case of difficult or multiple births, the postnatal leave is 70 days. In the case of a premature birth, maternity leave is increased to 140 days. In the case of the newborn not surviving, maternity leave is 70 days. In case a woman is pregnant again during the six-year period when on maternity leave for caring for a child, she will receive a paid maternity leave for the whole period of 126 days.

Morocco: Section 152 of the Labour Code refers to 14 weeks' maternity leave and there is a seven-week prohibition on women working following childbirth. Maternity leave can be taken from the seventh week preceding the expected date of birth and in the event of pathological complications is extended to eight weeks prior to birth and 14 weeks after giving birth.

## **BENEFITS**

### ARTICLE 6

1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on leave referred to in Articles 4 or 5.
2. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living.
3. Where, under national law or practice, cash benefits paid with respect to leave referred to in Article 4 are based on previous earnings, the amount of such benefits shall not be less than two-thirds of the woman's previous earnings or of such of those earnings as are taken into account for the purpose of computing benefits.
4. Where, under national law or practice, other methods are used to determine the cash benefits paid with respect to leave referred to in Article 4, the amount of such benefits shall be comparable to the amount resulting on average from the application of the preceding paragraph.
5. Each Member shall ensure that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies.
6. Where a woman does not meet the conditions to qualify for cash benefits under national laws and regulations or in any other manner consistent with national practice, she shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance.
7. Medical benefits shall be provided for the woman and her child in accordance with national laws and regulations or in any other manner consistent with national practice. Medical benefits shall include prenatal, childbirth and postnatal care, as well as hospitalization care when necessary.
8. In order to protect the situation of women in the labour market, benefits in respect of the leave referred to in Articles 4 and 5 shall be provided through compulsory social insurance or public funds, or in a manner determined by national



law and practice. An employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by him or her without that employer's specific agreement except where:

- (a) such is provided for in national law or practice in a member State prior to the date of adoption of this Convention by the International Labour Conference; or
- (b) it is subsequently agreed at the national level by the government and the representative organizations of employers and workers.

## GOVERNMENTS

### **Mainstream social dialogue into social insurance boards**

Morocco: The governing board of the Caisse nationale de sécurité sociale is tripartite. By integrating social dialogue into high-level discussions, the perspectives of the social partners are formally given voice and weight. After ratification in 2012 of Convention No. 183, maternity protection benefits, including leave, needed long-term and consistent financial coverage by the National Social Security Fund. For this reason the Board of Directors of the Caisse nationale decided immediately to carry out a study on the financial impact of the relevant law and how it should be reformed in order to ensure the financial stability of the National Social Security Fund's branch responsible for short-term benefits. Once it was ascertained that the revision was viable, coverage was increased to 14 weeks and the benefit was maintained at 100 per cent of the beneficiary's average daily remuneration, subject to a lower limit equal to the legal minimum wage.

## **EMPLOYMENT PROTECTION AND NON-DISCRIMINATION**

### ARTICLE 8

1. It shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave referred to in Articles 4 or 5 or during a period following her return to work to be prescribed by national laws or regulations, except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing. The burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing shall rest on the employer.

2. A woman is guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of her maternity leave.

## GOVERNMENTS

### **Use legislative reform process to update other laws on equality**

Morocco: When reforming labour laws in line with its ratification in 2012 of Convention No. 183, the Government used the process as an opportunity to revise others that

concerned women. For example the prohibition on night work for women was rescinded, subject to transport being provided between the workplace and residence, as well as such work being interrupted every two days with a rest period. This dispensation was reinforced by explicit prohibition of any form of discrimination, including based on sex or marital status, which would be an infringement or modification of the principle of equal opportunity and treatment in employment or occupation. Also reinforced were penal sanctions for forced labour and sexual harassment.

#### **Extend previous job protection to fathers and other family members**

Moldova: National labour law prohibits dismissal of employees in the case they are on medical or maternity leave, partially-paid leave for taking care of a child younger than three years, and on supplementary unpaid leave for taking care of a child aged between three and six years. The mother, father or other family member who benefits from partially-paid leave for taking care of a child until it is three years old and additional unpaid leave for taking care of a child between three and six years old is legally entitled to return to their former professional position.

#### **Provide childcare at community-based job counseling and vocational courses**

Moldova: As part of planned activities of the National Strategy on Labour Occupation Policies 2007-2015, a network of community-based and regional centres is planned. These will provide counseling and professional orientation for youth and women who seek to enter or re-join the labour market. Participants will be entitled to undertake free professional re-qualification courses, and childcare services for their dependants are envisioned. The Strategy seeks to prevent and eliminate all forms of discrimination in the labour market, including gender gaps in pay and promotions.

### **BREASTFEEDING MOTHERS**

#### **ARTICLE 10**

1. A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.
2. The period during which nursing breaks or the reduction of daily hours of work are allowed, their number, the duration of nursing breaks and the procedures for the reduction of daily hours of work shall be determined by national law and practice. These breaks or the reduction of daily hours of work shall be counted as working time and remunerated accordingly.

### **GOVERNMENTS**

#### **Use incentives to improve on minimum benefits provided by law**

Sri Lanka (Convention No. 103): Due to constraints on time and travel, the Maternity Benefits Ordinance encourages employers to establish childcare facilities at workplaces;

for those doing so the breastfeeding period required is reduced to 30 minutes twice daily, instead of the 60 minutes required where such facilities are not provided.

### **Provide possibility of flexible working time arrangements**

Moldova: The law provides for the possibility of establishing a partial working day or partial working week, upon mutual agreement between the employee and employer any-time. The employer is obliged to grant a partial workday or partial workweek schedule for pregnant women and for women and men with children younger than 14 years or disabled children. In this case, the employee is remunerated proportionally for the time worked. Such arrangements have no repercussions on calculations for length of labour service, duration of annual leave, and other labour rights.

## **IMPLEMENTATION**

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### ARTICLE 12

This Convention shall be implemented by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice.

## GOVERNMENTS

### **Begin the process of adapting legislation with tripartite dialogue**

Morocco: Although bringing national legislation in line with provisions of Convention No. 183 was a long process, the social partners were involved from the beginning. An example is the tripartite dialogue commencing in 2000 on the draft Labour Code. The draft was “fiercely debated and extensively amended” since incorporation of the principles set by Convention No. 183 into Moroccan law began with revision of a 1947 *Dahir* (decree), whose provisions had been based on a 1928 Act that modified the French Labour Code as it related to employment of women and maternity. The tripartite dialogue beginning in 2000 lasted until 2003, when a final and unamended version of the draft Labour Code was adopted in Parliament by unanimous vote.

### **Link maternity protection with equitable national development**

Morocco: For almost 20 years, public authorities and civil society have been mobilizing around the goal of women’s equitable participation and mainstreaming of gender into the aims of national development. The Agenda for Equality 2011-15, based on a gender equality strategy approved by the Government in May 2006, comprises nine priority areas. Examples of two that are linked to discrimination based on women’s reproductive role include: to reduce inequalities in the labour market and engage in the fight against poverty and all forms of precarious employment to which women and girls are exposed; and create mechanisms to ensure balance between family life and work, as well as guaranteed compliance with laws and regulations related to the social protection of vulnerable categories of the population.

**Speed up application while longer legal reform process is ongoing**

Morocco: While reform of relevant laws to align them with Convention No. 183 is taking place, its application in the public sector has been put into effect by means of an internal circular. As updating takes place of the Sick Leave and Maternity Leave decree of 10 May 2000, the Ministry for the Public Service and Modernization of the Public Sectors issued such circulars to apply Convention No. 183. Consequently, a public employee needs simply to register her pregnancy under the maternity scheme in the prescribed manner in order to receive the full-pay benefit during her leave.

**Assess and strengthen monitoring of violations**

Morocco: An assessment on equity and gender equality by the Ministry of Employment and Vocational Training, published in 2010, found that sex-disaggregated data was not available on non-compliance with national labour legislation. However, it revealed that the many infringements suffered by working women included dismissal on the ground of pregnancy, non-registration with the *Caisse Nationale de Sécurité Sociale*, and the absence of breastfeeding facilities. Improving information about such constraints to women's participation in the labour market is one of the aims of a programme introduced the same year. Its components include a gender-sensitive information system for better tracking of Labour Code violations.

**Institutionalize equity measures in employment**

Morocco: A medium-term programme, adopted in 2010, aims to institutionalize equity measures in order to help achieve gender equality. This strategic programme focuses on improving information about gender-related constraints in employment, with a view to introducing appropriate measures such as for social protection, vocational training and working conditions.

## › Ratification of Convention No. 156 on Workers with Family Responsibilities

### GOVERNMENTS

#### **Leverage national commitments and international agreements**

Australia: The UN Decade for Women (1976 to 1985) played an “integral part in creating a responsive policy environment” in the country. And since its ratification in 1990 of Convention No. 156, national research burgeoned, which – coupled with internationally-produced studies and country comparisons – “has been crucial” for providing evidence-based evaluations of policy measures in Australia and for use in advocacy and reform.

Paraguay: Prior to its ratification in 2007 of Convention No. 156, Paraguay had ratified in 1986 the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). It had also reformed in 1992 the national Constitution to incorporate the principle of equality between women and men, prohibit sex discrimination, and render the State responsible for removing obstacles to equality. Among other things, the existing Labour Code required industrial and commercial enterprises that employed more than 50 workers – irrespective of their sex – to provide rooms or daycare centres for their children under two-years old.

#### **Follow through on ratification commitments**

The former Yugoslav Republic of Macedonia: Convention No. 156 was “inherited” from the previous Socialist Federal Republic of Yugoslavia, which had ratified the Convention in an era with a completely different political context and economic system. Economic transition to a market economy since 1991 brought job losses as well as political transformation with an entirely new policy framework on labour relations, women, children, the family, and social protection. However supporting workers with family responsibilities remained relevant, and the principles of Convention No. 156 have been given new impetus as the country seeks to become a member of the European Union.

#### **Form strategic partnerships and bring policy demands to “centre stage”**

Australia: The work of the Australia federal Government’s Office of the Status of Women, created in 1983 and strategically placed in the Department of Prime Minister and Cabinet, was crucial in the country’s ratification in 1990 of Convention No. 156. But ratification could not have been achieved without strategic partnerships and the support of the National Women’s Consultative Council, women unionists within the Australian Council of Trade Unions, and women within the Labour party. Feminist organizations, such as the Women’s Electoral Lobby, also succeeded in placing policy demands “centre-stage” during federal election campaigns.

#### **Appeal to leaders with rights-based and business cases**

Australia: Initial resistance was evident not only by some state governments but by some politicians to policy and legal reform that was seen to challenge traditional gender roles. Nevertheless by the late 1980s, political controversy over such issues – which had accompanied the introduction of the Sex Discrimination Act in 1984 and of the Affirmative Action Act in 1986 – had largely died down without the social upheaval that some had predicted. Together with the growing international focus of the federal

Government and personal commitment of Prime Minister Hawke to the ILO as an institution, eventual agreement by state and territory government to ratification in 1990 of Convention No. 156 was largely inevitable.

Paraguay: One of the key challenges for ratification was obtaining tripartite consensus and genuine commitment of key leaders representing different perspectives. On the Government side, the most crucial Minister was “very enthusiastic” about ratification since he considered Convention No. 156 important for the well-being of families, which he felt was a priority. Commitment of social partner leaders – obtained through personal networking including speaking with spouses – to supporting workers with family responsibilities was based on rights-based and religious values, as well as on gains in productivity and global competitiveness. A justification message accompanied the Bill submitted to Congress and presented to Parliament and Office of the President of the Republic.

### **Conduct test cases in lead-up to legislative and regulatory action**

Australia: In the 1980s and 1990s a number of “test cases” served as public hearings at which the Australian Conciliation and Arbitration Commission and the Australian Industrial Relations Commission considered evidence from industrial parties and others about proposed changes related to work-family responsibilities in standard arbitration award conditions. Resulting judgments often improved standard conditions across the labour force. The cases, which helped generate national interest, provided a formal platform for various groups including women’s non-governmental organizations to give evidence. An example is the 1990 Parental Leave Test Case decision, which combined in industry arbitration awards provisions for (unpaid) maternity, paternity and adoption leave. The decision also extended these provisions from only women to both parents.

### **Use multiple advocacy and monitoring mechanisms**

Australia: In the 1980s the Government established several such mechanisms to monitor the impact of policies and initiatives on women. The National Women’s Advisory Council, based on feedback from working women on the pressures they faced, urged the Government to ratify Convention No. 156. A Working Party on Women and the Labour Force, created under the combined state and federal Departments of Labour, assessed progress on maternity provision, parental leave, and accessible and affordable childcare. The Australian Women’s Employment Strategy, administered by the Women’s Bureau of the Department of Employment, Education and Training, tracked eight national goals for improving women’s employment outcomes. And the Women’s Budget Program, as well as the Women’s Research and Employment Initiative Program – both under the same department – monitored work and family issues within their respective mandates.

Paraguay: In addition to an Act in 1992 creating the Secretariat for Women Affairs, which was attached to the Office of the President, other new public bodies advocating for gender equality and tracking policy impacts included: the Commission on Equity, Gender and Social Development of the Senate and Chamber of Deputies; Gender Directorate of the Supreme Court of Justice; Advisory Committee on Gender and Equity of the Municipal Board of Asunción; women’s secretariats in the country’s 17 departments; and the Tripartite Commission on Equal Opportunities.

### **Increase women's representation in policy making for stronger voice and advocacy**

The former Yugoslav Republic of Macedonia: Increasing women's relatively low rates of representation in politics was the aim of a provision introduced in 2002 within the Law on Elections. The provision requires that "every third candidate on the ballot should be of the less-represented sex". This requirement contributed to the fact that prior to early elections in 2011, women held 35 per cent or 42 of 120 seats in Parliament. Women's representation on municipal councils also rose; as a result of the 2009 elections, there were 373 female council members, or 27 per cent, of the total of 1,391.

Niger: In 1987 there was just one woman in a position in Government. In 1989 there were only five women among 93 Parliament members, and in 1992 there was one woman among 113 Parliament members. The Quota Act, proposed by the Ministry for Promotion of Women and Protection of Children and adopted in 2000, instituted quotas for the "under-represented sex" in elective posts (10 per cent), government posts (25 per cent) and state administration posts (25 per cent). In 2007 there were eight women in Government positions, and in 2011 there were six women Ministers in a total of 26. After a reshuffle the same year, there were five women ministers of 23. The Quota Act is not a definitive solution to women's more equal representation at the political level, and its scope is limited since it does not apply to the private sector and informal economy.

### **Tie ratification to national realities and regional trends**

Paraguay: Ratification by Paraguay was appropriate in the context of growing heterogeneity of what constituted a "family" along with transformation of gender roles as more women entered the labour market. Despite marked increase in the proportion of women in paid work, they were encountering major difficulties from the standpoint of quality of employment, wage discrimination, and in reconciling paid work and family responsibilities. Other countries of South America had faced these same challenges and most – Argentina, Bolivia, Peru, Uruguay and Venezuela – had ratified Convention No. 156.

### **Strategically choose the mechanism to spearhead ratification**

Paraguay: The Secretariat for Women's Affairs decided that ratification efforts would be lead by the Tripartite Commission on Equal Opportunities. It had technical support of the ILO, experience in relevant issues including poverty and employment, and was a credible institution attached to the Ministry of Justice and Labour. Most importantly, the Commission's membership was conducive to building consensus among the Government and social partners since it comprised representatives of the three.

### **Utilize ILO technical expertise and support**

Paraguay: Throughout the process leading to ratification, ILO contributed technical expertise and guidance or other support for: capacity building and training, advocacy plans and public awareness campaigns, information materials, policy and legal texts, tripartite meetings and other consultations, and public hearings. This expertise, based on good practices and lessons learned concerning ratification of ILO Conventions by member States around the world, "played a key role" in supporting ratification by Paraguay in 2007 of Convention No. 156. The vote was unanimous for ratification, and the process leading up to it took just eight months.

### **Start early on awareness-building campaigns**

Paraguay: The Tripartite Commission on Equal Opportunities developed, with ILO support, a ratification awareness campaign with the slogan: “Make Equality a Reality”. Workshops and training of trainers on lobbying were held for the Commission’s tripartite members. Booklets, posters and stickers were disseminated to inform citizens, and public hearings were held to gain the support of stakeholders in different sectors. Breakfast briefings aimed to sensitize television, radio and newspaper staff about the benefits of ratification. Journalists kept the issue visible in the media over time – which contributed to the fact that when lobbying for ratification began in Congress, deputies already knew much about Convention No. 156.

### **Produce evidence-based knowledge to inform action**

Australia: A firm evidence base informed Government decision-making on actions to support workers with family responsibilities. For example a survey in 1989 by the Australian Bureau of Statistics highlighted barriers created by family responsibilities to women’s participation in the labour market. Time-use data on productive and reproductive work in the Bureau’s pilot survey in 1987 showed a wide gender division of labour. A subsequent analysis published by the Office of the Status of Women revealed that married working women spent more than twice the amount of time as the same category of men in caring for children and sick or disabled relatives. This growing knowledge base was supplemented by evidence from research supported by the Women’s Research and Employment Initiatives Program including on vocational skills and training-related barriers to women’s equitable labour market participation.

### **Include ratification as objective in national Decent Work Agenda**

Paraguay: Ratification of Convention No. 156 was established as one of the priorities of the country’s Decent Work Agenda. This priority was identified during discussions at a seminar held on 8 March 2006 (International Women’s Day). The seminar was held by the Tripartite Commission on Equal Opportunities with support of ILO and brought together, among other high-level participants, the Minister for Women’s Affairs and Vice-Minister of Labour.

## WORKERS

### **Stay on message and keep up momentum**

Australia: Before ratification in 1990 of Convention No. 156, the Australian Council of Trade Unions had actively lobbied for a national paid maternity or parental leave scheme. It continued to do so after 1990, as did the Human Rights and Equal Opportunity Commission. Australian women’s civil society organizations had also been involved in this “long struggle” for 40 years before a national paid parental scheme was finally implemented in 2011.

### **Advocate for more gender-responsive trade unions**

Australia: In 1977 after pressure from women unionists, the Australian Council of Trade Unions (ACTU) adopted a Working Women’s Charter, which identified the union



movement's relevant priority actions. These included provision of adequate and affordable childcare and strategies to help meet working parents' needs. In 1984 the ACTU adopted an Action Program for Women Workers, whose goals and strategies included comprehensive maternity protection, parental leave, and childcare facilities.

## ► Implementation of Convention No. 156 on Workers with Family Responsibilities

### ARTICLE 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term *discrimination* means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

### GOVERNMENTS

#### Work toward a comprehensive legislative framework

Australia: Three examples in labour law show a progressive improvement in provisions to protect and support workers with family responsibilities. First, the Industrial Relations Act 1991 was amended in 1993 so that one of its objectives became to prevent and eliminate discrimination including based on sex, pregnancy and family responsibilities. These amendments, which required that Convention No. 156 be taken into account during deliberations of the Australian Industrial Relations Commission, opened the way for individual claims by workers. Second the Workplace Relations Act 1996, which succeeded the 1991 Act, aimed *inter alia* to prevent and eliminate discrimination including due to family responsibilities, as well as assist such workers through employers' development of mutually-beneficial workplace practices. The Act prohibited employment termination based on family responsibilities. It also provided that the above Commission must take into account Convention No. 156 in a way that furthers the Act's relevant aims. Third, the current Fair Work Act 2009 comprises ten National Employment Standards, of which one is a worker's right to request flexible work arrangements. It also extends the 1996 Act's protections for workers and prohibits "adverse action" – including discrimination based on sex, pregnancy and family responsibilities – in all employment aspects such as hiring, promoting, training and dismissal.

The former Yugoslav Republic of Macedonia: Over time the Government has adopted a policy framework that should improve support to workers in balancing their work and family responsibilities. It includes the Law on Labour Relations which was revised in 2005, Law on Employment and Insurance which was adopted in 1997 and extensively revised each year since 2000, the 2011 five-year Strategy for Employment, and the National Action Plan for Employment 2011-2013. The framework has already fostered

social dialogue through which collective agreements have been concluded and is foreseen to contribute toward women's increased labour market participation. In addition the framework has helped lead to some improvements in infrastructure and services such as childcare and schools. However legislation is still insufficient – for example there is no parental leave for male employees under the Labour Relations Law.

### **Build legal practitioners' expertise in mandatory training**

Australia: Extensive mandatory discrimination law training, designed for legal practitioners, has built expertise of tribunal members in New South Wales when assessing employer and employee claims concerning newly-introduced legislation. Carer discrimination provisions – introduced in 2001 in amendments to the New South Wales Anti-Discrimination Act 1997 – placed an obligation on employers to reasonably accommodate carers' needs for alternative working arrangements. The training coincided with introduction of this new right and helped ensure over the next two years that of 140 claims decided after the amendment, only one was appealed.

### **Survey workers to track occurrence of violations**

The former Yugoslav Republic of Macedonia: A provision in Article 25 of the Law on Labour Relations prohibits inquiries by the employer concerning a job applicant's marital or family status. The Centre for Research and Policy Making uses surveys to track such violations; the most recent one found that over 13 per cent of female respondents had been asked such questions in an interview with a prospective employer.

### **Mainstream gender into ministries**

The former Yugoslav Republic of Macedonia: A national gender policy encompasses a strategy for equal opportunities, about which consultation is taking place prior to expected adoption by the end of 2012. A strategy for equality and non-discrimination, which was adopted in 2012, does not specifically address workers with family responsibilities. The national gender machinery, which spans both central and local Government, comprises several institutions. The Department on Equal Opportunities, established in 2007 within the Ministry of Labour and Social Policy, is made up of two units – one on gender equality and the other on prevention and protection against any type of discrimination. Gender focal points, known as Coordinators on Equal Opportunities, are appointed in line Ministries. The Parliamentary Commission on Equal Opportunities, established in 2006 under the Law on Equal Opportunities within the Parliament, monitors from a gender perspective legal regulations that are proposed by the Government. This monitoring takes place through public hearings and oversight hearings. The Parliamentary Commission also proposes new laws on improving gender equality.

Niger: The Ministry for Population, Promotion of Women and Protection of Children is in charge of implementing the national gender equality policy; while this is a positive step, it is not sufficient under the Convention as its Article 3 states the policy needs to be explicit concerning workers with family responsibilities. Gender units are attached to other ministries and provide expert assistance concerning training and advocacy on equality between the sexes. The units also act as focal points for mainstreaming gender into policies, programmes and other relevant activities. In order to encourage the ministries to implement gender-related and proactive strategies, in 2011 the Directorate

for the Institutional Development for Promotion of Women and Gender held a self-assessment workshop for members of ministerial and regional units.

### **Recognize men's role and rights as workers with family responsibilities**

Australia: Despite the ratification of Convention No. 156 in 1990, the federal Sex Discrimination Act 1984 was amended in 1992 to prohibit only direct discrimination on the ground of family responsibilities in respect to employment dismissal. This effectively limited claims of such discrimination to women since they could argue – unlike men – that they were indirectly discriminated against based on sex, as they were more likely to have primary carer responsibilities. This was overcome after persistent lobbying by the Human Rights and Equal Opportunity Commission along with trade unions and civil society organizations, and an inquiry in 2008 by the federal Senate. Further amendments were made to the Act in 2011 to prohibit, in all areas of employment, direct discrimination against both men and women workers on the grounds of family responsibilities. Breastfeeding was made a separate ground of discrimination. The Paid Parental Leave Act, adopted in 2010, provided Australia's first statutory paid leave scheme. A new entitlement for working parents, known as “dad and partner pay” will be provided from 2013 to eligible working fathers or partners under this legislation. This new payment – with two weeks' pay at the rate of the national minimum wage – will include adopting parents and parents in same-sex couples.<sup>2</sup>

### **Ensure widest possible scope of application**

Chile: As of 17 October 2011, the Government adopted Act No. 20.545, which modified the Maternity Protection Scheme and established postnatal parental leave. When the law entered into force, all registered dependent or independent workers – including temporary or contract workers, and own-account workers such as market sellers and traders – who had made a minimum number of contributions to the welfare scheme were entitled to postnatal parental leave.

#### ARTICLE 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken--

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

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<sup>2</sup> See CEACR Observation in 2012.

## GOVERNMENTS

**Establish an implementation strategy with mechanisms**

Australia: After ratification of Convention No. 156 in 1990, the federal Government established two key policy mechanisms to promote gender equality in the labour market and support implementation of Convention No. 156. The Work and Family Unit, established in the industrial relations portfolio, focused on: developing an implementation strategy across the nation's policies and programmes; policy development on practices and conditions to enable both working parents to combine family and paid work responsibilities; promoting among the social partners flexible working and family leave arrangements, as well as employer-supported childcare; and monitoring such changes – along with any emerging problems – in workplaces. The Equal Pay Unit, established in the same portfolio, provided policy advice and commissioned research on the links between pay equity and work and family responsibilities.

**Conduct surveys on women and men's time use**

The former Yugoslav Republic of Macedonia: The State Statistical Office conducts biannually a nationwide time-use survey, which tracks the amount of time women and men spend on domestic activities. The findings, which are also sorted by rural and urban area, measure minutes spent daily on tasks such as preparing food, cleaning, laundry, ironing, gardening, repairs, shopping, and physical care and supervision of children. Although in “rare cases husbands can help, usually if the wife is employed and he is unemployed”, employed women bear “the complete burden” of maintaining households. The data was used by the Centre for Research and Policy Making in its “I Care” campaign, which advocated for more community care services to substitute for women's unpaid care work at home including for ill and elderly relatives.<sup>3</sup>

**Encourage men to take postnatal parental leave**

Chile: Men are encouraged to be involved more actively in the care of their newborns through postnatal parental leave. Under this new entitlement, which provides working women 12 weeks leave following their postnatal maternity leave, leave can be shared with the father if both parents are working. Either can opt for postnatal parental leave from the seventh week of the maternity leave. Weeks taken by the father – for which he is entitled to a stipulated allowance based on his salary and up to a maximum amount established by the law – must terminate before the end of the postnatal parental leave period.<sup>4</sup>

## ARTICLE 5

All measures compatible with national conditions and possibilities shall further be taken--

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as childcare and family services and facilities.

<sup>3</sup> Equitable sharing of family responsibilities is also discussed under Article 6.

<sup>4</sup> See CEACR Observation in 2012.

## GOVERNMENTS

### **Compensate family carers**

Ukraine: Although state-run elder care is not yet adequately developed or widely available, some improvements have been achieved. A network of nursing homes and special hostels provide household and leisure services to the elderly, in addition to healthcare. The Government also recently introduced a system of monetary compensation to individuals – including a family member – who provide elderly care; however a deficiency of this system is that in order to receive compensation, the carer cannot be employed.

### **Prioritize social security and social services**

Niger: In September 2011 Niger adopted a national social welfare policy, whose implementation is based on strategic priorities such as basic social services and infrastructure, and social and employment security. The strategy for the first priority includes extending childcare services such as daycare and community kindergartens, and facilitating and improving access to energy and drinking water. The strategy for the second priority includes extending social security coverage to excluded groups, and developing a diversified social insurance scheme that covers informal economy workers.

### **Tie national anti-poverty goals to women's access to paid work and family wellbeing**

Chile: Over the last 20 years, institutions have been developed in the country to promote early childhood wellbeing and to support working mothers, and Government programmes have given priority to education and care of children under six years of age. In the national context, reducing poverty and persistent inequalities between children of different socio-economic backgrounds were some of the goals for the *Chile Crece Contigo* scheme. It provides a network of services and benefits so that especially poor and vulnerable families have access to these services. These include pregnancy check-ups for mothers, personalized assistance for children's development, and childcare services. In addition to building children's cognitive and social skills, the centres allowed more time for parents, especially women, to engage in paid work which helped increase family well-being and reduce poverty.

### **Tackle barriers to women's empowerment including voice and advocacy**

Niger: Although not directly linked with Convention No. 156, efforts have been made in Niger to tackle such violence as part of efforts to improve women's status and empower them, so that they can in turn obtain more voice and advocate for their needs. Gender-based violence was identified by the Coordinating Body for Non-Governmental Organizations and National Women's Associations (CONGAFEN) as a barrier to women's rights in Niger. In 2001 CONGAFEN held a workshop on "Women of Niger and the Rights of the Family" in partnership with religious associations, and following the event it commissioned a study on women's juridical, political, social and economic status including the theme of gender-based violence. In 2009, CONGAFEN advocacy highlighted gender-related barriers – including violence – to women's labour market participation. A survey in 2008, commissioned by the Ministry for Promotion of Women and Protection of Children, identified risk factors for gender-based violence. The survey laid the groundwork for sustained action in a national context in which tradition discourages

victims from denouncing their persecutors. Another survey in 2010, conducted by the National Statistics Institute, analyzed the typology of violence in the country and found that the most common form – conjugal violence – was widespread.

#### ARTICLE 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

#### GOVERNMENTS

##### **Promote collaborative research including with civil society and academia**

Australia: *Gender Indicators, Australia*, published by the Australian Bureau of Statistics, provides sex-disaggregated data including on work and family responsibilities. Its production is guided by an advisory group comprising representatives of the Office of the Status of Women, academic experts, and women's civil society groups. Academics have also been important in promoting analysis of time-use data, and highlighting working conditions and social policy at enterprise and industry levels as well as in the broader labour market. Such research has helped to reveal, among other things, gaps between family friendly policy and practice, gender issues in uptake of flexible work options, including low uptake by men, and rights-based and business cases for family-friendly workplaces.

##### **Create local mechanisms to take local action**

The former Yugoslav Republic of Macedonia: Some 75 Commissions on Equal Opportunities for Women and Men have been established across the country at local government level. Members of the Commissions, each of which is headed by a coordinator, comprise elected local municipal councilors from different political parties. The Commissions develop and adopt action plans on gender equality, which are based on each constituency's specific gender-related challenges and possible solutions.

##### **Promote behavior change through diverse communication channels**

Australia: After ratification of Convention No. 156 in 1990, the federal Government's Office of the Status of Women launched a three-year community education programme on "Sharing the Load". It aimed to bring about attitudinal and behavior change concerning women's unequal share of family responsibilities. A poster campaign featured media and sports personalities stating their commitment to share equally their family responsibilities. A community education booklet, published by the National Women's Consultative Council, explained Convention No. 156 and the significance of its ratification for Australians. The booklet listed key facts about workers with family responsibili-

ties and provided examples of its Articles and how these could be applied and used by individuals, employers, unions and Government.

Chile: Public information campaigns about two good practice measures for implementing Convention No. 156 were instrumental in raising knowledge among citizens and providing information about how they could benefit from the measures. The campaigns relied on television, radio and print media including brochures, and contained messages from the country's two successive national Presidents.

The former Yugoslav Republic of Macedonia: Understanding is weak among employers and workers about the principle of equality in opportunity and treatment, and time-use surveys show most women perform "the complete burden" of maintaining households. In order to sensitize the social partners and help change the gender division of labour, since 2006 the Ministry of Labour and Social Policy has conducted a training programme on promoting the principle of equal opportunities. Among the training modules is one on women and men's roles and responsibilities in the family, which highlights the importance of more equal sharing of these.

### **Show visible political will at the highest levels**

Chile: Two good practice measures for implementing Convention No. 156 became priorities on the political agenda of the national Presidents. In March 2006, President Michelle Bachelet began her term of office at the same time as initiatives were taken to launch *Chile Crece Contigo*. And when President Sebastián Piñera began his term in March 2010, he included provision of postnatal parental leave as part of this Government's platform. The two successive Presidents also participated in public information campaigns to promote awareness about the measures.

### **Use data for evidence and business-case advocacy**

Australia: Federal Government data shows that since Australia's ratification in 1990 of Convention No. 156, provision of childcare services changed substantially. A marked increase over time in childcare use was seen to have directly supported women's higher rates of labour force participation. Three Human Rights and Equal Opportunity Commission inquiries into paid maternity and parental leave – in 1999, 2000 and 2007 – all recommended a national government-funded scheme, and in 2009 the Government requested that the feasibility of such a scheme be considered by its Productivity Commission. The latter's report noted that Convention No. 156 was relevant to this inquiry and it endorsed a statutory paid parental leave scheme that provided paid leave for a total of 18 weeks at the federal weekly minimum wage. A Government paid parental leave scheme, based on the Commission's proposal, commenced in January 2011.

#### ARTICLE 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

## GOVERNMENTS

**Strive for equitable access to vocational guidance and training**

The former Yugoslav Republic of Macedonia: Article 6 of the Law on Labour Relations, which prohibits discrimination based inter alia on family status, states that “women and men must be provided with equal opportunities and equal treatment in terms of... access to employment, including promotion and vocational and professional training at work...”.

## ARTICLE 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

## GOVERNMENTS

Australia: The Workplace Relations Act 1996 aims inter alia to prevent and eliminate discrimination including due to family responsibilities, as well as assist such workers through employers’ development of mutually-beneficial workplace practices. The Act prohibits employment termination based on family responsibilities

The former Yugoslav Republic of Macedonia: The Law on Labour Relations prohibits an employer to discriminate against job seekers or employees based on inter alia family status, and it has a special provision that prohibits inquiries by the employer on the marital or family status of women. In order to prevent a worker’s dismissal due to a family-related absence, discrimination is also prohibited when employment contracts are terminated. The Law on Labour Relations allows for an “approved absence because of disease or injury, pregnancy, childbirth, parenthood, and care for a family member as one of the unfounded reasons for termination of an employment contract”. Moreover, to protect discriminatory actions against workers returning from maternity leave as well as from paternity leave, the Ministry of Labour and Social Policy has introduced a provision stating that upon completion of parental leave, the worker must be returned to the same job or another appropriate job in accordance with the employment contract.

## WORKERS

**Establish mechanisms for workers to seek advice and redress**

Ukraine: A telephone hotline set up in 2010 by the Federation of Trade Unions of Ukraine had received by June 2012 some 800 calls from workers about alleged violations of their rights, including with respect to family responsibilities. A significant proportion of callers, especially women, described these as threats or termination of their employment due to family responsibilities. The hotline provides a quick and anonymous way for workers and representatives of trade unions all over the country to obtain advice



and information about ways to resolve such problems or formally file a complaint and seek redress.

#### ARTICLE 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

### SOCIAL DIALOGUE

#### **Embed family-related leave into collective agreements**

The former Yugoslav Republic of Macedonia: Article 42 of the 2011 general collective agreement for the private sector spells out numerous family-related reasons that entitle a man or woman to up to seven working days' paid leave. These include for the worker's marriage (three days) or that of a child (two days), and death of the worker's spouse or child (five days). Article 43 concerns valid reasons for unpaid family-related leave which can be approved by the employer for up to three-months, depending on the enterprise production process. Examples of these are caring for a sick family member, and building or repairing a family dwelling. On the sectoral level, the branch collective agreements state that workers might have to take leave should the enterprise production process decrease; however the employer is required to take into account the family situation of workers including those who are single parents.

#### **Incorporate practical solutions into general and collective agreements**

Ukraine: Since 2008, the Government and joint representative bodies of employers' and workers' organizations at the national level have agreed to include family-related provisions in the General Agreement on Regulation of Basic Principles and Norms of Social and Economic Policy and Labour Relations. These provisions concern improving working conditions for women and men who care for children and sick or disabled family members. As a result, private enterprises have incorporated such provisions in their collective agreements.

#### ARTICLE 11:

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

## GOVERNMENTS

**Proactively plan implementation with social dialogue mechanisms**

Australia: On the same day that it ratified Convention No. 156, the federal Government's National Women's Consultative Council held a conference with representatives of employers' and workers' organizations. At the conference, held to plan for implementation, the federal Government outlined steps it was taking to give effect to the principles of Convention No. 156. These included: introducing a Family Allowance Supplement to minimize paid-work disincentives for low-income families; provision of better childcare; availability in the public service of parental leave and flexible working hours; active support for an Australian Council of Trade Unions' case on parental leave, which had been submitted to the Australian Industrial Relations Commission; and establishing consultative mechanisms between employers' and workers' organizations for devising measures to give effect to Convention No. 156.

**Publically recognize employers' good practices including in small enterprises**

Australia: The Business Achievement Awards, which since 2001 have encouraged innovation including for family-friendly workplaces, are given by the Equal Opportunity for Women in the Workplace Agency. The Fresh Ideas for Work and Family Grants Program, launched in 2009 by the federal Government, encourages small businesses to help workers balance their paid and family responsibilities.

Ukraine: As part of the communication component of a project on "Women and Children's Rights in Ukraine", contests were held in 2010 and 2011 including on the theme of Equal Opportunities: the Best Employer. In 2008 and 2009 another two contests on Best Company for the Family were held by Women's Perspectives, a non-governmental group. These contests were organized in partnership with the Ministry of Labour and Social Policy and the Slovak Agency for International Development, known as SlovakAid. More than 200 Ukrainian companies took part in the contests and presented their good practices to demonstrate ways to support workers with family responsibilities.

## WORKERS

**Build capacity of workers' organizations to mainstream gender**

Ukraine: Representatives of workers' organizations participating in a joint European Union and ILO project in 2009 to 2011 on "Gender Equality in the World of Work" developed gender equality plans for mainstreaming gender into their structures, policies and programmes with time-bound indicators. They also were involved in launching a "Start and Improve Your Business" training programme for women entrepreneurs, and learned how to facilitate participatory gender audits within workers' organizations.

**Improve women's representation in trade union movement for more voice and advocacy**

Niger: During 1982-1986, only one woman was among 21 members of the Executive Committee for the country's first Workers' Trade Union Federation (USTN). After women activists began raising the issue of more equal representation within their unions, two

women on the Committee in 1986 advocated for an USTN Department for Women's Affairs. The Department, which was established the same year, mobilized and helped educate women workers so they could participate more actively in the trade union movement and voice their specific concerns. Affiliated unions also set up similar units and succeeded in increasing the number of women activists within these, as well as the number of new trade unions representing women. While participation of women in trade unions is not directly linked with implementation of Convention No. 156, this example helps illustrate the challenges to overcome in order that women's representation and thus voice are strengthened, so that issues of concern to them can be raised and addressed including as workers with family responsibilities.

## EMPLOYERS

### **Close the gap between work-life balance policies and practice**

Australia: Human resources practices that are more "sophisticated and responsive" concerning work-family reconciliation have impacted workplaces in a positive way by linking work-life balance with enterprise organizational culture and sustainability. The gap between policies on achieving such balance and actual practice has become a growing focus of human resources efforts. Some business groups in Australia have promoted family-friendly workplaces by sponsoring employer awards, which since 1992 have been administered at the federal level through the Government's industrial relations portfolio. Sponsoring groups include the Australian Chamber of Commerce and Industry, and the Business Council of Australia.

The former Yugoslav Republic of Macedonia: Some companies have formally introduced flexitime arrangements, so that workers with family responsibilities can drop off children at school or do errands outside of working hours. Most of these arrangements comprise a start time of between 8:00 and 10:00, and an ending time between 16:00 and 18:00, respectively.

Ukraine: Companies are using, among other strategies, codes of conduct to identify problems related to discrimination based on sex or family responsibilities, gender equality plans and measures, flexitime and teleworking, and establishing on-site "parenting rooms", daycare facilities or providing financial or other assistance for preschool placements.

### **Align workplace hours with school hours**

The former Yugoslav Republic of Macedonia: In 2002 most large private enterprises changed their working hours to 9:00 to 17:00, although publically-run kindergartens were slow to align their opening hours. However, the Macedonian Telecom Company and Macedonian Mobile Company, both semi-private and based in Skopje, made an agreement with the privately-run Izvorche Montessori Kindergarten to accept employees' children as of 7:00 and to remain open until 18:00.

### **Build employers' capacity to mainstream gender**

Niger: Educational activities on concerns of women workers and discrimination against them have been undertaken with members of the Federation of Employers' Organizations of Niger.



Ukraine: Executive heads and other representatives of employers' organizations participating in a joint European Union and ILO project in 2009 to 2011 on "Gender Equality in the World of Work" developed gender equality plans for mainstreaming gender in their structures, policies and programmes with time-bound indicators. They also were involved in launching a "Start and Improve Your Business" training programme for women entrepreneurs and learned how to facilitate participatory gender audits within their members' enterprises.

## SOCIAL DIALOGUE

### **Seek multidisciplinary and broad social consensus**

Chile: Social consensus was a key factor in developing two good practice measures for implementing Convention No. 156. During the design process of both measures, two successive Presidents of Chile invited specialists from various disciplines, sectors and organizations – including women's right groups – to contribute their expertise. For the *Chile Crece Contigo* measure, the post of Presidential Adviser for the Reform of Policies on Children was established. ILO support was provided concerning the postnatal paternity leave measure, for which a Presidential Advisory Committee on Women, Work and Maternity was established.

Niger: The National Social Dialogue Commission is a standing tripartite body in which the social partners can discuss issues related to any kind of dispute including workplace-related. The Commission's 28 members are equally-distributed among Government, the most representative employers' and workers' organizations, and representatives of civil society and cooperative associations. This institution is an example of an entry point for advancing gender equality more generally, including by increasing women's participation, so that issues including workers with family responsibilities can be better addressed.

### **Make progress through social partners' points of consensus**

Australia: Unions and employers' groups in the country have held different views on how best to support workers with family responsibilities, as well as on the role of labour standards as a basis for that support. However there is substantial consensus on the crucial role that workplace-level negotiations have to play in rendering workplaces more family-friendly. Unions and employers have been consulted often on federal Government-produced guides on application of Convention No. 156 and have shared their good practices in enterprise-level social dialogue on accommodating workers with family responsibilities while also meeting business' needs. One good practice, which received support by the Victorian Government's "better practice" grant, is the Victorian Hospitals Industrial Association and the Australian Service Union's joint manual on family-friendly workplaces in the community-services sector.

## Trends and challenges revealed by recent research

Trends in recent legislative and policy texts are analyzed in the most recent General Survey<sup>5</sup> which is featured in the annotated bibliography. Following are some trends in research identified during compilation of the annotated bibliography.

1. Constant barriers to gender equality: A more equitable sharing by men and women of family responsibilities and effective maternity protection are critical to building on successes during the last three decades in legal and policy reforms for women's rights. For example UN Women's *Progress of the World's Women 2011-2012* noted that while 173 countries had guaranteed paid maternity leave, breaking down the barrier of the "maternal wall" depended on effective implementation of such reforms.
2. Scarce information on some groups: Very few texts have explored the relationship between effective maternity protection and its link with reducing HIV infection among infants. Few addressed maternity protection and support for family responsibilities for domestic workers, women in rural areas, and in the informal economy. While there is growing interest in extending current provisions to provide universal social security coverage including maternity protection, there is a need for further research and country studies on its practical application, in conformity with the Social Protection Floors Recommendation, 2012 (No. 202).
3. Striking commonalities among workers' concerns: A dominant and consistent worry among workers – from surveys of academics in advanced economies to interviews with informal economy domestic workers in developing ones – is how to balance work with family responsibilities. Women and men in different sectors and across countries as diverse as Botswana, Honduras, Russian Federation, United States and Viet Nam share concerns about how being a parent impacts their ability to get a job, pressures as a caregiver to settle for work with poor conditions, pay or job loss due to family responsibilities, and poverty that can result from it.
4. Business case and new pragmatism of enterprises: Many researchers and authors note that human reproduction and rights-based equality should be considered along with business production and efficiency. Yet few provide detailed examples or guidance concerning financing mechanisms for such protection. And none provide estimates of financial and social costs in the absence of such protection – for example the effects of many countries' dramatically-low fertility rates on businesses, tax revenues, pension schemes, and national competitiveness. Human resources practices among many national and international businesses – particularly large ones – are focusing on closing gaps between relevant enterprise policies and actual practice; in a growing number of countries, legislated quotas for women's increase in governance and management positions have been a critical impetus.
5. Data and research gaps: Among gaps identified in the texts include national and global data on dismissal of women workers on grounds of maternity, as well as of men and women workers for reasons of family responsibilities; better design and more frequent collecting of women and men's time-use data and its wider use in statistics, policies and measures; linkages between employment guarantee policies and unpaid work; quantitative and qualitative-based research on care needs; and

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<sup>5</sup> See paragraphs 784-786.

replacement of traditional “male-headed household” data collection models and studies to capture intra-household dynamics such as decision-making, labour participation and the gender division of unpaid work in households.

6. Some so-called “family-friendly” initiatives undermine equality: Several studies warned about legal reforms and workplace measures that do not proactively and simultaneously promote more gender equality. When combined with existing discriminatory labour market practices, these measures can further “feminize” atypical employment, deteriorate women’s working conditions, and reinforce women’s double burden of paid and unpaid work. When legislation and measures assume that women – and not also men – have family responsibilities, the “male breadwinner” model is perpetuated.
7. Men’s roles: Most texts call for men’s increased engagement in family responsibilities as a precondition to women’s equitable participation in paid work. Yet few incorporate a “men and masculinities” perspective and even less propose strategies based on such an analysis. One high-level study provides such insightful findings and innovative recommendations – yet there is little cross-fertilization with other research. Many texts cite examples of legislation that excludes men, such as a national labour code that provided the right to leave for caring for a child only to working women; this couldn’t be transferred to the father unless the mother was deprived of her maternal rights, hospitalized, incarcerated or dead. Yet, a paternity quota in one country had “significantly increased the number of fathers taking the leave” noted one text.
8. More hours, less pay: Data show that women everywhere spend more hours on unpaid care work than men, and less time in paid work. Women work longer hours daily than men when both types of work are considered. This means less time for women to invest in their education and training, be involved in workers’ and employers’ organizations, attend to their own health, and take up leisure activities. The overwhelming majority of studies link such disparities with the gender pay gap – whose reduction has been slow or even has backtracked – and which is influenced by austerity budget cuts to social and care services, women’s occupational choices and employment patterns.
9. Good practices and challenges: Proven approaches to ensuring that national and workplace policies are responsive and relevant to workers with family responsibilities – as well as to employers’ needs – include setting up tripartite national policy frameworks, encouraging collective bargaining agreements on statutory requirements of Convention No. 156, and fostering family-friendly workplace measures. Political will to prioritize maternity protection remains one of the greatest challenges; once this is obtained, finance strategies and funding allocation can then take place. Good practices of workplace solutions for such protection are well-documented.

## **World of work-related opportunities to step up ratification efforts**

### **› Consensus of ILO constituents on strategies**

Discrimination related to pregnancy and maternity was identified by the International Labour Conference in its 2009 Resolution concerning gender equality at the heart of decent work as “a major challenge”. The Conference noted that “lack of social security, the gender pay gap, low pay in general, inadequate working conditions, exploitation and

abuse including sexual harassment, and the absence of voice and representation are exacerbated for women because of the additional responsibilities of their reproductive role and lack of access to resources and affordable services”.<sup>6</sup> Yet the reconciliation of work and family responsibilities is possible, stated the Conference, “when approached in a holistic manner. The global decline in fertility – which has been predicted to eventually occur in all regions – has to be considered within the national realities of the levels of female education, access to maternity protection and access to affordable quality child-care and dependent care. When family-friendly policies are introduced, paid work and caregiving become compatible”. There is a strong link, observed the Conference, “between fertility rates, improved education, high labour force participation of women, and non-discrimination policies which are aimed at balancing work and family responsibilities”.<sup>7</sup>

– *Men’s role in families*

The Conference stressed the importance of creating “conditions for men’s active participation in family responsibilities to fulfill the need to reconcile work and personal life, especially in relation to childcare and dependent care”.<sup>8</sup> Work-family reconciliation measures, stated the Conference, were not just about women but also men.

“A variety of new measures (such as paternity leave and/or parental leave) have succeeded in permitting working fathers to be more involved in the sharing of family responsibilities and could be replicated. This applies to caring for children and dependent family members. There is evidence that when the participation of women in the workforce increases, more men take parental leave. The birth rate has also been seen to improve; and men’s long working hours can be alleviated. In some societies, today’s fathers take paternity leave and share more in family responsibilities, showing a gradual attitudinal shift and breaking down of gender stereotypes. Innovate legislation and proactive policies, as well as awareness raising on ‘paternity’ as a social value and responsibility, could enhance this shift”.<sup>9</sup>

– *Economic crises and recovery packages*

The Conference agreed that crises should not be used as excuses to create even greater inequalities nor undermine women’s acquired rights: “During times of economic crisis, not respecting fundamental principles and rights at work would represent both a failure to uphold universally recognized rights and a failure of economic policy to ensure growth and recovery. This current crisis should be viewed as an opportunity to shape new gender equality policy responses”.<sup>10</sup> For this reason, recovery packages during economic crises “need to take into account the impact on women and men and integrate gender concerns in all measures. Short-term measures can include generating and saving jobs, income-replacement measures to assist women and men caring for family members...”.<sup>11</sup> And, stated the Conference:

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<sup>6</sup> Ibid, page 13/65, para. 3.

<sup>7</sup> Ibid, page 13/70, para. 28 and page 13/66, para. 4.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid, page 13/66, para. 6.

<sup>10</sup> Ibid, page 13/67, para. 9.

<sup>11</sup> Ibid, page 13/66, para. 10.

“Medium and long-term measures should seek to revise legislation, including labour laws where appropriate, to provide better opportunities for women and men to reconcile work and family responsibilities... In times of economic crisis, government investment in public and community services should be strengthened where appropriate, including in rural areas... There should be a focus on greater sharing of care and home responsibilities so that women and girls do not continue to carry the majority of domestic tasks. In all discussion on recovery packages, both regarding their design and assessing their success, women must have an equal voice with men”.<sup>12</sup>

– *Role of governments and social partners*

Governments should create a conducive environment for gender equality, noted the Conference, and “need to affirm clearly their commitment to gender equality and demonstrate their political will to develop the legal policies and frameworks to make gender equality in the world of work a reality. Gender equality should be part of national development policies, including affordable and sustainable public programmes and child and dependent care services for all”.<sup>13</sup>

Governments need to “secure affordable quality health, education and public services for all”. They “have the lead role in taking appropriate measures to formalize the informal economy...[and] Governments should take steps to extend the coverage of social security and social protection to all”.<sup>14</sup> Governments also need to develop – together with the social partners – “adequate policies allowing for a better balance of work and family responsibilities for women and men in order to allow a more equal sharing of these responsibilities. Such policies should include parental and/or paternity leave (with incentives for men to use them since, when available, men do not often take advantage of them)”. And, “infrastructure for childcare and dependent care, backed by appropriate human and financial resources, should be pursued”.<sup>15</sup>

Governments should develop gender equality indicators, which could include childcare and dependent care provision; regularly compile, publish and disseminate sex-disaggregated data on these indicators; and set up systems to measure and monitor progress towards agreed targets.<sup>16</sup> They should also “strengthen the capacity of national statistical offices and, when necessary, develop measurement systems, to collect comprehensive information effectively on all categories of activities, including through time-use surveys, to inform policy development that facilitate the sharing of all unpaid work between women and men”.<sup>17</sup>

Workers’ organizations, stated the Conference, “should continue to contribute to achieving gender equality in the workplace by representing the workers’ point of view from a gender perspective in discussion on issues such as legislative reform” and “by dissemi-

<sup>12</sup> Ibid, para. 11.

<sup>13</sup> Ibid, page 13/72, para. 38.

<sup>14</sup> Ibid, page 13/73, paragraphs 41 and 43.

<sup>15</sup> Ibid, para. 42.

<sup>16</sup> Ibid, para. 45.

<sup>17</sup> Ibid, page 13/73, para. 46.



nating information, building capacity and strengthening expertise on gender equality in areas such as...maternity protection and parental leave”.<sup>18</sup>

Employers’ organizations can contribute to achieving gender equality by, among other things, assisting members to develop gender-sensitive workplace policies and measures, organizing training and workshops, and promoting fundamental principles and rights at work among their members including awareness raising, training and technical assistance on the right to non-discrimination, and especially sex-based discrimination.<sup>19</sup>

### ► Focus on the four strategic objectives of decent work

The Conference recalled the 2008 Declaration on Social Justice for a Fair Globalization, in which the ILO’s four strategic objectives – of principles and rights, employment, social protection, and social dialogue and tripartism, are implemented through international labour standards with gender equality as cross-cutting.

#### – *Principles and rights, and the role of international standards*

The Conference noted that Convention Nos. 183 and 156 call on States to provide policy guidance and practical means for reconciling work and family responsibilities, and for protecting pregnant workers. It observed that “Convention No. 156 applies to both men and women workers with responsibilities in relation to their dependants”. Although protecting maternity had received much attention from ILO member States, more analysis is required “regarding the low number of ratifications of Convention No. 183 and efforts to promote it should be stepped up”.<sup>20</sup> Two fundamental Conventions of particular relevance to gender equality, specified the Conference, are the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).<sup>21</sup>

The Conference stated that ILO should promote improved ratification rates of Convention Nos. 156 and 183, analyze obstacles to ratification, and ensure their effective implementation. ILO should also “...support the strengthening of labour inspection systems and courts so that they are able to monitor more effectively the application of key equality Conventions and issues of sex discrimination at work”.<sup>22</sup>

#### – *Employment*

Concerning lifelong learning, apprenticeship opportunities and vocational training, the Conference stated that these need to be accessible to enable both women and men to adapt to changing skills and technological demands. The Conference also observed that “setting targets for gender balance within training [and] ensuring flexible training delivery times and methodologies...can be helpful in facilitating equal access for women in these opportunities”.<sup>23</sup>

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<sup>18</sup> Ibid, page 13/74, paragraphs 50(d) and (e).

<sup>19</sup> Ibid, paragraphs 49(c) and (d).

<sup>20</sup> Ibid, page 13/71, para. 30.

<sup>21</sup> Ibid, para. 34.

<sup>22</sup> Ibid, page 13/77, para. 56(b) and (e).

<sup>23</sup> Ibid, page 13/68, para. 19.

Women's unpaid work is intensified by limited public investment in rural areas, which results in poor infrastructure and services; this also curtails women's income opportunities. On the other hand, noted the Conference, increased public investment in social infrastructure in rural areas can significantly alleviate women's family responsibilities and enable them to move out of poverty". Employment-intensive public works can be an important means for generating employment in poor communities and creating assets. "Yet", the Conference observed, "much investment is concentrated on physical infrastructure instead of social infrastructure".<sup>24</sup>

– *Social protection*

The Conference restated the approach for advancing gender equality as outlined in the 2007 ILC Conclusions on promoting sustainable enterprises: "Sustainable tax-based or other national models of universal social security that provide citizens with access to key services such as quality health care, unemployment benefits, maternity protection and a basic pension, are key to improving productivity and fostering transitions to the formal economy". And paternity and /or parental benefits "should not be forgotten".<sup>25</sup>

Occupational safety and health considerations previously focused on dangerous jobs predominantly held by men – yet the increasing proportion of women in the workforce points to the usefulness of more research on the differentiated impact of workplace risks on women and men. For this reason, noted the Conference, greater attention needs to be paid to men's and women's specific occupational safety and health needs including reproductive health of both sexes, by promoting appropriate policies and practices for them.<sup>26</sup>

The need for integration of maternity protection as part of governments' responsibility for social and economic policy should be recognized and applied. Eliminating discrimination due to family obligations – particularly hiring and firing policies that discriminate against women of childbearing age – through better legal frameworks and effective application is necessary. With a view to "making progress towards giving effect to the principle of paid maternity leave and paternity and/or parental leave", observed the Conference, "public support systems and other measures can and need to be developed".<sup>27</sup>

It noted that "tensions in combining work and family responsibilities still hamper the full participation of women in the workforce and their economic empowerment. States should take measures to promote and encourage a better work-family balance, including working to ensure more and better quality services for care of children and dependants. Legislation and policies (such as paid paternity and/or parental leave) that encourage men to participate in care responsibilities have been shown to work across a variety of countries". Men's behavior needs to change, as shared parental responsibilities are key to changing gender stereotypes and barriers, and to adjusting the gender division of labour in households to a more equitable distribution of tasks, which has significant benefits for both sexes.<sup>28</sup>

<sup>24</sup> Ibid, page 13/69, paragraphs 22 and 23.

<sup>25</sup> Ibid, page 13/70, para. 25.

<sup>26</sup> Ibid, para. 26.

<sup>27</sup> Ibid, para. 27.

<sup>28</sup> Ibid, para. 28.

Regarding ILO's role in social protection, the Conference agreed it "should develop policy options to help constituents upgrade social security systems so that they are inclusive and take into account the needs of workers with family responsibilities; ...compile and disseminate good practices on parental leave and paternity and maternity leave and benefits, and provide technical support to governments to develop effective laws and policies; ...[and] promote gender-sensitive occupational safety and health policies, cultures and systems"<sup>29</sup>.

– *Social dialogue and tripartism*

Collective bargaining was described by the Conference as "a key means of determining terms and conditions of employment. [It] can ensure the systematic integration of gender dimensions into labour market and macroeconomic policies in general, and address specific issues such as...enhanced protection against discrimination, work-family measures and childcare infrastructure".

Tripartite dialogue, including through social and economic councils, national employment policy bodies and tripartite gender equality commissions, has been successful in achieving a more effective implementation of gender equality measures. Such tripartite bodies "should be created or strengthened to institutionalize social dialogue on gender issues. Negotiators and other representatives, both men and women, from the three parties should be trained in gender equality and equal pay, and more women negotiators are needed"<sup>30</sup>.

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<sup>29</sup> Ibid, page 13/76-77, paragraphs 54(a), (d) and (f).

<sup>30</sup> Ibid, page 13/72, para. 37.

## Annex: Annotated bibliography

Entries that follow are categorized in two parts: the first comprises international, regional and some country-based information resources, and the second comprises guides and other practical tools. This bibliography, based on a much larger literature mapping, presents only a small selection of web-accessible information produced during the last ten years.

In the first part, international entries include major reports and surveys, as well as other texts of interest to a global readership. Relevant ILO publications are featured, followed by a selection from the UN system, ILO constituents, researchers and civil society. Regional entries provide only a small and incomplete snapshot of some themes including for country-focused texts. The second part of the bibliography features entries that provide examples of measures and strategies, or that serve as guidance for practitioners, with ILO entries are featured first, followed by a small selection of international, regional and country-focused entries.

Succinct descriptions about the entries – which are listed in chronological order beginning with the most recent – are in the published language. Concerning entries of ILO field office or department-produced information, the current title of these offices or departments is provided, as some have changed since publication.

### Part one: international, regional and country-based entries

#### › International

##### ***Database of National Labour, Social Security and Related Human Rights Legislation (NATLEX)***

ILO International Labour Standards Department

[www.ilo.org/natlex](http://www.ilo.org/natlex)

This database provides abstracts of legislation and relevant information indexed by keywords and subjects.

[www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=fr](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=fr)

Cette base de données fournit des résumés de législations et informations y relatives, répertoriés par mots-clés et classés par thèmes.

[www.ilo.org/dyn/natlex/natlex\\_browse.home?p\\_lang=es](http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=es)

Esta base de datos ofrece resúmenes de la legislación e información de referencia pertinente y están clasificados por palabras clave y por temas.

### ***Information System on International Labour Standards (NORMLEX)***

ILO International Labour Standards Department

[www.ilo.org/normlex](http://www.ilo.org/normlex)

This database comprises ratification information, reporting requirements, and comments of the ILO supervisory bodies, as well as national labour and social security laws.

[www.ilo.org/dyn/normlex/fr/f?p=1000:1:0::NO::](http://www.ilo.org/dyn/normlex/fr/f?p=1000:1:0::NO::)

Cette base de données fournit des informations sur les ratifications, les obligations de faire rapport, les commentaires des organes de contrôle de l'OIT, ainsi que sur les législations nationales du travail et de la sécurité sociale.

[www.ilo.org/dyn/normlex/es/f?p=1000:1:0::NO::](http://www.ilo.org/dyn/normlex/es/f?p=1000:1:0::NO::)

Esta base de datos ofrece información sobre las ratificaciones, la obligación de envío de memorias, los comentarios de los órganos de control y sobre la legislación nacional sobre trabajo y seguridad social.

### ***Database of Conditions of Work and Employment Laws***

ILO Conditions of Work and Employment Programme, Geneva

[www.ilo.org/dyn/travail/travmain.home](http://www.ilo.org/dyn/travail/travmain.home)

This database focuses on national labour laws in the areas of working time, minimum wages and maternity protection. Users can access information about maternity protection in ILO member States, with statutory entitlements divided into four areas of protection that cover the main provisions of Convention No. 183 on Maternity Protection. These provisions are on: maternity leave and other related types including paternity, adoption and parental leave, along with which workers are covered; cash benefits available during the various types of leave and source of funding; health protection measures such as on working time arrangements, avoidance of dangerous or unhealthy work, and breastfeeding; and protecting women against discrimination on maternity grounds and providing employment security. The main legislative sources for the database are national laws including different kinds of legislative provisions such as acts, decrees and regulations. Users can search by category or country, as well as generate a country profile.

### ***General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B)***

International Labour Conference, 101st Session, International Labour Office, Geneva, 2012

[www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174846/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174846/lang--en/index.htm)

This General Survey, which deals with all eight fundamental Conventions, seeks to give a global picture of the law and practice in member States in terms of the

practical application of ratified and non-ratified Conventions. The text describes various positive initiatives in some countries, in addition to certain serious problems encountered in implementation of provisions of the above-mentioned Conventions. The section on “sex discrimination and gender equality” under chapter 3 includes discussion of pregnancy and maternity, as well as workers with family responsibilities.

***Etude d'ensemble sur les conventions fondamentales concernant les droits au travail à la lumière de la Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable, 2008, Rapport III (partie 1B)***

[www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174829/lang--fr/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174829/lang--fr/index.htm)

Cette étude, qui porte sur l'ensemble des huit conventions fondamentales, cherche à broser un tableau global de la législation et de la pratique dans les États Membres touchant à l'application pratique des conventions ratifiées et non ratifiées. Le texte décrit les diverses initiatives positives prises dans certains pays tout autant que les problèmes graves qu'ils rencontrent dans l'application de leurs dispositions. La section «discrimination fondée sur le sexe et égalité de genre», au chapitre 3, comprend une discussion autour du thème de la grossesse et de la maternité, ainsi que des travailleuses et des travailleurs ayant des responsabilités familiales.

***Estudio General sobre los convenios fundamentales relativos a los derechos en el trabajo a la luz de la Declaración de la OIT sobre la justicia social para una globalización equitativa, 2008. Informe III (1B)***

[www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS\\_174832/lang--es/index.htm](http://www.ilo.org/ilc/ILCSessions/101stSession/reports/reports-submitted/WCMS_174832/lang--es/index.htm)

El presente Estudio General trata de los ocho convenios fundamentales y tiene el propósito de presentar un panorama general de la legislación y la práctica de los Estados Miembros desde el punto de vista de la aplicación de los convenios ratificados y no ratificados, El texto describe las diversas iniciativas emprendidas en varios países, y refiriéndose también a algunos problemas graves encontrados en la aplicación de los convenios antes mencionados. La sección sobre “la discriminación sexual y la igualdad de género” en el capítulo 3 incluye la discusión sobre el embarazo y la maternidad, así como los trabajadores con responsabilidades familiares

***Gender Dimensions of agricultural and rural employment: Differentiated pathways out of poverty – Status, trends and gaps***

ILO, Food and Agriculture Organization (FAO), and International Fund for Agricultural Development (IFAD), Rome, 2012

[www.fao.org/docrep/013/i1638e/i1638e.pdf](http://www.fao.org/docrep/013/i1638e/i1638e.pdf)

The division of domestic labour, for which the overwhelming responsibility for household tasks, care and other unpaid work falls on rural women, is one of the major constraints to unleashing their economic potential. Such work includes often-long

hours collecting water and fuel, which from a policy perspective could be addressed through targeted interventions in physical infrastructure. Women spend much of their day caring for their children, assisting other family members who are ill or disabled, and preparing food and cleaning; this calls for public financing of childcare services including support for daycare centres, health clinics, and improved food preparation tools among other things to help reduce the drudgery of such tasks. Rural women often work on the family farm or help in small family businesses without receiving remuneration as a result of unequal power relations within households which severely limits their ability to make claims on their contributions. To address this, policies should aim to strengthen women's legal rights, support self-help groups, and ensure women's greater participation in public life of rural communities. The report provides some examples of good practices in maternity protection.

### ***World Development Report 2012 – Gender Equality and Development***

World Bank, Washington D.C., 2012

<http://go.worldbank.org/F45LWEFBIO>

In order to promote women's access to economic opportunities, access to childcare and early childhood development programmes must be increased. If this isn't done, women can be "stopped short", not necessarily by a glass ceiling but by a "maternal wall". For every woman who dies during childbirth in Sweden, 1,000 women die in childbirth in Afghanistan, 815 in Somalia, 495 in Nigeria and 122 in Pakistan. Excess female deaths in low-income countries are tied to maternal mortality, as was the case historically in rich countries. Yet when countries "put their minds to it, maternal mortality has been brought down in a surprisingly short time". What to do at national policy level? Provide financial support, so that mothers give birth in well-functioning institutions. Promote innovation and learning since "poor data systems and bad health go together". Leverage partnerships to monitor, build accountability, and share knowledge. Countries that have sharply decreased maternal mortality in a short time – such as Malaysia, Sri Lanka, Maldives, Turkey and Honduras – are participating in a South-South knowledge exchange programme to share their good practices.

### ***Male involvement in the prevention of mother-to-child transmission of HIV***

World Health Organization, Geneva, 2012

[www.who.int/reproductivehealth/publications/rtis/9789241503679/en/index.html](http://www.who.int/reproductivehealth/publications/rtis/9789241503679/en/index.html)

There is ample evidence that documents men's impact on the various components of programmes on prevention of mother-to-child transmission (PMTCT). Male involvement has been recognized as a priority area of intervention within this woman-centred approach. The paper highlights benefits of men's engagement in PMTCT for reducing HIV, barriers to their engagement, and promising strategies to involve men. The paper also reviews conceptual and methodological issues, especially those that merit further consideration and research.

***“When Scientists Choose Motherhood”***

Article in *American Scientist*, volume 100, number 2, page 38, city not cited, March-April 2012

[www.americanscientist.org/issues/feature/2012/2/when-scientists-choose-motherhood/2](http://www.americanscientist.org/issues/feature/2012/2/when-scientists-choose-motherhood/2)

Women are well-represented in social sciences but in short supply in math-intensive fields like chemistry, physics and engineering. In the top 100 US universities in 2007, only 4.4 to 12.3 per cent of full professors in such fields were women, and 16 to 27 per cent were assistant professors. “The effect of children on women’s academic careers is so remarkable”, notes the report, “that it eclipses other factors [such as life-long sex discrimination and career preferences] in contributing to women’s underrepresentation in academic science”. Tenure systems, created when mostly unmarried men lived in university residences, have not adapted enough to professors’ family responsibilities. In one study, childless women and men professors worked on average 78 hours per week both in the workplace and at home; yet men with children worked 88 hours in both while women with children worked 100-plus hours in both. “The reality of the lives of women professors with children”, states the report, “may seem too stark for their younger colleagues, post-doctorate and students”, thus deterring them from entering the track system for professorships. Suggested strategies include part-time tenure track positions that become full-time once children are older, offering couples who are both professors the temporary option of sharing one full-time position, temporarily stopping “tenure clocks” for primary caregivers, and lengthening time for work on grants to accommodate child-rearing.

***Work-life balance***

Prepared for 312th Session of the ILO Governing Body (GB.312/POL/4), ILO, Geneva, 2011

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_163642.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_163642.pdf)

The current interest in work-family reconciliation policies stems from challenges including the rise in women’s paid work, non-standard work, intensification of paid work, ageing, and family pattern changes such as increased single-parent households. Austerity measures during the current economic crisis have further exacerbated the competing pressures of paid work and family responsibilities. Data show that women everywhere still spend considerably more hours in unpaid care work than men, and less time in paid work. When considering women’s total number of hours spent in paid and unpaid care work, they have longer working days than men which means less time for women to invest in their education and training, be involved in workers’ organizations, and to partake in leisure and their own health care. Lack of or inadequate public transport and social services exacerbates work-family tensions and also affects workers’ well-being and productivity.

***Equilibre entre vie professionnelle et vie privée***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_164329.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_164329.pdf)



L'intérêt actuel pour les politiques de conciliation travail-famille résulte de nouveaux défis, tels que l'augmentation du travail rémunéré des femmes, le travail atypique, l'intensification du travail rémunéré, le vieillissement et les changements du modèle familial, comme l'augmentation des ménages monoparentaux. Les mesures d'austérité dues à la crise économique actuelle ont encore aggravé les pressions concurrentes du travail rémunéré et des responsabilités familiales. Les données montrent que, partout dans le monde, les femmes passent toujours beaucoup plus de temps que les hommes à prodiguer des soins non rémunérés et moins de temps qu'eux dans un travail rémunéré. En examinant le nombre total d'heures consacrées par les femmes au travail rémunéré et non rémunéré, elles ont des journées de travail plus longues que celles des hommes, ce qui signifie qu'elles ont moins de temps à investir dans leur éducation et la formation, pour s'impliquer dans les organisations de travailleurs, s'adonner à des loisirs et s'occuper de leur propre santé. L'absence ou l'insuffisance des transports publics et des services sociaux aggrave les tensions travail-famille et affecte également le bien-être et la productivité des travailleurs-euses.

### ***Conciliación del trabajo y la vida familiar***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_163643.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_163643.pdf)

El interés actual en las políticas de conciliación del trabajo y la vida familiar, se deriva de desafíos como la expansión del empleo femenino remunerado y de los empleos atípicos, la intensificación del trabajo remunerado, el envejecimiento de la población y los cambios en los modelos familiares, tales como el crecimiento de los hogares monoparentales. Las medidas de austeridad en la actual crisis económica, han exacerbado aún más las presiones concurrentes del trabajo remunerado y las responsabilidades familiares. Los datos disponibles muestran que en todas partes las mujeres siguen dedicando muchas más horas que los hombres a labores no remuneradas de prestación de cuidados y menos tiempo al trabajo remunerado. En cuanto al número total de horas que dedican las mujeres al trabajo remunerado y no remunerado de prestación de cuidados, las mujeres suelen tener jornadas laborales más largas que los hombres, lo que significa menos tiempo para invertir en su propia educación y formación, para formar parte de un sindicato, para ocio y el cuidado de su propia salud. La falta o insuficiencia de transporte público y servicios sociales, potencian las tensiones entre la vida profesional y la vida familiar, al tiempo que afectan al bienestar y productividad de los trabajadores et trabajadoras.

### ***Equality at work: The continuing challenge – Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B)***

Prepared for 100th Session of the International Labour Conference, ILO, Geneva, 2011

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_154779.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_154779.pdf)

A inquiry by ILO in 2010 on maternity legislation found that many countries provide insufficient benefits for pregnant women. In Africa only 39 per cent of countries

reviewed were found to provide benefits in accordance with ILO standards, and in Asia this requirement was met by only two of 23 countries reviewed. ILO standards were found to be met by 78 per cent of developed economies, including those in the European Union. Globally, some countries were found to provide no cash benefits for pregnant women – such as Lesotho, Papua New Guinea, Swaziland, and the United States. Such benefits help ensure women can maintain an adequate standard of living and health for themselves and their children, and that labour markets do not structurally disadvantage them due to pregnancy.

***L'égalité au travail: un objectif qui reste à atteindre – Rapport global en vertu du suivi de la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail, Rapport I(B)***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_154781.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_154781.pdf)

Une enquête menée en 2010 par l'OIT sur la législation concernant la maternité a déterminé que de nombreux pays fournissaient des prestations insuffisantes aux femmes enceintes. En Afrique, seulement 39 pour cent des pays examinés offraient des prestations conformes aux normes de l'OIT, et, en Asie, cette exigence était suivie par seulement deux des 23 pays pris en compte. Les normes de l'OIT étaient respectées par 78 pour cent des pays à économie développée, y compris ceux de l'Union européenne. A l'échelle mondiale, certains pays ne proposaient pas de prestations en espèces aux femmes enceintes – comme le Lesotho, la Papouasie-Nouvelle-Guinée, le Swaziland et les États-Unis. Ces prestations permettent d'assurer aux femmes un niveau de vie et une hygiène de vie suffisants pour elles-mêmes et leurs enfants et permettent aussi d'éviter que le marché du travail ne les désavantage pas en raison de leur grossesse.

***La igualdad en el trabajo: un objetivo que sigue pendiente de cumplirse – Informe Global con arreglo al seguimiento de la Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_154780.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_154780.pdf)

Un estudio realizado por la OIT en 2010 sobre la legislación de la maternidad, encontró que muchos países proporcionan prestaciones insuficientes a las mujeres embarazadas. En África solo el 39 por ciento de los países cuyos datos se han examinado garantizan prestaciones respetuosas con las normas de la OIT, y en Asia lo hacen sólo dos de los 23 países examinados. Se considera que las normas de la OIT se cumplen en un 78 por ciento en las economías de desarrollo, incluidas las de la Unión Europea. A nivel mundial, se encontró que algunos países no proporcionan la menor prestación pecuniaria a las mujeres embarazadas – como Lesoto, Papúa Nueva Guinea, Suazilandia, y los Estados Unidos. Este tipo de beneficios ayudan a las mujeres a garantizar una condición de salud apropiada y un nivel de vida adecuado para ellas y para sus hijos y a que el mercado laboral no resulte estructuralmente desfavorecido para ellas como consecuencia del embarazo.

***Indigenous women workers with case studies from Bangladesh, Nepal and the Americas***

Vinding, D. and Kampbel, E.R., ILO International Labour Standards Department, and Bureau for Gender Equality, Working Paper 1/2012, Geneva

[www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_173293.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_173293.pdf)

Despite the fact that the indigenous women described in these three case studies live and work in diverse contexts, their situations – like those of other such women around the world – are remarkably similar in terms of lack of employment opportunities and decent working conditions. Among the top three multiple forms of discrimination faced by especially-poor indigenous women is bias based on their perceived family responsibilities. Indigenous women’s economic participation tends to be under-registered in many parts of the world; the women themselves often consider that unpaid “family obligations” include taking care of livestock and growing basic crops, even if some of the resulting products are sold. Indigenous women often work in unhealthy environments; for example in rural areas, women workers on commercial farms are often exposed to unprotected use of pesticides and other harmful chemicals. Although in one case study labour legislation required that carpet factories provide worksite accommodation for women workers and their children, there were no childcare facilities so small children had to stay at their mothers’ side while working.

***Progress of the World’s Women 2011-2012 – In pursuit of justice***

UN Women, New York, 2011

<http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf>

In the last 30 years, significant progress has been made on legal reform in favour of women’s rights – but the challenge is to put these into practice. Globally 173 countries guarantee paid maternity leave. Yet the two areas “in which women’s rights are least protected, where the rule of law is weakest and men’s privilege is most fiercely guarded are, first, women’s rights in the private and domestic spheres, including... to make decisions about reproductive health”. The second is women’s economic rights, including for decent work. Central to success of legislation and policies to make workplaces more accessible to women is to take into account the fact that “in all countries, women are primarily responsible for household and child-rearing tasks – unpaid labour which impacts on their ability to access the labour market on equal terms to men”. Annexes comprise national statistics from almost all countries on the theme of women’s economic opportunities, including data on length of paid maternity leave, and mandatory paid or unpaid paternity leave.

***Le Progrès des Femmes dans le monde 2011-2012 – En quête de justice***

[http://progress.unwomen.org/pdfs/FR\\_Report-Progress.pdf](http://progress.unwomen.org/pdfs/FR_Report-Progress.pdf)

Au cours des 30 dernières années, des progrès significatifs ont été accomplis en matière de réformes juridiques en faveur des droits des femmes, mais le défi est maintenant de mettre ces principes en pratique. Mondialement, 173 pays garantissent un congé maternité payé. Pourtant, les «deux domaines dans lesquels les

droits des femmes sont le moins protégés, c'est à dire où l'état de droit est le plus faible et où les privilèges des hommes sont les plus fortement ancrés» sont, premièrement, «les droits des femmes dans les sphères domestique et privée, notamment... leurs droits de prendre les décisions relatives à leur sexualité». Le second domaine est celui des droits économiques des femmes, y compris pour le travail décent. La réussite de la législation et des politiques visant à rendre les lieux de travail plus accessibles aux femmes repose principalement sur la reconnaissance du fait que, dans tous les pays, les femmes assument une «double charge qui consiste à assurer les besoins de leur famille et à effectuer une grande partie des tâches ménagères non rémunérées... Cette double charge limite le temps que les femmes peuvent consacrer aux loisirs et a une incidence sur leur bien-être, réduisant par ailleurs leur possibilité de recevoir une éducation et d'obtenir un emploi rémunéré». Les annexes incluent des statistiques nationales de la plupart des pays sur les opportunités économiques offertes aux femmes, ainsi que des données sur la longueur du congé maternité rémunéré, du congé paternité obligatoire rémunéré ou non.

***El Progreso de las Mujeres en el mundo 2011-2012 – En busca de la justicia***

<http://progress.unwomen.org/pdfs/SP-Report-Progress.pdf>

En los últimos 30 años, la reforma jurídica en pro de los derechos de las mujeres ha avanzado de manera considerable – pero el reto es ponerlos en práctica. A nivel mundial 173 países garantizan la licencia de maternidad con goce de sueldo. Sin embargo, hay dos áreas “en las que los derechos de las mujeres están más desprotegidos, donde el estado de derecho es más imperfecto y los privilegios de los hombres se defienden con mayor tenacidad: por una parte, los derechos de las mujeres en su esfera privada incluyendo...tomar decisiones sobre su salud reproductiva”. El segundo son los derechos económicos de las mujeres, incluyendo el derecho al trabajo decente. Lo fundamental para asegurar el éxito de la legislación y las políticas para hacer del mercado laboral un espacio más accesible para las mujeres es de tener presente que “en todos los países, las mujeres son ante todo responsables de las tareas del hogar y la crianza de niños y niñas – un trabajo no pagado que incide en su capacidad de acceder al mundo laboral en términos de igualdad con los hombres”. Los anexos incluyen las estadísticas nacionales de casi todos los países sobre el tema de las oportunidades económicas de las mujeres, incluidos los datos sobre la duración de la licencia de maternidad con goce de sueldo, y licencia de paternidad obligatoria con o sin goce de sueldo.

***Maternity at work: A review of national legislation – Findings from the ILO Database of Conditions of Work and Employment Laws (second edition)***

ILO, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_124442.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_124442.pdf)

This report reviews national legislative provisions for maternity protection in 167 member States. The first part notes that some 30 per cent fully meet the requirements of Convention No. 183 on Maternity Protection concerning three key aspects: duration,

benefit paid, and source of the funding. In other words, these countries provide for at least 14 weeks of leave; benefits paid are at a rate of at least two-thirds of previous earnings; and these are paid by social security, public funds or in a manner determined by national law and practice where the employer is not solely responsible for payment. Regions with the highest proportion of countries in conformity with these three key aspects are Central Asia and Europe, while this is particularly low in the Middle East and Asia and the Pacific. The report's second part, which discusses other relevant kinds of leave, found that 49 countries provide some form of leave that fathers can take around the birth of their child. A similar number of countries provide some type of parental leave in addition to maternity leave, and many make leave available to adoptive parents. However a remaining and key question is whether legislation is effectively implemented, so that eligible women benefit from their maternity protection rights, as well as freedom from discrimination in employment.

***La maternité au travail: Une revue de la législation nationale – Résultats de la Base de données de l'OIT sur les lois relatives aux conditions de travail et de l'emploi (deuxième édition)***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_142158.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_142158.pdf)

Ce rapport passe en revue les dispositions législatives nationales pour la protection de la maternité dans 167 États membres. La première partie relève que quelque 30 pour cent d'entre ces états satisfont pleinement aux prescriptions de la convention n° 183 sur la protection de la maternité par trois aspects clés: la durée, la prestation versée, et la source du financement. En d'autres termes, ces pays fournissent au moins 14 semaines de congé; les prestations versées sont à un taux d'au moins deux tiers des gains antérieurs, et celles-ci sont payées par la sécurité sociale, des fonds publics ou d'une manière déterminée par le droit et la pratique nationale lorsque l'employeur n'est pas seul responsable du paiement. Les régions où l'on trouve le plus de pays en conformité avec ces trois aspects clés sont l'Asie centrale et l'Europe, alors que le Moyen-Orient et l'Asie et le Pacifique comptent une représentation particulièrement faible. La deuxième partie du rapport, qui traite d'autres formes de congés relatifs à la maternité, constate que 49 pays prévoient un congé que les pères peuvent prendre avant ou après la naissance de leur enfant. Un nombre similaire de pays prévoient un congé parental en plus du congé de maternité, et bon nombre de pays élargissent ce droit aux parents adoptifs. Il reste cependant une question clé qui est de savoir si la législation est effectivement mise en œuvre, afin que les femmes pouvant prétendre aux droits de protection de la maternité puissent réellement en bénéficier et soient libres de toute discrimination dans l'emploi.

***La maternidad en el trabajo: Examen de la legislación nacional – Resultados de la Base de datos de la OIT sobre las leyes relacionadas a las condiciones de trabajo y del empleo (segunda edición)***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_142159.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_142159.pdf)

En el presente informe se examinan las disposiciones legislativas nacionales que rigen la protección de la maternidad en 167 Estados Miembros. La primera parte indica que aproximadamente el 30 por ciento cumplen con los requisitos del Convenio núm. 183 sobre la protección de la maternidad en relación con tres aspectos fundamentales: la duración, la prestación que se remunera y la fuente de la financiación. En otras palabras, estos países contemplan un mínimo de 14 semanas de licencia, retribuidas al menos dos tercios de las ganancias anteriores, y costeadas con cargo a la seguridad social, a fondos públicos o de la manera que determine la legislación y la práctica nacionales cuando no es el empleador el único responsable del pago. Las regiones que tienen la proporción más elevada de países que están en conformidad con estos aspectos del Convenio son Asia Central y Europa, mientras que esa conformidad es especialmente baja en Asia y el Pacífico y en Oriente Medio. La segunda parte del informe, que analiza otros tipos de disposiciones en materia de licencia, encontró que 49 países prevén alguna forma de licencia a la que pueden acogerse los padres en torno a la fecha de nacimiento de un hijo. Un número similar de los países prevén algún tipo de licencia parental además de la licencia de maternidad, y muchos ofrecen una licencia a los padres y madres adoptivos. Sin embargo, queda preguntarse si la legislación se aplica en la práctica para que las mujeres puedan beneficiarse de los derechos de protección de la maternidad, así como de la no discriminación en el empleo.

***Decent Work for Domestic Workers – Report IV (1)***

Prepared for 99th Session of the International Labour Conference, ILO, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_104700.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_104700.pdf)

Convention No. 183 on Maternity Protection establishes a 14-weeks leave minimum; this is reflected in legislation that is applicable to domestic workers in many industrialized countries, several transition economies and in a number of developing countries. However, domestic workers have limited access to the kind of measures and protection that help ensure them safe and healthy pregnancies and births, a replacement income when on maternity leave, and the right to return to their jobs. Pregnancies often result in dismissal of domestic workers, and in some cases legislation may permit or facilitate such dismissals. Concerning migrant domestic workers, a number of receiving countries have laws or regulations that allow dismissal and/or repatriation of domestic workers found to be pregnant.

***Travail décent pour les travailleurs domestiques – Rapport IV (1)***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_104701.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_104701.pdf)

La Convention n° 183 sur la protection de la maternité établit un congé minimum de 14 semaines qui est reflété dans la législation applicable aux travailleuses domestiques de nombreux pays industrialisés, ainsi que dans plusieurs pays à économie de transition ou en développement. Toutefois, les travailleuses domestiques ont un

accès limité aux mesures préventives qui permettent de leur assurer une grossesse saine et un accouchement dans de bonnes conditions, ainsi qu'un revenu de remplacement pendant le congé de maternité et le droit de retourner à leur emploi. Pour une travailleuse domestique, une grossesse débouche souvent sur un licenciement et, dans certains cas, la législation peut permettre ou faciliter ce type de licenciement. En ce qui concerne les travailleuses domestiques migrantes, un certain nombre de pays d'accueil ont des lois ou règlements qui permettent de licenciement et/ou le rapatriement des travailleuses domestiques enceintes.

### ***Trabajo decente para los trabajadores domésticos – Informe IV (1)***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_145506.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_145506.pdf)

El Convenio núm. 183 sobre la protección de la maternidad establece 14 semanas de permiso como mínimo, que se refleja en la legislación que es aplicable a las trabajadoras domésticas en muchos países industrializados, las economías en transición y varios países en desarrollo. Sin embargo, las trabajadoras domésticas tienen acceso limitado al tipo de medidas y protección que ayudan a garantizar embarazos y nacimientos seguros y saludables, una renta de sustitución durante la licencia de maternidad y el derecho a regresar a sus puestos de trabajo. Los embarazos suelen dar lugar al despido de las trabajadoras domésticas, y en algunos casos, la legislación puede permitir o facilitar tales despidos. En cuanto a las trabajadoras domésticas migrantes, un número de países que los reciben tienen leyes o reglamentos que permiten el despido y / o la repatriación de las trabajadoras domésticas que están embarazadas.

### ***Working conditions laws report 2010***

ILO, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_145473.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145473.pdf)

This succinct report reviews national legal developments concerning maternity protection, working time and minimum wages. It draws on the ILO Database of Conditions of Work and Employment Laws, which provides information on more than 100 countries across all regions. The report finds that in most countries, minimum standards for working conditions have been defined in law. While these do not necessarily guarantee better working conditions in practice, if carefully crafted and backed by effective enforcement mechanisms, such laws can help narrow the gap between legal standards and actual working conditions. A chapter on maternity protection focuses on three aspects under national law of such leave provisions: duration of leave, amount of leave benefits, and source of funding. There are significant variations among the 167 countries covered concerning extent of protection and respective regulation models. While all countries reviewed have implemented some kind of childbirth protection for women, not all provide for paid maternity leave. And only one-third fully satisfy the three related provisions of Convention No. 183 on Maternity Protection.

***Workplace solutions for childcare***

Hein, C. and Cassirer, N., ILO, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_110397.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_110397.pdf)

This book reviews key childcare concerns facing working parents and employers, and how these are addressed by different national approaches, public policies and services. Case studies were selected to reflect a variety of national contexts and cover four industrialized countries (France, Hungary, United Kingdom and the United States) and six developing ones (Brazil, Chile, India, Kenya, South Africa and Thailand). Different types of childcare assistance at workplaces are described along with their advantages and disadvantages – from the point of view of employers as well as workers – in terms of cost, choice, benefits and administrative requirements. The types are categorized as on-site facilities, linking with facilities in the community, financial support, advice and referral services, and backup emergency care. The book is designed for policy makers and the social partners since it explores how practical partnerships and support for childcare can be organized and funded, as well as describes limitations and challenges of these different solutions.

***Soluciones para el cuidado infantil en el lugar de trabajo***

[www.ilo.org/wcmsp5/groups/public/@ed\\_protect/@protrav/@travail/documents/publication/wcms\\_151190.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_protect/@protrav/@travail/documents/publication/wcms_151190.pdf)

Este libro examina las principales preocupaciones del cuidado infantil a las que se enfrentan los padres y madres que trabajan y los empleadores, y cómo éstas se abordan en los diferentes enfoques nacionales, políticas públicas y servicios. Los estudios de caso fueron seleccionados para reflejar una variedad de contextos nacionales y se refieren a cuatro países industrializados (Francia, Hungría, Reino Unido y los Estados Unidos) y seis en desarrollo (Brasil, Chile, India, Kenia, Sudáfrica y Tailandia). Los diferentes tipos de asistencia a los cuidados infantiles en los lugares de trabajo se describen junto con sus ventajas y desventajas – desde el punto de vista de los empleadores-as como de los trabajadores et trabajadoras – en términos de costo, opciones, beneficios y requisitos administrativos. Los tipos son clasificados en instalaciones de empresa, contactos con los centros del vecindario, ayuda económica, servicios de asesoramiento y remisión y cuidados de emergencia de refuerzo. El libro está diseñado para los responsables políticos y los interlocutores sociales, ya que explora cómo las asociaciones y el apoyo práctico para el cuidado de los niños pueden ser organizados y financiados, así como se describen las limitaciones y los desafíos de estas diferentes soluciones.

***Video on “Maternity Protection in Tanzania”***

ILO, Geneva, 2010

[www.ilo.org/global/about-the-ilo/press-and-media-centre/videos/institutional-videos/WCMS\\_141856/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/press-and-media-centre/videos/institutional-videos/WCMS_141856/lang--en/index.htm)

Over 80% of women in Tanzania are involved in paid work – yet they also play an important and fundamental role in the country’s future since they give birth. This



11-minutes video explores challenges in reconciling these roles, and portrays how women are often faced with an impossible choice between ensuring their families' economic well-being and raising healthy children. Examples are provided of ways ILO, the Government, and workers' and employers' organizations in Tanzania are working together to address these challenges with practical solutions.

***Decisions for Work: An Examination of the Factors Influencing Women's Decisions for Work***

International Trade Union Confederation (ITUC), Brussels, 2010

[www.ituc-csi.org/IMG/pdf/femmes\\_En.pdf](http://www.ituc-csi.org/IMG/pdf/femmes_En.pdf)

Unequal sharing of household and childcare duties between women and men has a profound impact on especially women's career possibilities and working patterns. This report is based on an internet survey focusing on 43 countries and includes analysis of legislation in a smaller number.

***Décisions en matière de travail: Étude des facteurs qui influencent les décisions des femmes en matière de travail***

[www.ituc-csi.org/decisions-en-matiere-de-travail.html?lang=fr](http://www.ituc-csi.org/decisions-en-matiere-de-travail.html?lang=fr)

Le partage inégal des tâches ménagères et de la garde d'enfants entre les femmes et les hommes a un impact profond sur les possibilités de carrière des femmes et sur leur mode de travail. Ce rapport, basé sur un sondage par Internet se concentrant sur 43 pays, présente une analyse de la législation d'un petit groupe de ces pays.

***Decisiones para Trabajar: Análisis de los factores que influyen en las decisiones de las mujeres para trabajar***

[www.ituc-csi.org/IMG/pdf/women\\_une\\_\\_ES.pdf](http://www.ituc-csi.org/IMG/pdf/women_une__ES.pdf)

El reparto desigual de las tareas del hogar y del cuidado de los hijos entre hombres y mujeres tiene un impacto profundo en especial sobre las posibilidades de carrera de las mujeres y las tendencias laborales. Este informe se basa en una encuesta en internet que se centra en 43 países e incluye el análisis de la legislación en un número más pequeño.

***Gender equality at the heart of decent work – Report VI***

Prepared for 98th Session of the International Labour Conference, ILO, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@relconf/documents/meetingdocument/wcms\\_105119.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf)

This report, prepared prior to the 2009 Conference's Resolution concerning gender equality at the heart of decent work, includes a chapter on safe maternity and health-care for mother and infant survival. These are "at the core of life itself, for mothers, infants, communities and nations", notes the report. It describes the aims of maternity protection – which are also central to decent work and productivity for women –

along with ILO action relative to such protection and employment, social protection, social dialogue, and principles and rights. An indicative list of areas in which ILO policies, programmes and activities aim to impact workers' lives include eliminating maternal-related discrimination and ensuring employment security through better legal frameworks and their effective application; developing systems and means to give effect to the principle of paid maternity leave, which could form part of a basic social security package; intensifying public policy and practical interventions for flexible work schedules, working time, parental leave, and state-run childcare; and adopting or strengthening policies on paternity leave.

### ***L'égalité entre hommes et femmes au cœur du travail décent – Rapport VI***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_106240.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106240.pdf)DESC

Préparé avant l'adoption de la résolution concernant l'égalité entre femmes et hommes au cœur du travail décent, à la Conférence internationale du Travail de 2009, ce rapport comporte un chapitre sur la maternité sans risques et sur les soins de santé permettant d'assurer la survie de la mère et de son nouveau-né. Selon le rapport, ces conditions sont «à l'essence même de la vie, pour les mères, les enfants, les sociétés et les nations». Le rapport explique les objectifs de la protection de la maternité – qui sont aussi au cœur du travail décent et de la productivité des femmes – ainsi que l'action du BIT en faveur de cette protection et de l'emploi, de la protection sociale, du dialogue social, et des principes et des droits. Il fournit également une liste indicative des aspects sur lesquels les politiques, programmes et activités de l'OIT peuvent influencer: élimination de la discrimination liée à la maternité et mesures pour la sécurité d'emploi grâce à de meilleurs cadres juridiques et à leur application effective, développement de systèmes et de moyens pour donner effet au principe de congé de maternité rémunéré, ce qui pourrait faire partie d'un programme de sécurité sociale de base; intensification d'une politique publique et d'interventions pratiques favorisant les horaires de travail flexibles, le temps de travail, le congé parental, la garde d'enfants gérée par l'état; et adoption ou renforcement des politiques en matière de congé de paternité.

### ***La igualdad de género como eje del trabajo decente – Informe VI***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_106282.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_106282.pdf)

Este informe, preparado antes de la resolución de la Conferencia de 2009 en materia de la igualdad de género como eje del trabajo decente, incluye un capítulo sobre la maternidad y la salud de la madre y la supervivencia infantil. Estos son “el núcleo de la vida misma, para las madres, los bebés, las comunidades y las naciones”, señala el informe. En él se describen los objetivos de protección de la maternidad – que son también esenciales para el trabajo decente y la productividad de las mujeres – junto con la acción de la OIT relativa a la protección y el empleo, la protección social, diálogo social, y los principios y derechos. Una lista indicativa de las áreas en que las políticas de la OIT, programas y actividades destinadas a influir en la vida de los trabajadores y trabajadoras incluyen: eliminar la discriminación por motivos de

maternidad y garantizar la seguridad del empleo a través de mejores marcos jurídicos y su aplicación efectiva; establecer sistemas y medios para dar efecto al principio de la licencia de maternidad remunerada, que podría formar parte de un régimen básico de seguridad social; reforzar las políticas públicas y las intervenciones prácticas que favorezcan los horarios de trabajo flexibles, la organización adecuada del tiempo de trabajo, las licencias parentales, y los servicios de guardería estatales; y adoptar o consolidar las políticas de licencia por paternidad.

### ***The unpaid care work – paid work connection***

Antonopoulos, R., ILO Policy Integration and Statistics Department, Working Paper No. 86, Geneva, May 2009

[www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms\\_119142.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/publication/wcms_119142.pdf)

This paper examines interfaces and trade-offs between paid and unpaid work, and it identifies data gaps and proposes themes for further research. Analysis focuses on how economic and social policies and institutions influence women's economic options by reducing or increasing their disproportionate burden of unpaid care work. Such work shapes the ability, duration and types of paid work that women can undertake; it also reduces women's "voice" and access to decision-making roles, and impacts their ability to accumulate savings and assets. Since unpaid care work is regarded as women's "natural" work in the private sphere of the family, its economic dimensions and contributions are invisible. And because such work is undervalued, paid care workers are in jobs that are presumed to be unskilled with low pay with few options for promotion and scant social protection. Unpaid care work – which imposes a systematic "time-tax" on women throughout their life cycle, is a manifestation of unequal power relations between the sexes. Recommendations include the need to better design time-use data, as well as more frequent collection and wider application; further research on family-work reconciliation policies and unpaid care work; exploring linkages between employment guarantee policies and unpaid work; and addressing paid yet informal care workers' needs especially lack of regulation, retirement benefits, and social protection.

### ***Global Employment Trends for Women 2009***

ILO, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_103456.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_103456.pdf)

When discussing women and men's share of vulnerable employment, this report notes that the most pressing challenge to address in order to reduce women's disproportionate share is to empower them. The main route to successfully doing this is "giving women the chance of a decent job". Among preconditions for women's more equal labour market participation is men's more equal sharing of family responsibilities, along with heavy investment in female education and changes in labour legislation. The report notes that progress in reducing the gender pay gap has been slow or even backtracked in some countries and that "regulations and practices concerning work and family life, childcare facilities and other social rights play a significant role

in the participation of women in the labour force, in their occupational choices, and in the employment patterns that affect the gender wage gap". When governments design and implement fiscal stimulus packages, "it is important to recognize the labour market disadvantage that women face...and to consider explicit employment growth targets for women. Another fundamental dimension to address is the impact on unpaid family care work that women are mostly responsible for, which may expand as the crisis worsens and further limit women's access to labour markets "if policies to improve sharing of these responsibilities with men are not forthcoming".

### ***Tendances mondiales de l'emploi des femmes – 2009***

[www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_105176.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_105176.pdf)

Ce rapport examine la répartition d'emplois vulnérables entre les femmes et les hommes et relève que le défi le plus urgent pour réduire la disproportion touchant les femmes est de leur donner plus de moyens. Pour réussir dans cette voie, il faut leur offrir la possibilité d'un emploi décent. Entre autres conditions préalables à une participation plus égale des femmes au marché du travail, il faut une participation égale des hommes aux responsabilités familiales ainsi que des investissements substantiels dans l'éducation des femmes et des changements dans la législation du travail. Le rapport note que les progrès dans la réduction de l'écart de rémunération entre les sexes ont été lents, il y a même eu une régression dans certains pays, et que «les pratiques et réglementations relatives à la vie professionnelle et familiale, les services de garde d'enfants et d'autres droits sociaux – jouent un rôle important dans la participation des femmes à la population active, dans leurs choix professionnels et dans les caractéristiques de l'emploi qui affectent les écarts salariaux entre les sexes». Lorsque des gouvernements conçoivent et mettent en œuvre des mesures d'incitation fiscale, «il importe qu'ils prennent en considération la situation défavorable à laquelle les femmes se trouvent confrontées sur le marché du travail du fait du défi en termes d'équité, et qu'ils envisagent des cibles de croissance de l'emploi spécifiques pour les femmes. Un autre aspect fondamental à prendre en compte est l'impact sur le travail non rémunéré des tâches ménagères et de l'éducation des enfants qui incombent pour la plupart aux femmes. Cet impact pourrait se renforcer à mesure que la crise s'aggrave et, partant, réduire encore l'accès des femmes aux marchés du travail si des politiques pour améliorer le partage de ces responsabilités avec les hommes ne sont pas rapidement mises en place».

### ***Tendencias Mundiales del Empleo de las Mujeres – 2009***

[www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_elm/---trends/documents/publication/wcms\\_114111.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_elm/---trends/documents/publication/wcms_114111.pdf)

Cuando se habla de la proporción de empleo vulnerable entre mujeres y hombres, este informe señala que el reto más apremiante a tratar para reducir la cantidad desproporcionada de las mujeres, es empoderarlas. La manera más directa de lograrlo es "brindando a las mujeres la oportunidad de tener un trabajo decente". Entre las condiciones previas para la participación de la mujer en el mercado laboral más equitativo es el reparto más equitativo con los hombres en las responsabilidades

familiares, junto con una fuerte inversión en la educación de la mujer y cambios en la legislación laboral. El informe señala que el progreso en la reducción de la brecha salarial de género ha sido lento e incluso a dado marcha atrás en algunos países y que la “normativa y las prácticas relativas a la conciliación de la vida familiar y la vida laboral, los servicios de cuidado de niños y otros derechos sociales cumplen una función significativa en la participación de las mujeres en la fuerza de trabajo, en sus decisiones profesionales y en los patrones de empleo que influyen en la brecha salarial entre las mujeres y los hombres”. Cuando los gobiernos diseñan y aplican planes de estímulo fiscal, “es importante reconocer la desventaja laboral a la que se enfrentan las mujeres...y prever objetivos de crecimiento de empleo específicos para las mujeres”. Otra dimensión fundamental que se ha de abordar es el impacto en el trabajo no remunerado relativo al cuidado de la familia, que casi siempre suele estar a cargo de las mujeres, que puede acentuarse a medida que empeore la crisis limitando aun más el acceso de las mujeres a los mercados de trabajo “si no se ponen en marcha políticas destinadas a compartir mejor esas responsabilidades”.

***Panel Discussion on key policy initiatives on the equal sharing of responsibilities between women and men, including caregiving in the context of HIV/AIDS – Moderator’s summary (E/CN.6/2009/CRP.5)***

Commission on the Status of Women, New York, 2-3 March 2009

[www.un.org/womenwatch/daw/csw/csw53/crps/E-CN.6-2009-CRP.5%20En.pdf](http://www.un.org/womenwatch/daw/csw/csw53/crps/E-CN.6-2009-CRP.5%20En.pdf)

Policies and measures are needed to facilitate reconciling paid and unpaid work; these include maternity leave, and paternity and parental leave. Promising strategies are leave entitlements for parents to care for young children, and measures that require fathers to use parental leave or forfeit it. Investing in appropriate infrastructure – such as provision of water, sanitation and electricity – help reduce time needed for unpaid care work, especially in the context of HIV. However, because such work is overwhelmingly performed by women and girls, such measures need to be combined with training opportunities and other strategies to facilitate women’s participation in paid work. While women’s role and presence in the labour market has increased, men and boys have not assumed a commensurate role in domestic tasks and caregiving – thus greater emphasis and strategies are needed on their more equal sharing of such responsibilities.

***Table ronde sur les politiques de partage, dans des conditions d’égalité, des responsabilités entre les femmes et les hommes, y compris les soins dispensés dans le contexte du VIH/sida – Résumé (E/CN.6/2009/CRP.5)***

[www.un.org/womenwatch/daw/csw/csw53/crps/E-CN.6-2009-CRP.5%20Fr.pdf](http://www.un.org/womenwatch/daw/csw/csw53/crps/E-CN.6-2009-CRP.5%20Fr.pdf)

Des politiques et mesures sont nécessaires pour faciliter la conciliation du travail rémunéré et non rémunéré; il s’agit notamment du congé de maternité, de paternité et du congé parental. Le droit au congé permettant aux parents de prendre soin de leurs jeunes enfants est une stratégie prometteuse, donnant aux pères le droit d’utiliser le congé parental ou d’y renoncer. L’investissement dans des infrastructures appropriées – telles que la fourniture d’eau, l’assainissement et l’électricité

– permet de réduire le temps nécessaire au travail non rémunéré, en particulier dans le contexte du VIH. Cependant, ce travail étant majoritairement effectué par les femmes et les filles, ces mesures doivent être combinées avec des possibilités de formation et d'autres stratégies visant à faciliter la participation des femmes au travail rémunéré. Bien que le rôle des femmes et leur présence dans le marché du travail ait augmenté, les hommes et les garçons n'assument toujours pas un rôle égal dans les tâches domestiques et les soins – d'où la nécessité de mettre plus d'accent sur des stratégies favorisant un partage plus égal des responsabilités.

***“Engaging Men and Boys in Caregiving: Reflections from Research, Practice and Policy Advocacy”***

Barker, G., paper presented for Interactive Expert Panel, Commission on the Status of Women, New York, March 2009

[www.un.org/womenwatch/daw/csw/csw53/panels/capacity-buidling/barker.pdf](http://www.un.org/womenwatch/daw/csw/csw53/panels/capacity-buidling/barker.pdf)

Variables in men's childcare participation include their social class and education. When men do carry out domestic chores they gain little or no identity or social recognition for it. One significant aspect of the benefits of men's involvement in child caregiving is its importance in promoting the concept of gender equality among children; such involvement increases the chance that sons will be more gender-equitable and more nurturing as fathers. In addition to paid paternity leave, recommendations to promote men and boys' caregiving include: scale up fatherhood preparation courses and campaigns that encourage men's roles with children; use interventions to reach boys and young men in order to challenge rigid gender-related attitudes and behaviours; engage with workplaces through employers and trade unions to help create more flexible working time arrangements; review national public health policies, including on maternal and child health, to identify ways to engage men who are about to become fathers; review childhood development policies in order to better engage men, including as caregivers, in the home as well as in caregiving professions; and make health and other social services more accessible and friendly to men.

***Equal sharing of responsibilities between women and men, including care-giving in the context of HIV/AIDS (EGM/ESOR/2008/BP.2)***

Addati, L. and Cassirer, N., prepared for Expert Group Meeting, Commission on the Status of Women, Geneva, 6-9 October 2008

[www.un.org/womenwatch/daw/egm/equalsharing/EGM-ESOR-2008-BP-2%20ILO%20Paper.BP.2.pdf](http://www.un.org/womenwatch/daw/egm/equalsharing/EGM-ESOR-2008-BP-2%20ILO%20Paper.BP.2.pdf)

The issues addressed by Convention No. 156 on Workers with Family Responsibilities – especially conflict between work and family responsibilities and implications for equality of opportunity in the labour market – are becoming increasingly prominent. This is due to women's increased labour force participation, working hours, commuting time, and the care burden linked to HIV. The availability of family-based assistance has declined along with relevant social care services. For this reason workers with family responsibilities are caught in a “time-money squeeze” and often are forced to make difficult choices with no-win solutions. These include hiring

domestic workers who are often paid low wages with few rights or social protection, taking older children – often girls – out of school to care for younger ones, or taking children to work. Governments must take leadership on policy solutions and create a climate favorable to social dialogue concerning the issue. Proven approaches to ensure national and workplace policies are relevant and responsive to workers' and employers' needs include setting up tripartite national policy frameworks, encouraging collective bargaining agreements on statutory requirements, and fostering family-friendly workplace measures.

### ***Working Conditions Laws 2006-2007 – A global review***

ILO Conditions of Work and Employment Programme, Geneva, 2008

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_100.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_100.pdf)

Globally, half of the countries reviewed rely entirely on social insurance or other public funds to finance maternity leave benefits, while in just over one-fourth maternity leave is funded solely by employers. Some one-fifth of countries have a mixed system. However, there are marked regional differences in the source of maternity leave benefits. The vast majority of industrialized countries draw only on social insurance or other public funds, which is also the case in almost all Central and Eastern Europe countries. In Asian countries, about 45 per cent require employers to fund maternity benefits, while just over one-third make these payments from social insurance or other public funds. In over three-fourths of Latin American countries, maternity benefits are drawn from social security systems or other funds, with the remainder mixed systems. In over one-third of African countries, maternity benefits are financed exclusively by employers, while just less than one-third are paid wholly from social insurance or other public funds. About one-fifth of these countries have a mixed system.

### ***Expanding women's employment opportunities: Informal economy workers and the need for childcare***

Cassirer, N. and Addati, L., ILO Conditions of Work and Employment Programme, Geneva, 2007

[www.ilo.org/emppolicy/events/WCMS\\_125993/lang--es/index.htm](http://www.ilo.org/emppolicy/events/WCMS_125993/lang--es/index.htm)

This succinct paper notes that family responsibilities are an important factor in steering women toward work in the informal economy and for constraining their income-earning activities within such work. Family responsibilities limit the types of income-generating activities that women can take up; country case studies show that women entrepreneurs tend to be concentrated in less dynamic activities in the informal economy as compared to their male counterparts. They also tend to rely on “traditional” domestic skills that can be performed at home in order to also perform their unpaid care work responsibilities. Families faced with a lack of childcare options often hire domestic workers, which further contributes to the growth of informal economy employment. Poorer families often cope by leaving children at home alone, taking them to work, or enlisting an older sibling – often a girl who must drop out of

school – to care for younger children. Most efforts to address workers’ family responsibilities do not reach informal economy workers, who are beyond the purview of government and outside the domains of employers’ or workers’ organizations. Actual examples of childcare initiatives to address informal economy workers’ needs are provided, along with comments on results, lessons learned, and replicability.

***Accroître les opportunités de travail des femmes: Les travailleurs de l'économie informelle et les services de garde des enfants***

[www.ilo.org/wcmsp5/groups/public/@ed\\_emp/@emp\\_policy/documents/meetingdocument/wcms\\_125992.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_policy/documents/meetingdocument/wcms_125992.pdf)

Ce bref article démontre que les responsabilités familiales sont un facteur important dans l’orientation des femmes vers le travail dans l’économie informelle, les contraignant à cantonner leurs activités génératrices de revenus au sein de tels travaux. Les responsabilités familiales limitent les types d’activités génératrices de revenus que les femmes peuvent entreprendre; des études de cas par pays montrent en effet que les femmes entrepreneurs se concentrent dans des activités de l’économie informelle moins dynamiques que celles de leurs homologues masculins. Elles ont également tendance à s’appuyer sur les compétences «traditionnelles» domestiques qui peuvent être effectuées à la maison afin qu’elles puissent assumer également leurs tâches de soins impayées. Les familles confrontées à un manque d’options de garde d’enfants doivent souvent embaucher des travailleurs-euses domestiques, ce qui renforce encore la croissance de l’emploi dans l’économie informelle. Les familles pauvres n’ont d’autre choix que de laisser les enfants seuls à la maison, les emmener sur le lieu de travail, ou encore de confier la garde des jeunes enfants à l’aîné – souvent une fille, qui doit quitter l’école. La plupart des efforts déployés pour faire face aux problèmes des travailleurs-euses ayant des responsabilités familiales ne parviennent pas jusqu’à l’économie informelle, car celle-ci se trouve à la fois en-dehors de la compétence du gouvernement et en dehors des domaines des organisations des partenaires sociaux. Des exemples concrets d’initiatives de garde d’enfants destinées à répondre aux besoins des personnes qui travaillent dans l’économie informelle sont fournis dans l’article, ainsi que les commentaires sur les résultats, les leçons apprises et leur répliquabilité.

***Ampliar las oportunidades de trabajo de la mujer: los trabajadores de la economía informal y la necesidad de servicios de cuidado infantil***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_145655.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_145655.pdf)

Este artículo breve resalta que las responsabilidades familiares son un factor importante tanto porque orientan a las mujeres hacia el trabajo dentro de la economía informal como porque restringen sus actividades generadoras de ingresos dentro de ese tipo de trabajo. Las responsabilidades familiares limitan el tipo de actividades generadoras de ingresos que las mujeres pueden ocupar, estudios de casos muestran que las mujeres empresarias tienden a concentrarse en las actividades menos dinámicas en la economía informal, en comparación con sus homólogos del sexo masculino. También tienden a concentrarse en competencias domésticas “tradicio-



nales” que se pueden realizar en el hogar con el fin de realizar también sus responsabilidades de trabajo de cuidado no remunerado. Las familias que hacen frente a la falta de opciones de cuidado infantil a menudo contratan personal doméstico, lo que contribuye al crecimiento del empleo en la economía informal. Las familias más pobres a menudo se arreglan dejando sus hijos solos en el hogar, llevándolos consigo al trabajo, o alistando a un hermano mayor – a menudo a una chica que tiene que abandonar la escuela – para cuidar a los niños más pequeños. La mayoría de los esfuerzos para hacer frente a las responsabilidades familiares de los trabajadores y trabajadoras no llegan a al sector de la economía informal, que están más allá de la esfera del gobierno y fuera de los dominios de las organizaciones de empleadores-as o de trabajadores et trabajadoras. Ejemplos reales de iniciativas de cuidado de niños para atender las necesidades de las personas que trabajan dentro de la economía informal son provistos, junto con comentarios sobre los resultados, lecciones aprendidas y replicabilidad.

***Equality at work: Tackling the challenges – Global report under the follow-up to the ILO Declaration on fundamental principles and rights at work, Report 1(B)***

Report of the Director-General, 96th Session of the International Labour Conference, ILO, Geneva, 2007

[www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/equality\\_07.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/equality_07.pdf)

Parental leave is available in some countries for both women and men. It can be a shared entitlement that either parent can take (such as in Cuba, Estonia, Hungary and Viet Nam), an individual and non-transferable entitlement (Belgium, Iceland and Ireland), or a mixed entitlement that combines individual and family entitlements (Norway and Sweden). However large proportions of working parents are denied these entitlements de jure, especially those in self-employment, with temporary contracts, or working for small employers (United States) or depending on their prior employment history (Japan). Everywhere the key factor in encouraging take up of the entitlement by both men and women is that such leave is paid – and relatively well-paid. The report also addresses other trends such as extension of leave for fathers, and elder leave care, in addition to discussing maternity protection and paternity leave.

***L'égalité au travail: relever les défis – Rapport global en vertu du suivi de la Déclaration de l'OIT relative aux principes et droits fondamentaux au travail, Rapport 1(B)***

[www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_082607/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_082607/lang--en/index.htm)

Dans certains pays, le congé parental est accordé aux femmes comme aux hommes. Il peut être un droit partagé que l'un des deux parents peut prendre (comme à Cuba, en Estonie, en Hongrie et au Viet Nam), un droit individuel et non transférable (Belgique, Islande et Irlande), ou un droit mixte qui combine les droits individuels et familiaux (Norvège et Suède). Cependant, nombreux sont les parents actifs qui sont privés de ces droits de jure, en particulier ceux travaillant à leur compte, titulaires de contrats temporaires, ou travaillant pour de petites entreprises (Etats-Unis), ou en raison de leurs antécédents de travail (Japon). Partout, le facteur déterminant

qui pousse les parents à prendre ce congé est qu'il est payé – et relativement bien payé. Le rapport aborde également d'autres tendances telles que la prolongation du congé pour les pères et les congés de soins pour les personnes âgées. Il s'intéresse également à la protection de la maternité et au congé de paternité.

***La igualdad en el trabajo: afrontar los retos que se plantean – Informe global con arreglo al seguimiento de la Declaración de la OIT relativa a los principios y derechos fundamentales en el trabajo, Informe 1 (B)***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms\\_082609.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---webdev/documents/publication/wcms_082609.pdf)

El período de licencia parental es aplicable en algunos países, tanto para las mujeres como para los hombres. Puede ser un derecho compartido que cada padre y madre puede tomar (como en Cuba, Estonia, Hungría y Viet Nam), un derecho individual e intransferible (Bélgica, Islandia e Irlanda), o un derecho mixto, que combina derechos individuales y familiares (Noruega y Suecia). Sin embargo, estos derechos se niegan de jure a numerosos padres y madres que trabajan, en particular a los que lo hacen por cuenta propia, con contratos temporales, o para pequeños empleadores/as (Estados Unidos) o bien en función de su historial de empleo (Japón). En todas partes el factor decisivo que motiva la utilización de los derechos de licencia parental tanto para los hombres como para las mujeres es que es remunerada – y, en general, relativamente bien. El informe también aborda otras tendencias como la prolongación de la licencia para los padres y madres y la licencia para el cuidado de los ancianos, además de las discusiones sobre la protección de la maternidad y la licencia por paternidad.

***“Towards Decent Working Time”***

by J. Messenger, in *Decent Working Time – New trends, new issues*, edited by Boulin, J.Y.; Lallement, M.; Messenger, J. and Michon, F., ILO, Geneva, 2006

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_071859.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_071859.pdf)

Two significant dimensions of “decent working time” are that working time arrangements, in parallel with increasing productivity, should simultaneously promote both “family-friendly” workplaces and gender equality. “Normalizing” part-time work – making such positions equivalent to those of full-time in terms of pay, benefits and career development opportunities – and de-segregating so that users are not predominately female, are two strategies for avoiding reinforcement of rigid gender divisions of labour in the workplace and the home. To overcome managerial resistance and negative attitudes of colleagues – which create obstacles to men’s use of family-reconciliation measures – a broad range of policies not just on working time are needed. One approach is to provide fathers with the right to take extended leave for family reasons or reduce their working hours when they have young children – rights that are already available to mothers in many industrialized countries. Another is to implement enterprise-level policies that reduce the “long-hours culture” that creates invisible barriers for women to advance in management positions.

***Reconciling work and family responsibilities: Practical ideas from global experience***

Hein, C., ILO Conditions of Work and Employment Programme, Geneva, 2005

[www.ilo.org/public/libdoc/ilo/2005/105B09\\_142\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2005/105B09_142_engl.pdf)

Balancing family responsibilities with paid work demands is a major factor for women's disadvantage in the labour market, while paid-work demands and their conflict with family responsibilities contribute to men's disadvantage in being involved with their families. This book uses evidence from industrialized and developing countries to show how reducing work-family conflict is in the interests of governments and social partners. It explores policy responses based on examples and lessons learned. The government's role is highlighted since it should set legislative and policy frameworks, in collaboration with employers and trade unions. Also discussed are attitudes, policies and practices that can render workplaces more family-friendly, and practical ways these can be addressed and accomplished. Making family responsibilities more compatible with paid work mainly involves measures related to the availability of care arrangements for dependants. Making working conditions more compatible with family responsibilities is an essential component of work-family reconciliation; for example, childcare for a 12-hour workday every day is simply not a viable solution for parents or children.

***Extending maternity protection to women in the informal economy: An overview of community-based health-financing schemes***

ILO Social Security Department; and Conditions of Work and Employment Programme, 2003

[www.ilo.org/dyn/infoecon/iebrowse.page?p\\_ieresource\\_id=479&p\\_lang=en](http://www.ilo.org/dyn/infoecon/iebrowse.page?p_ieresource_id=479&p_lang=en)

This working paper examines how maternity benefits are included in 23 community-based health-financing systems in nine countries in Africa, Asia and Latin America: Argentina, Chile, Colombia, India, Nepal, Philippines, Senegal, Tanzania and Uganda. The collected information and subsequent analysis provide an evidence-base for developing practical guidelines to promote community-based health-financing schemes that incorporate maternity protection services. The paper concludes by describing good practices in extending maternity protection and lessons learned, including for better financial sustainability. For example group insurance has the advantage of reducing adverse selection. A crucial factor in reducing such selection is a waiting period for benefit entitlements. Preventive and maternity care training are very important for encouraging women to join a health micro-insurance scheme, as is awareness raising on reproductive health care. Educating members on disease prevention and general health as part of the scheme not only contributes to better wellbeing but results in extra savings to allow for more scope in maternity protection.

***Workers with family responsibilities***

International Labour Conference, 80th Session, Geneva, 1993

[www.ilo.org/public/libdoc/ilo/P/09661/09661\(1993-80-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1993-80-4B).pdf)

This report comprises the results of a survey of member States in 1992 on the position of their law and practice relevant to the promotion of equality and treatment for workers with family responsibilities, as stated in Convention No. 156 and accompanying Recommendation No. 165. The reports enabled the CEACR to carry out its first general survey of the situation regarding implementation of these instruments, both in ratifying member States and those that had not ratified.

### ***Travailleurs ayant des responsabilités familiales***

[www.ilo.org/public/libdoc/ilo/P/09662/09662%281993-80-4B%29.pdf](http://www.ilo.org/public/libdoc/ilo/P/09662/09662%281993-80-4B%29.pdf)

Ce rapport reprend les résultats d'une enquête menée auprès des Etats membres, en 1992, sur la situation de leur législation et de leurs pratiques respectives quant à la promotion de l'égalité et de traitement des travailleurs-euses ayant des responsabilités familiales, telle que définie par la Convention No. 156 et la Recommandation No. 165 qui l'accompagne. Les rapports fournis par les états membres – qu'ils aient ratifié ou non ces instruments – ont permis à la CEACR de dresser un premier bilan sur la mise en œuvre de ces instruments.

### ***Trabajadores con responsabilidades familiares***

[www.ilo.org/public/libdoc/ilo/P/09663/09663\(1993-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09663/09663(1993-4B).pdf)

El presente informe contiene los resultados de una encuesta entre los Estados miembros en 1992, sobre el estado de su legislación y la práctica en lo que respecta al fomento de la igualdad de oportunidades y de trato en beneficio de los trabajadores-as con responsabilidades familiares, dispuesto en el Convenio (núm. 156) y la Recomendación (núm. 165) que lo acompaña. En base a las memorias así comunicadas por los gobiernos la comisión de la CEACR ha podido proceder al presente primer estudio general de la situación relativa a la aplicación de ambos instrumentos, tanto en los Estados que han ratificado como en aquellos que aún no lo han hecho.

## **› Regional and some country-based entries**

### *– Africa*

#### ***Maternity Protection and Health Insurance in Africa – Comparative Overview of Ghana, Kenya, Rwanda, and Tanzania***

Mensah, J. and Oppong, J., ILO, Geneva, 2009

[www.socialsecurityextension.org/gimi/gess/RessShowRessource.do?ressourceId=14643](http://www.socialsecurityextension.org/gimi/gess/RessShowRessource.do?ressourceId=14643)

Exemptions and fee waivers for common maternal care such as ante- and postnatal care, and simple delivery, exist in the four countries' health insurance schemes. But inconsistencies, ambiguities and poor knowledge about exemption policies frequently result in official and "nonofficial" fees. In Kenya hidden fees inflate user costs, while Rwanda has clear and unambiguous co-payments. Catastrophic payments for delivery complications are common, and in Ghana – which has the best maternal care indicators among the four – mothers or their new-born children sometimes are detained for non-

payment. In Ghana and Kenya, many households must sell assets to pay for care. Policy recommendations include to educate people on their healthcare entitlements, waivers and exemptions as well as the benefits of social health insurance schemes; implement monitoring mechanisms to eliminate hidden fees and informal payments; and extend insurance benefits to cover delivery complications and neonatal intensive care. Maternal mortality can be reduced by national health insurance schemes that make maternal healthcare economically-accessible and that reduce catastrophic payments. Yet insurance schemes alone cannot reduce maternal mortality for those who need it most – poor rural women – without a supporting health infrastructure with emergency transport and geographically-accessible health facilities staffed by qualified personnel.

– *Americas and the Caribbean*

***Igualdad entre hombres y mujeres en Paraguay: la necesaria conciliación entre familia y trabajo***

Echauri, C. y Serafini, V., Equipo de Trabajo Decente y Oficina de Países de la OIT para el Cono Sur de América Latina, Santiago, 2011

[www.oitchile.cl/pdf/igu034.pdf](http://www.oitchile.cl/pdf/igu034.pdf)

Una de las principales causas de las inequidades de género en el mercado laboral está en la persistencia de una división sexual del trabajo que otorga a las mujeres la responsabilidad principal en el cuidado de las personas. Esto incide en la distribución de los tiempos de trabajo de hombres y mujeres en las esferas productivas y reproductivas y en una serie de prejuicios y mitos sobre las capacidades de hombres y mujeres para trabajar y conciliar su vida laboral y familiar. Paraguay dio un paso significativo al ratificar en 2007 el Convenio núm. 156; con esto, asumió el compromiso de adoptar las medidas necesarias. El proceso de ratificación fue precedido por un acuerdo tripartito. Sus integrantes desarrollaron una campaña nacional que permitió reposicionar el tema de la conciliación como uno de relevancia nacional, otorgando base social al acuerdo político que se logró en el Parlamento. Este estudio se propone aportar al debate nacional en Paraguay y fortalecer las capacidades de los actores sociales para elaborar planes de acción, promoviendo la formulación y ejecución de políticas, reformas legales y otras medidas que faciliten la conciliación de la vida laboral, familiar y personal, contribuyendo así a una distribución más equitativa entre hombres y mujeres del tiempo dedicado al cuidado de la familia.

***Responsabilidades por compartir: la conciliación trabajo-familia en Perú***

Anderson, J., Equipo de Trabajo Decente y Oficina de Países de la OIT para el Cono Sur de América Latina, Santiago, 2011

[http://igenero.oit.org.pe/images/stories/documentos/Responsabilidades\\_por\\_compartir\\_Peru.pdf](http://igenero.oit.org.pe/images/stories/documentos/Responsabilidades_por_compartir_Peru.pdf)

La evidencia y los argumentos examinados en este libro llevan a señalar cinco áreas donde existen oportunidades significativas en la actual coyuntura del país, especialmente para los actores involucrados: Estado, empresas, organizaciones de la sociedad civil y sindicatos. Está en primer lugar, el bono demográfico: dos o tres décadas durante las cuales las tasas de dependencia serán favorables para la experimenta-

ción con nuevas formas de organización de las labores domésticas y actividades de cuidado. En segundo lugar, las sinergias actuales y potenciales entre los distintos actores involucrados, bajo la coordinación del Estado. En tercero están las oportunidades para la creación de empleo en el sistema de cuidados. En cuarto, la demanda de infraestructura y servicios para la gestión doméstica como otra área para la creación de empleo y en quinto lugar la incorporación efectiva de la micro y pequeña empresa de mujeres en las políticas de formalización, incluyendo la aplicación de las leyes laborales correspondientes.

### ***Trabajo decente y corresponsabilidad de los cuidados en Argentina***

Lupica, C., Oficina de País de la OIT para la Argentina, Buenos Aires, 2010

[http://igenero.oit.org.pe/images/stories/trabajo\\_y\\_familia/TyF\\_Informe\\_Arg.pdf](http://igenero.oit.org.pe/images/stories/trabajo_y_familia/TyF_Informe_Arg.pdf)

Este informe se estructura en cuatro secciones. En la primera, “Interrelación entre vida familiar y ámbito laboral”, se hace referencia a los grandes cambios demográficos, culturales y en la dinámica del mercado laboral, que afectan la conciliación entre trabajo y familia. En la segunda, “El marco institucional que arbitra la relación trabajo y familia”, se desarrolla el marco institucional (legislación y políticas públicas) que arbitran esta relación. En la tercera sección, “Conciliación y corresponsabilidad en las agendas de los actores”, se indaga sobre el grado de inserción y desarrollo de la temática en las agendas del Estado, las empresas y las organizaciones sindicales. En la cuarta parte, se sintetizan las conclusiones y se enumeran algunas consideraciones para la elaboración de políticas y acciones de conciliación. El anexo incluye iniciativas legales sobre protección de la maternidad en curso en el Congreso de la Nación; ejemplos de medidas de conciliación y apoyo al cuidado implementado en las empresas “mejores empleadoras 2009”, y ejemplos de cláusulas destacadas de conciliación y corresponsabilidad en los cuidados.

### ***Trabajo decente y corresponsabilidad social en el cuidado: Retos en el camino hacia la igualdad – Costa Rica***

Equipo de trabajo decente y Oficina de países de la OIT para América Central, Haití, Panamá et República Dominicana, San José, 2010

[http://dwt.oit.or.cr/index.php?option=com\\_docman&task=cat\\_view&gid=72&Itemid=42](http://dwt.oit.or.cr/index.php?option=com_docman&task=cat_view&gid=72&Itemid=42)

Este informe se estructura en ocho capítulos, iniciando en el capítulo uno con un recorrido por las cuestiones conceptuales, con énfasis en la evolución de los enfoques en América Latina. En el capítulo dos, se detallan los principales cambios sociales, demográficos y laborales, que se han dado en el país en las últimas décadas, y su impacto en términos de aumento de las tensiones entre los mundos laboral y familiar. El marco legal nacional es el tema central del capítulo tres y en el capítulo cuatro se detallan las políticas sociales universales y programas focalizados que, directa o indirectamente, contribuyen a la conciliación de las esferas laboral y familiar. El capítulo quinto se focaliza en la caracterización de la población que no accede a ningún tipo de apoyo para solventar sus problemas de cuidado. En el capítulo sexto, se repasa la presencia que las políticas de conciliación tienen en la agenda política, mostrándose que todavía son pocas las políticas que tienen referencias expresas a

este tema. Igualmente se analizan las visiones predominantes en las organizaciones empresariales y sindicales. En el capítulo séptimo se abundan en las prácticas que ya se han dado a lo interno de las empresas dominicanas. Y finalmente, en el capítulo ocho se presentan algunas recomendaciones de política y medidas específicas para ser implementadas por los diferentes sectores, desde el enfoque de la corresponsabilidad entre las familias, el Estado, el mercado y la sociedad.

***Ambos a dos: proveer y cuidar: el desafío pendiente en una sociedad en evolución – República Dominicana***

Equipo de trabajo decente y Oficina de países de la OIT para América Central, Haití, Panamá et República Dominicana, San José, 2010

[http://dwt.oit.or.cr/index.php?option=com\\_docman&task=cat\\_view&gid=72&Itemid=42](http://dwt.oit.or.cr/index.php?option=com_docman&task=cat_view&gid=72&Itemid=42)

El documento está organizado en cinco capítulos. El primero hace referencia a los principales enfoques y teorías desarrolladas en Europa, América Latina y Costa Rica, que han permitido generar pensamiento y promover una agenda propositiva para avanzar en la conciliación entre la vida laboral y familiar. En el segundo capítulo se analizan los avances y ausencias de la normativa internacional y nacional en materia de derechos laborales de las mujeres y protección social. El tercer apartado hace un recorrido por las tendencias más recientes y relevantes en materia de mercado laboral y modelos de familia en Costa Rica. El capítulo cuarto explora la agenda pública y política, los principales programas existentes en materia de conciliación y corresponsabilidad, así como las percepciones de los sectores sindical y empresarial, además señala algunas buenas prácticas que permiten visualizar soluciones innovadoras basadas en la corresponsabilidad social. En el último capítulo se precisan los desafíos más urgentes que el país tiene de cara a lograr que la conciliación entre trabajo y vida familiar deje de ser un obstáculo para la generación de trabajo decente para las mujeres. Igualmente se señalan algunas recomendaciones y actoras que parten de la premisa de que esta es una responsabilidad compartida entre el Estado, el mercado y la sociedad.

***Work and Family: Towards new forms of reconciliation with social co-responsibility***

ILO and UNDP, Santiago, 2009

[www.ilo.org/gender/Informationresources/Publications/WCMS\\_111375/lang--en/index.htm](http://www.ilo.org/gender/Informationresources/Publications/WCMS_111375/lang--en/index.htm)

This report examines the international framework of guidelines and principles reflected in ILO labour standards, the Convention on the Elimination of all Forms of Discrimination against Women, and the Millennium Development Goals. It also discusses the relevant roles of government, employers' and workers' organizations, and civil society. Transformations that have brought a growing imbalance between work and family life are described, along with how these affect women and men, especially in low-income families. Legal and policy frameworks governing the interaction between family and work are analyzed, including how social security systems can address these. The last section provides public policy proposals and recommendations. Only by combining a wide range of measures, concludes the report, "will Latin America and the Caribbean be able to achieve co-responsibility for care giving and

through it, the full exercise of social and economic rights by both men and women, on equal terms”.

***Trabajo y familia: Hacia nuevas formas de conciliación con corresponsabilidad social***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_111376.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_111376.pdf)

En este informe se aproxima el marco internacional de normas y valores, reflejado en los Convenios de la OIT, en la Convención sobre la eliminación de todas las formas de discriminación en contra de las mujeres (CEDAW) y en los Objetivos de Desarrollo del Milenio. Se reflexiona, además, acerca del papel que corresponde al Estado, a las organizaciones de empleadores-as y trabajadores y trabajadoras y a las organizaciones de sociedad civil, en estos temas. Se describen las transformaciones que han agudizado el desequilibrio entre la vida laboral y familiar, y cómo éstas afectan a las mujeres y los hombres, especialmente a las familias de bajos ingresos. Se analizan marcos legales y de políticas relativas a la relación entre el trabajo y la vida familiar, incluyendo cómo los sistemas de seguridad social pueden enfrentar dichas tensiones. La última parte está dedicada a propuestas de políticas públicas y recomendaciones. Por el contrario, la combinación de un amplio menú de medidas, concluye el informe, “permitirá que América Latina y el Caribe logre a través de la corresponsabilidad en los cuidados, el pleno ejercicio de los derechos sociales y económicos a hombres y mujeres por igual”.

***Reconciling work and family: Issues and policies in Trinidad and Tobago***

Reddock, R. and Bobb-Smith, Y., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment Series No. 18, Geneva, 2008

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_17.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_17.pdf)

Family traditions and structures in Trinidad and Tobago have significantly changed over the last three decades, with more pressure on workers to reconcile work and family needs. Women have used innovative coping strategies to reduce such conflict, and in this respect men are visible, albeit to a lesser extent. The State, trade unions and private sector have not adequately recognized the link between work-family reconciliation and problems of “social dislocation”. Employers in both the private and public sectors have not significantly accepted their responsibilities to address this. While Government – and to a more limited extent the private sector and NGOs – has provided support facilities and services based on family needs, policies are not yet targeted to workers with family responsibilities. A starting point for the State’s taking the lead is ratification of Convention No. 156 on Workers with Family Responsibilities and Convention No. 183 on Maternity Protection, and their accompanying Recommendations.

***Reconciling work and family: Issues and policies in Brazil***

Sorj, B., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment Series No. 8, Geneva, 2004



[www.ilo.int/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_8.pdf](http://www.ilo.int/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_8.pdf)

Trends affecting the labour market and families' relation to it include reduced growth rates, increased irregular work, and continued high unemployment and poverty rates. At the same time, women have entered the labour force in large numbers while "traditional" family structures have diminished, the proportion of extended families has fallen, the average number of dependent children has dropped, and single female parent-headed households have increased. Strategies adopted by families include that of adults taking different types of jobs – for which working time arrangements are an important consideration. The paper observes that "regulated employment prevails for men, i.e. protected by labour legislation, with various benefits arising from the contractual relation; for women unregulated work predominates, which implies shorter hours and lower salaries. Above all, wives with children enter the most precarious occupations". A final section presents conclusions and recent research findings on flexible working time measures.

– *Arab States*

***Social Care Needs and Service Provisions in Arab States: Bringing Care Work into Focus in Lebanon***

ILO Regional Office for the Arab States, Beirut, Issue Brief No. 2, 2009

[www.ilo.org/public/english/region/arpro/beirut/downloads/info/fact/genderbriefs/issuebrief\\_2\\_lebanon.pdf](http://www.ilo.org/public/english/region/arpro/beirut/downloads/info/fact/genderbriefs/issuebrief_2_lebanon.pdf)

Women are expected to assume the role of unpaid social care providers – with such care work consuming much of their time and energy and largely keeping them from pursuing paid work. Four broad lessons were learned based on a preliminary assessment in 2007 of social care needs, services and deficits in Lebanon. They are: appropriate state social policy responses targeting improved care service are vital to advancing women's access to paid work; with the steady demand for paid care services, social and legal protections are necessary to safeguard care workers' rights; high-level policy commitment is needed to fill growing social care gaps with a skilled national labour force; and the collection of better research data on social needs care will enable governments to create more gender-responsive labour and social policies.

***Care Needs and Service Provisions in Arab States: Bringing Care Work into Focus in Lebanon***

ILO Regional Office for the Arab States, Beirut, Policy Brief No. 1, 2009

[www.ilo.org/public/english/region/arpro/beirut/downloads/info/fact/genderbriefs/policybrief\\_1\\_lebanon.pdf](http://www.ilo.org/public/english/region/arpro/beirut/downloads/info/fact/genderbriefs/policybrief_1_lebanon.pdf)

Recommendations include that more quantitative and qualitative research be conducted on care needs; traditional "male-headed household" models used for data collection and studies fails to capture intra-household dynamics (such as decisions, labour participation and the gender division of unpaid work in households); sex-disaggregated time-use surveys should be conducted twice-yearly and across years; policy frameworks should take into account childcare provision and overall social

care as basic elements to advance women's employment opportunities; campaigns should promote active roles in family care responsibilities by men as fathers, sons, husbands and siblings; and childcare, eldercare and disabled care should be more financially accessible to all.

### ***Feasibility Study on the Implementation of a Maternity Cash Benefits Scheme***

ILO Social Security Department; and ILO Regional Office for the Arab States, Geneva, 2007

[www.socialsecurityextension.org/gimi/gess/RessShowRessource.do?ressourceId=2531](http://www.socialsecurityextension.org/gimi/gess/RessShowRessource.do?ressourceId=2531)

This study, conducted when the full cost of paid maternity leave was borne by employers as per a provision in the Jordanian Labour Code, warns this lead to some employers' not hiring women. Part I gives an overview of relevant policies and good practices in countries around the world. It also discusses the purpose of maternity cash benefits schemes – and especially the advantages of providing these through social security as opposed to employers' liability. Part II, which analyses social security provisions including those for paid maternity leave, highlights ways to provide these within a fair and affordable maternity protection scheme. Maternity protection coverage – and therefore financial contributions – should be attributed to both men and women members of the general social security system since childbearing is an investment on behalf of society as a whole in its future human capital. This is also important to help ensure that contribution liabilities do not offer a reason for discrimination toward women in employment. The report concludes by encouraging the Government to progressively extend coverage to all government employees and in enterprises covered by Social Security Law No. 19 (2001), including those with less than five employees. Annexes comprise a costing methodology and detailed estimates of the indicative costs of maternity cash benefits in Jordan, based on a calculation model.

#### – *Asia and the Pacific*

### ***Reconciling work and family: Issues and policies in China***

Liu, B.; Zhang, Y., and Li, Y., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment series No. 22, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_21.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_21.pdf)

In China caregivers' responsibilities have been aggravated by high expectations from only-children, labour force mobility, ageing, market-orientation and privatization of family care, and reduced support by traditional extended families. Although the Government has provided public services and care facilities to help alleviate the burden of family responsibilities, this paper observes that “[it] does not fully realize the importance of providing equal employment opportunities and treatment for men and women workers with family responsibilities [and] ...does not shoulder the responsibility of resolving work-family conflicts”. Among policy recommendations are that the Government should ratify and implement as soon as possible Convention

No. 156 on Workers with Family Responsibilities, focus legislation on ending discrimination against workers with such responsibilities, and take action to ensure that both women and men workers enjoy equitable employment opportunities and treatment. The Government should also categorize breastfeeding, aged care, and family services within its “public services” category, and strengthen relevant statistics and studies. Enterprises should provide men and women workers with better means to reconcile work and family care.

### ***Reconciling work and family: Issues and policies in Thailand***

Kusakabe, K., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment Series No. 14, Geneva, 2006

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_14.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_14.pdf)

Over the past five decades rapid industrialization and commercialism in Thailand have changed the way women and men work, including longer hours and migration. HIV's spread has also impacted family structures. Although paid maternity leave is 90 days, many women workers return to work after only 60 due to their employers' pressure and because only the first 45 days are fully paid. Just one-fourth of registered workers are covered by social security, which provides child allowances. Pregnancy and childcare – the later for which responsibility mostly falls on grandparents – are considered by many employers as “obstacles for workers' productivity”. Policy recommendations include that the Government should ratify Conventions No. 156 and No. 183; improve childcare services; provide child allowances directly to providers and independent of employment; reduce working hours and “provide a living wage as a minimum wage”; increase leave entitlements for work-family balance including introducing paternity leave; promote sharing of household work, and men's responsibilities in these and childcare; improve data collection to improve statistics on family and work; and raise public awareness on the importance of work-family balance among the social partners and in the media.

### ***Reconciling work and family: issues and policies in the Republic of Korea***

Kim, T.H. and Kim, K.K., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment Series No. 6, Geneva 2004

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_6.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_6.pdf)

Women's economic activities and potential capabilities are hindered by social structures in which they bear the burden of unpaid family care work. Although family-friendly measures have been introduced, these have not reduced this double burden – in fact, combined with discriminatory customs in the labour market, these measures “show a tendency to create a feminization of atypical employment and deterioration in women's paid working conditions. Employers acknowledge the need for family-friendly employment systems and would like the government to lead the way. The Ministry of Gender Equality has been successful in strengthening maternity protection, and debates were being held in the Korean Tripartite Commission on

issues such as shorter and flexible working hours. Recommendations include that the Government should expand the basic social security system for the elderly and disabled, as well as childcare facilities; strengthen monitoring of corporate compliance with work-family measures; give technical assistance on introducing and implementing employee support systems; and address issues such as shorter working hours, and contingency workers' maternity protection. Reproduction and equity must be considered along with production and efficiency.

### ***Reconciling work and family: Issues and policies in Japan***

Abe, M.; Hamamoto, C. and Tanaka, S., ILO Conditions of Work and Employment Programme, Conditions of Work and Employment series No. 5, Geneva, 2003

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_5.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_5.pdf)

Changes affecting the lifecycle of Japanese families include ageing, increasing “non-marriage”, and declining fertility. Factors contributing to female university graduates' low labour participation include small levels of economic assistance to families with children, such as dependent child allowances and tax exemptions. A “domestic dilemma” is that men work long hours, making it difficult for them to shoulder family responsibilities, while the gender wage gap and “social and family conditions” make it difficult for women to balance paid work and family responsibilities. Although Japan has made legal provision for childcare and family-care leave systems, only 56 per cent of women giving birth took childcare leave. Less than 1 per cent of fathers took such leave, and the paper observes that “family-care leave is hardly being utilized at all”. Recommendations include that the Government should introduce policies to further reduce working hours and eliminate the gender wage gap, the latter of which must be rapidly done. If not, warns the paper, it will “prove difficult to eliminate the phenomenon of gender-based division of labour, ensuring that work-family policies remain limited in their effectiveness”.

### ***The Case for Work/Life Balance: Closing the Gap Between Policy and Practice***

Hudson Highland Group, city not cited, 2005

[http://au.hudson.com/Portals/AU/documents/Hudson2020\\_Work-Life.pdf](http://au.hudson.com/Portals/AU/documents/Hudson2020_Work-Life.pdf)

In the context of the current skill shortages and ageing workforces in both Australia and New Zealand, the subject of how work/life balance can be achieved has become an imperative. This is especially important so that organizations can attract and retain talent, not only from traditional sources but also from untapped and diverse social groups including working mothers, mature workers and some minority groups. For future commercial sustainability, organizations need to ensure that they not only encourage but mandate a practical and workable work/life balance policy. This paper explores the concept of work/life balance, challenges some of the rhetorical assumptions associated with it, outlines organizational “cultural inhibitors” to implementation of flexible work arrangements, and provides practical strategies for developing work/life balance agendas.

– *Europe*

***Maternity protection in the context of work-life reconciliation for men and women – Comparative analysis of three European countries’ maternity protection systems***

United Nations Development Programme and ILO Decent Work Technical Support Team and Country Office for Eastern Europe and Central Asia, city not cited, 2011

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/maternity\\_protection\\_thecontext\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/maternity_protection_thecontext_en.pdf)

This study focuses on laws and policies related to maternity protection and family-friendly policies in the Czech Republic, France and Iceland. Differences in these countries’ priorities in the specific legislation and measures are obvious when analyzed from a gender perspective. Concluding sections consider evidence regarding implementation in the three countries of maternity protection and family-friendly policies, as well as challenges. The latter include monitoring compliance and gaps in coverage of maternity protection policies. Some good practices are highlighted, as well as policy implications based on the case study comparison.

***Gender and Employment in Bosnia and Herzegovina – A Country Study***

Somun-Krupalija, S., ILO Bureau for Gender Equality, Working Paper 4/2011, Geneva

[www.ilo.org/gender/Informationresources/WCMS\\_170832/lang--fr/index.htm](http://www.ilo.org/gender/Informationresources/WCMS_170832/lang--fr/index.htm)

Women, especially in rural areas, tend to spend more time in paid and mostly unpaid activities combined – which limits their ability to engage in other income-generating activities. There are few public kindergartens, so infants are largely in mostly-female relatives’ care. Childcare facilities that exist are inaccessible due to long waiting lists or expensive cost for poorer families. Women also tend to have primary responsibility for elder relatives’ care, for which social services provide little help and are sometimes inaccessible particularly in rural areas. Of the ten cantons, maternity leave was not paid in four at the time of publication, and in six such leave payments ranged from 50 per cent to 90 per cent of earnings. However, “pregnant workers are often dismissed under the veil of redundancy...and may be given dismissals without any notice”.

***Work and Family Relations in Armenia***

ILO Regional Office for Europe and Central Asia, Moscow, 2010

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/workandfamily\\_arm\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/workandfamily_arm_en.pdf)

Although Armenia has a number of progressive laws in respect to workers with family responsibilities, for the most part these are based on the assumption that mothers – and not also fathers – have primary responsibility for the family. While the number of pre-school institutions dropped from 699 to 628 between 2002 and 2008, rates of children attending increased by some 10 per cent. However these are relatively low by international standards, particularly in rural areas. While the Government is aware of the link between under-attendance at childcare facilities and women’s labour market participation – which between 2003 and 2008 grew from 55 per cent

to 65 per cent – at the time of publication there were no specific, targeted and meaningful attempts to rectify the problem.

### ***Work and Family Relations in Azerbaijan***

ILO Regional Office for Europe and Central Asia, Moscow, 2010

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/indd\\_aze\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/indd_aze_en.pdf)

As of 2008, women made up 49 per cent of the total labour force compared to 77 per cent of men. Dominance of the extended family or “aila” (clan), combined with poor economic conditions, restrict women’s economic roles. Expectations within families and society result in pressure on women to look after children and households, and in rural areas they often farm a small plot of land. The country recently completed the domestic procedure for ratification of Convention No. 183 on Maternity Protection, as well as for Convention No. 156 on Workers with Family Responsibilities. While many aspects of the Labour Code can be classified as family-friendly, they are based on assumptions about the gendered nature of care work. According to the Labour Code at the time of publication, the right to leave for childcare applies uniquely to women and can only be transferred to men if a woman is unavailable for reasons of death, deprivation of maternal right, hospitalization or incarceration.

### ***Work and Family Relations in Turkmenistan***

ILO Regional Office for Europe and Central Asia, Moscow, 2010

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/turkm\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/turkm_en.pdf)

New wording adopted in 2008 for the Constitution has created opportunities to reform national legislation by introducing special measures, including those designed to maintain a work-family balance for the country’s men and women. The Law on State Guarantees of Women’s Equality envisages that spouses are equal in family relations, and it establishes the principle of equality between the sexes in performing household work. Under the Labour Code at the time of publication, enterprises that employ many women must organize crèches and kindergartens, as well as breastfeeding rooms – although it is impossible to monitor compliance due to lack of statistical data. Women tend to prefer part-time employment in order to devote more time to family and childcare, and the majority cite flexible schedules and proximity to home as the main criterion for choosing a job.

### ***Work and Family Relations in Georgia***

ILO Regional Office for Europe and Central Asia, Moscow, 2009

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/georgia\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/georgia_en.pdf)

As with other countries in the region, structural changes to the economy – led by international financial institutions – have created obstacles and threats for workers with family responsibilities. Reductions in Government social expenditure and employers’ cutbacks in services provided to workers have meant the end of free or low-cost childcare. New jobs are often in the informal economy and hence provide little social protection or childcare provision. Georgian women’s increased participation in the

labour market has been facilitated by childcare provided by their extended families, even though in 2007 women were earning just over half or 52.6 per cent of men's earnings. The effects of family-friendly legislation beginning in 2005 has been interrupted by the economic downturn and women's informal economy employment.

### ***Work and Family Responsibilities: Russian Federation***

ILO Regional Office for Europe and Central Asia, Moscow, 2009

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/workfamily\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/workfamily_en.pdf)

While weekly hours in paid employment for women do not differ much compared to those of men, women spend an average of 30 hours weekly on household chores compared to 14 hours spent by men. As a result, women have a “double” workday. It is interesting to consider, within the context of family-work conflicts, marital status and gender pay gaps. The largest pay gap at the time of publication was 35% and between women and men who are married; such women tend to be underemployed more frequently. The pay gap was slightly less at 31 per cent between women and men who are not married but living with their partners. The pay gap falls to 18.3 per cent between women and men who are divorced. The smallest gender pay gap at 18.2 per cent is between women and men who have never been married – in other words, persons whose family responsibilities tend to be minimal.

### ***Work and Family: The Republic of Tajikistan***

ILO Regional Office for Europe and Central Asia, Moscow, 2009

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/box\\_eng.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/box_eng.pdf)

Tajikistan has ratified Convention No. 183 on Maternity Protection, but the Labour Code sets specific standards and requirements for employment of women with family responsibilities exclusively. Men, at the time of publication, were not considered by the Labour Code as workers with family responsibilities. More and more women are entering paid work including in the informal economy, where they have limited access to social protection schemes. Increasing numbers are also toiling as domestic workers, and producing and selling agricultural and homemade products. Although between 1999 and 2004 a total of 31 preschool education institutions were closed, the number of children attending these increased by 10,000. Demand for such institutions is predicted to remain high due to high birth rates and population growth.

### ***Reconciling work and family in Georgia***

ILO Regional Office for Europe and Central Asia, Moscow, 2009

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/georgia\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/georgia_en.pdf)

The situation for workers with family responsibilities has undergone a huge upheaval in the last two decades. Living standards in Georgia were the highest among the Soviet republics prior to the collapse of the Soviet Union; in the 1990s just after the collapse, 99 per cent of Georgian children attended pre-school education institutions. However the country then suffered a bitter conflict and civil war followed by rapid economic liberalization and deregulation. Today some 45 per cent of children attend

pre-school institutions, and childcare provided by extended families is considered to be one of the main factors enabling women to participate in the workforce. While the law includes maternity provisions and a national system of childcare facilities exists, it is unclear what percentage of women workers are able to access maternity benefits or pay for such facilities due to the precarious nature of their employment and rising childcare costs.

### ***Work and Family: The Republic of Kyrgyzstan***

ILO Regional Office for Europe and Central Asia, Moscow, 2008

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/wfd\\_kyrgyz\\_en.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/wfd_kyrgyz_en.pdf)

Economic depression, aggravated by decreasing numbers and privatization of social security facilities and growing influence of groups espousing a “traditional” gender division of household work and childcare, is creating a greater load on working women and impacted their health, and social and political status. Men are also affected by economic reforms and gender stereotypes concerning their role as “breadwinner” and being a “true man”; the male suicide rate is 3.8 times higher than women’s, and men’s life expectancy at 63.5 years means they live on average 8.6 years less than women. Men have almost six hours of free time per day, which is 1.2 times more than women who spend two times longer on household work and childcare. Despite a number of positive steps by Kyrgyzstan to improve gender equality-related legislation, among challenges is the decreasing amount of childcare facilities. This has resulted in a greater number of child injuries and has negatively affected the physical and mental development of the many children under six years who are left alone at home all day, or in the charge of siblings. In part because of this, only 40 of 100 urban children are adequately prepared to enter school. The decreasing number of childcare facilities was recognized by the Medium-term National Development Strategy 2007-2010 as one of the problems that impedes the country’s development.

### ***Combining your work and family responsibilities***

ILO Regional Office for Europe and Central Asia, Moscow, year not cited

[www.ilo.org/public/english/region/eurpro/moscow/info/publ/work\\_and\\_family.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/info/publ/work_and_family.pdf)

This succinct information sheet observes that women often sacrifice their professional careers given the conflicts in combining paid work and pregnancy, breastfeeding and childcare, the latter of which falls largely on their shoulders. Men – who are often perceived to have little or no family responsibilities – are considered “ideal workers”. Yet they suffer from heavy workload stress and long hours – which take a toll on their physical and psychological health. And men who wish to dedicate more time to their families are discriminated against since “society does not welcome deviations from stereotypes”. The information sheet includes a section on negative impacts of work-family conflicts on workers, employers and society, and it describes ILO norms and recommendations concerning how to reconcile these conflicts. A section on solutions lists practical ways to render workplaces more family-friendly, along with brief descriptions of good practices. Also listed are these workplace’s benefits for employers and workers, especially young women and men.



## Part two: tools, measures and guides

### ***Maternity Protection Resource Package – From Aspiration to Reality for All***

ILO, Geneva, 2012

<http://mprp.itcilo.org/pages/en/index.html>

This online training package provides explanations, guidance, examples of good practice and tools to help users strengthen and extend maternity protection to all women in all types of economic activity. Modules on specific topics can be used as a reference for self-learning, leading group training, giving policy advice, conducting research, and encouraging action by governments, workers' and employers' organizations. Intended users of the package, in addition to ILO constituents, include civil society, researchers and practitioners. Its main message is that maternity protection at work for all is both possible and desirable, as it contributes to equitable economic growth, social cohesion and decent work. The package was coordinated by TRAVAIL in collaboration with the United Nations Children's Fund (UNICEF), Entity for Gender Equality and the Empowerment of Women (UN Women), and Population Fund (UNFPA), along with the World Health Organization (WHO), International Baby Food Action Network (IBFAN), and Geneva Infant Feeding Association (GIFA).

### ***Kit de Ressources sur la Protection de la Maternité – Réaliser les aspirations de tous***

<http://mprp.itcilo.org/pages/fr/index.html>

Ce programme de formation en ligne propose des explications, des conseils, des exemples de bonnes pratiques et des outils pour aider à renforcer et à étendre la protection de la maternité à toutes les femmes, dans tous les types d'activité économique. Les modules portant sur des sujets spécifiques peuvent servir de référence pour l'auto-apprentissage, la conduite d'une formation de groupe, ou pour orienter dans le choix de politiques, mener des recherches et encourager l'action des gouvernements et des partenaires sociaux. Au-delà des mandants de l'OIT, le kit de formation vise essentiellement la société civile, les chercheurs-euses et les praticiennes. Son principal message est que la protection de la maternité au travail pour tous est à la fois possible et souhaitable, car elle contribue à une croissance économique équitable, à la cohésion sociale et au travail décent. Le kit a été coordonné par TRAVAIL, en collaboration avec le Fonds des Nations Unies pour l'enfance (UNICEF), l'entité pour l'égalité des sexes et l'autonomisation des femmes (ONU-Femmes) et le Fonds des Nations Unies pour la Population (FNUAP), ainsi que l'Organisation mondiale de la Santé (OMS), le Réseau international d'Action pour l'alimentation infantile (IBFAN), et l'Association genevoise pour l'alimentation infantile (GIFA).

### ***Gender Equality and Decent Work – Selected ILO Conventions and Recommendations that promote gender equality as of 2012***

ILO Bureau for Gender Equality, and International Labour Standards Department, Geneva, 2012

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_088023.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088023.pdf)

This compilation of international labour standards that are especially relevant to gender equality is an update the 2006 edition. Important new developments since the prior edition include the 2008 International Labour Conference adoption of the ILO Declaration on Social Justice for a Fair Globalization, which places gender equality at the core of the Decent Work Agenda; the 2009 Conference Resolution concerning gender equality at the heart of decent work, which gives the ILO a 21st century framework for supporting gender-responsive policies in all its activities and programming; the 2010 Conference's HIV and AIDS Recommendation (No. 200); and its Domestic Workers Convention, 2011 (No. 189) and accompanying Recommendation (No. 201). Full texts of the standards are presented in the following categories: fundamental principles and rights at work; maternity protection, and work and family; employment promotion; working conditions; and specific categories such as HIV, domestic workers, indigenous peoples, and migrant workers. Also available in CD ROM.

***Egalité entre hommes et femmes et travail décent – Conventions et recommandations de l'OIT clés pour la promotion de l'égalité entre hommes et femmes 2012***

[www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS\\_088023/lang--en/index.htm](http://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_088023/lang--en/index.htm)

Cette compilation de normes internationales du travail spécifiques à l'égalité des sexes est une mise à jour de l'édition 2006. D'importants faits nouveaux sont survenus depuis l'édition précédente, notamment l'adoption à la Conférence internationale du Travail en 2008 de la Déclaration de l'OIT sur la justice sociale pour une mondialisation équitable, qui place l'égalité hommes-femmes au cœur de l'Agenda du travail décent; la Résolution de 2009 concernant l'égalité entre femmes et hommes au cœur de travail décent qui donne à l'OIT un cadre de référence pour le 21ème siècle garantissant des politiques prenant en compte la spécificité du genre dans toutes ses activités et programmes; la Recommandation (n° 200) de 2010 sur le VIH et le sida; et la Convention (n° 189) de 2011 sur les travailleurs domestiques et sa Recommandation (n° 201). Les textes complets des normes sont présentés par catégories de la façon suivante: principes et droits fondamentaux au travail; protection de la maternité, travail et famille, promotion de l'emploi, conditions de travail, et catégories spécifiques couvrant le VIH, les travailleuses et travailleurs domestiques, les peuples indigènes, et les travailleuses et travailleurs migrants. La compilation est également disponible sur CD-ROM.

***Igualdad de género y trabajo decente – Convenios y recomendaciones claves de la OIT para la igualdad de género 2012***

[www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_088160.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088160.pdf)

Esta recopilación de normas internacionales del trabajo relacionadas específicamente con la igualdad de género, son una actualización de la edición de 2006, ya que desde entonces, algunos acontecimientos importantes han tenido lugar. Estos incluyen la adopción de la Declaración de la OIT sobre la justicia social para una globalización equitativa, en la Conferencia Internacional del Trabajo de 2008, la que sitúa a la igualdad de género en el corazón del Programa de Trabajo Decente; la Resolución

de la Conferencia de 2009, relativa a la igualdad de género como eje del trabajo decente, que proporciona a la OIT un marco de trabajo del siglo XXI con el que dar apoyo a políticas sensibles con las cuestiones de género, en toda su programación y actividades; la Recomendación (núm. 200), sobre el VIH y el sida en la Conferencia de 2010; el Convenio (núm.189) de 2011 y su Recomendación (núm. 201) sobre las trabajadoras y los trabajadores domésticos. Los textos completos de las normas se presentan en las siguientes categorías: principios fundamentales y derechos en el trabajo; protección de la maternidad, y trabajo y familia; promoción del empleo; categorías específicas relativas a VIH y el sida, trabajadoras y trabajadores domésticos, pueblos indígenas y tribales, y trabajadoras y trabajadores migrantes; y condiciones de empleo. La recopilación también está disponible en CD-ROM.

### ***Decent Work for Domestic Workers – Convention 189 and Recommendation 201 at a glance***

ILO Conditions of Work and Employment Programme, Geneva, 2011

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_170438.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170438.pdf)

The Convention's article 14(1) requires Members take appropriate measures to ensure that domestic workers enjoy conditions not less favourable than those generally applicable to workers in respect to social security protection, including as regards maternity benefits. These measures are to be taken "in accordance with national laws and regulations" and "with due regard to the specific characteristics of domestic work". Thus, the Convention provides flexibility in design of appropriate measures to ensure domestic workers' social protection, and the measures may be put in place progressively. The Recommendation's provision 25 states that "members should, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, establish policies and programmes, so as to:...(b) address the work-life balance needs of domestic workers; and (c) ensure that the concerns and rights of domestic workers are taken into account in the context of more general efforts to reconcile work and family responsibilities". Provision 3 states that "in taking measures for the elimination of discrimination in respect of employment and occupation, Members should, consistent with international labour standards, among other things:...(c) ensure that no domestic workers is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status".

### ***Travail décent pour les travailleurs domestiques – Convention 189 et Recommandation 201 en bref***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_170439.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170439.pdf)

L'article 14(1) de la Convention exige que les Membres prennent des mesures appropriées «afin d'assurer que les travailleurs domestiques jouissent, en matière de sécurité sociale, y compris en ce qui concerne la maternité, de conditions qui ne soient pas moins favorables que celles applicables à l'ensemble des travailleurs». Ces mesures

doivent être prises «conformément à la législation nationale et en tenant dûment compte des caractéristiques spécifiques du travail domestique». Ainsi, la Convention offre une flexibilité dans la conception des mesures appropriées pour assurer la protection sociale des travailleurs-euses domestiques, et les mesures peuvent être mises en place progressivement. La disposition n° 25 de la recommandation stipule: «Les Membres devraient, en consultation avec les organisations d'employeurs et de travailleurs les plus représentatives et, lorsqu'elles existent, avec les organisations représentatives des travailleurs domestiques et celles des employeurs de travailleurs domestiques, établir des politiques et des programmes: a) visant à encourager le développement continu des compétences et qualifications des travailleurs domestiques, y compris l'alphabétisation s'il y a lieu, afin d'améliorer leurs possibilités de perfectionnement professionnel et d'emploi; b) répondant aux besoins des travailleurs domestiques de concilier vie professionnelle et vie personnelle; c) assurant que les préoccupations et les droits des travailleurs domestiques soient pris en compte dans le cadre d'efforts plus généraux visant à concilier vie professionnelle et responsabilités familiales». La disposition n° 3 spécifie: «En prenant des mesures pour l'élimination de la discrimination en matière d'emploi et de profession, les Membres devraient, entre autres, en accord avec les normes internationales du travail:... c) assurer que les travailleurs domestiques ne soient en aucun cas tenus de se soumettre à un dépistage du VIH ou à un test de grossesse, ou de divulguer leur statut VIH ou leur état de grossesse».

***Trabajo Decente para las Trabajadoras y los Trabajadores Domésticos – Convenio 189 y Recomendación 201 en pocas palabras***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_168267.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168267.pdf)

El artículo 14(1) de la Convención exige que los Miembros deben adoptar medidas apropiadas a fin de asegurar que los trabajadoras et trabajadores domésticos disfruten de condiciones no menos favorables que las condiciones aplicables a los trabajadoras et trabajadores en general con respecto a la protección de la seguridad social, inclusive en lo relativo a la maternidad. Estas medidas deben ser tomadas “actuando en conformidad con la legislación nacional” y “teniendo debidamente en cuenta las características específicas del trabajo doméstico”. De este modo, la Convención proporciona flexibilidad en el diseño de medidas apropiadas para garantizar la protección social de las trabajadoras y trabajadores domésticos, y las medidas pueden aplicarse progresivamente. La disposición 25 de la Recomendación establece que “los Miembros, en consulta con las organizaciones más representativas de los empleadores y de los trabajadores y con organizaciones representativas de los trabajadores domésticos y organizaciones representativas de los empleadores de trabajadores domésticos, cuando tales organizaciones existan, deberían formular políticas y programas a fin de:...b) atender las necesidades de los trabajadores domésticos en cuanto a lograr un equilibrio entre la vida laboral y la vida personal; y (c) asegurar que las preocupaciones y los derechos de los trabajadores domésticos se tengan en cuenta en el marco de los esfuerzos más generales encaminados a conciliar el trabajo con las responsabilidades familiares”. La disposición 3 establece que “al adoptar medidas destinadas a eliminar la discriminación en materia de empleo y

ocupación, los Miembros, actuando en conformidad con las normas internacionales del trabajo, deberían, entre otras cosas:....(c) asegurar que no se exija que los trabajadores domésticos se sometan a pruebas de detección del VIH o de embarazo, o revelen su estado serológico respecto del VIH o su estado de embarazo”.

### ***Decent Work for Domestic Workers – Convention 189, Recommendation 201***

ILO, Geneva, 2011

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_168266.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168266.pdf)

This booklet contains the Convention and accompanying Recommendation texts, which were adopted in June 2011 by the International Labour Conference. A preface explains the historic nature of the texts since, for the first time, international instruments are being applied to an essentially-informal segment of global workforces. Convention No. 189 guarantees minimum labour protections to domestic workers on par with other categories of workers, while allowing for considerable flexibility in implementation. The accompanying Recommendation provides practical and useful guidance on giving effect to obligations the Convention. Adoption of these standards, notes the preface, is a beginning – they need to be ratified and implemented.

### ***Un travail décent pour les travailleuses et travailleurs domestiques – Convention 189, Recommandation 201***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_168268.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168268.pdf)

Ce livret contient la Convention et la Recommandation qui s’y rapporte, toutes deux adoptées en Juin 2011 par la Conférence internationale du Travail. La préface explique «le caractère historique des textes, puisque, pour la première fois, des instruments internationaux sont appliqués à un segment essentiellement officieux de la force de travail globale». La Convention n° 189 garantit une protection minimale aux travailleuses et travailleurs domestiques, à l’instar des autres catégories de travailleuses et travailleurs, tout en permettant une flexibilité considérable dans la mise en œuvre des mesures de protection. La Recommandation fournit des conseils pratiques pour donner effet aux obligations de la Convention. Mais, comme le note la préface, l’adoption de ces instruments n’est qu’un début car ils doivent encore être ratifiés et mis en œuvre.

### ***Un trabajo decente para las trabajadoras y los trabajadores domésticos – Convenio 189, Recomendación 201***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_168267.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_168267.pdf)

Este folleto contiene la Convención y los textos de la Recomendación que lo acompaña, las cuales fueron adoptadas en junio de 2011 por la Conferencia Internacional del Trabajo. El prefacio explica la naturaleza histórica de los textos, ya que por primera vez se dispone de instrumentos laborales internacionales aplicables a un

segmento de la fuerza de trabajo mundial que está ocupado esencialmente en el sector informal. El Convenio núm. 189 garantiza la protección laboral mínima que deben tener las trabajadoras y los trabajadores domésticos, a la par con las demás categorías de trabajadoras y trabajadores, y deja un margen de flexibilidad considerable para su aplicación. La Recomendación ofrece una guía práctica y útil en dar cumplimiento a las obligaciones de la Convención. La adopción de las normas es un comienzo, señala el prefacio – y que aún hay que lograr su ratificación y materializar su puesta en práctica.

### ***Achieving MDG 4 through Decent Work***

ILO Conditions of Work and Employment Programme, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_141550.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_141550.pdf)

This succinct guide describes ILO efforts to achieve Millennium Development Goal 4 on “Reduce Child Mortality”. In connection with pregnancy and childbirth, many women and men cannot afford to take time away from economic activities to care for their children and risk loss of income or their jobs. A lack of childcare facilities, especially for poor families, further places at risk children’s health and lives. Returning to paid work is a major factor around the world in women’s reducing or stopping breastfeeding which decreases the nutritional, developmental and health benefits for the child as well as the physical and mental benefits for the mother. Children’s health and development can also be at risk when pregnant working mothers face hazards, long working hours or physically-demanding tasks. Policies and practices that address these and that increase household incomes, as well as social health protection, are an important part of the package of measures required to protect and improve newborn and child health.

### ***Achieving MDG 5 through Decent Work***

ILO Conditions of Work and Employment Programme, Geneva, 2010

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_141549.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_141549.pdf)

This succinct guide summarizes progress and gaps on achieving the Millennium Development Goal 5 on “Improve Maternal Health”. Although maternal deaths decreased from 320 per 100,000 live births in 1990 to 251 per 100,000 in 2008, almost 343,000 women continue to die during pregnancy and childbirth every year. Some 99 per cent of these deaths and related injuries occur in the developing countries – with sub-Saharan Africa’s share over half of such deaths. In this region, high rates of HIV infection and AIDS-related illness among pregnant women contribute to higher rates of maternal mortality. Only 23 countries, warns the guide, are “on track to achieve a 75 per cent decrease in maternal deaths by 2015. Stronger commitments and better cooperation between UN agencies, governments and other development partners are needed to broadly achieve MDG 5”. Addressing maternal health through the Decent Work Agenda and integrating reproductive health issues in workplaces will help accelerate progress.

### **Notas OIT – Trabajo y familia**

Equipo de Trabajo Decente y Oficina de Países de la OIT para el Cono Sur de América Latina, y Equipo de Trabajo Decente y Oficina de Países de la OIT para América Central, Santiago y San José, 2009

[http://igenero.oit.org.pe/index.php?option=com\\_content&task=view&id=268&Itemid=119](http://igenero.oit.org.pe/index.php?option=com_content&task=view&id=268&Itemid=119)

Estos nueve informes breves de información, sobre las condiciones de trabajo y del empleo, abordan los siguientes temas: *Trabajo y responsabilidades familiares: nuevos enfoques* (nota 1), *Promoción de la igualdad de género a través de políticas de conciliación trabajo-familia* (nota 2), *Lugares de trabajo que apoyan la conciliación: mejores empresas* (nota 3), *Protección de la maternidad* (nota 4), *Alternativas que pueden facilitar la conciliación de vida laboral y familiar* (nota 5), *Licencias y responsabilidades familiares* (nota 6), *Conciliación entre trabajo y vida familiar: acciones de los sindicatos* (nota 7), *Envejecimiento de la población: ¿Quién se encarga del cuidado?* (nota 8).

### **Quick Guide to What and How: Unpaid Care Work – Entry Points to Recognise, Reduce and Redistribute**

Swedish International Development Cooperation Agency, Women's Economic Empowerment Series, Stockholm, 2010

[www.oecd.org/dataoecd/30/11/47565971.pdf](http://www.oecd.org/dataoecd/30/11/47565971.pdf)

This one-page brochure defines unpaid care work, which is most often performed by women and girls. Such work is not recognized and hence excluded from economic statistics and data that informs policymaking. A section on reducing this work, which is an obstacle to women's economic empowerment, explains how freeing up time for women should mean they can engage in paid jobs and/or social and political activities. Examples of initiatives and good practices to redistribute unpaid care work include Turkey's labour laws and regulations that oblige firms with a specific number of women workers to provide a nursing room, in Jordan a caregiver health insurance programme, a Kenyan civil society's involvement in childcare, and in Benin union services to alleviate household work burdens. A section on strategies explores ways to ensure that such burdens are shared more equitably between women and men, households, communities, government, and the private sector. Boxes show definitions of key terms, relevant international conventions and agreements, examples of relevant indicators, and other information resources.

### **Infant and young child feeding**

World Health Organization, Factsheet No. 342, July 2010

[www.who.int/mediacentre/factsheets/fs342/en/](http://www.who.int/mediacentre/factsheets/fs342/en/)

Only about 35 per cent of infants up to six months old are exclusively breastfed, and in many countries just one-third of breastfed infants from six to 23 months of age meet the criteria of dietary diversity and age-appropriate feeding frequency. Optimal breastfeeding and complementary feeding practices are so critical that they can save the lives of 1.5 million children under five years old every year. Recommendations

include: initiating breastfeeding within one hour of birth; exclusive breastfeeding for the first six months of life; and introducing nutritionally-adequate and safe complementary foods at six months, together with continued breastfeeding up to two years and beyond. Among actions to help protect, promote and support breastfeeding are adoption of ILO Convention No. 183 on Maternity Protection, and using the International Code of Marketing of Breast-milk Substitutes.

### ***Alimentation du nourrisson et du jeune enfant***

[www.who.int/mediacentre/factsheets/fs342/fr/index.html](http://www.who.int/mediacentre/factsheets/fs342/fr/index.html)

Seulement 35 pour cent des bébés de six mois sont allaités exclusivement au sein et, dans de nombreux pays, à peine un tiers des nourrissons de six à 23 mois qui sont allaités satisfont aux critères de diversité alimentaire et de fréquence des repas qui conviennent à leur âge. La conjugaison optimale de l'allaitement au sein et de l'alimentation de complément peut, chaque année, sauver la vie d'un million et demi d'enfants de moins de cinq ans. Les recommandations comprennent: l'allaitement précoce dans l'heure qui suit la naissance; l'allaitement exclusif au sein pendant les six premiers mois de la vie; et l'introduction, à l'âge de six mois, d'aliments de complément sains et satisfaisants sous l'angle nutritionnel, parallèlement à la poursuite de l'allaitement jusqu'à l'âge de deux ans et au-delà. Les actions qui aident à protéger, promouvoir et encourager l'allaitement au sein comprennent, notamment, l'adoption de moyens d'action comme la Convention n° 183 de l'OIT sur la protection de la maternité et le Code international de commercialisation des substituts du lait maternel.

### ***Alimentación del lactante y del niño pequeño***

[www.who.int/mediacentre/factsheets/fs342/es/index.html](http://www.who.int/mediacentre/factsheets/fs342/es/index.html)

Solo aproximadamente un 35 por ciento de los lactantes de 0 a 6 meses reciben lactancia exclusivamente materna, y en muchos países, solo un tercio de los niños de 6 a 23 meses alimentados con leche materna cumplen los criterios de diversidad de la dieta y frecuencia de las comidas apropiados para su edad. Las prácticas óptimas de lactancia materna y alimentación complementaria son tan importantes que pueden salvar cada año la vida de 1,5 millones de menores de 5 años. Las recomendaciones incluyen: inicio inmediato de la lactancia materna en la primera hora de vida; lactancia exclusivamente materna durante los primeros 6 meses de vida; introducción de alimentos complementarios seguros y nutricionalmente adecuados a partir de los 6 meses, continuando la lactancia materna hasta los 2 años o más. Entre las medidas que ayudan a proteger, fomentar y apoyar la lactancia materna están la adopción del Convenio núm. 183 sobre la protección de la maternidad, y utilizando el Código Internacional de Comercialización de Sucedáneos de la Leche Materna.

### ***Protect the future: Maternity, paternity and work***

ILO Bureau for Gender Equality, and ILO Conditions of Work and Employment Programme, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms\\_106262.pdf](http://www.ilo.org/wcmsp5/groups/public/@dgreports/@gender/documents/publication/wcms_106262.pdf)



This brochure, prepared for an ILO awareness campaign in 2009 on “Gender equality at the heart of decent work”, highlights key issues and trends including supporting fathers’ roles. A summary of ILO responses and partnerships for improving maternity protection presents examples of national and multi-sectoral approaches for better maternal and newborn health. Insights are also provided on initiatives by employers’ and workers’ organizations to support maternity protection, as well as good practices by governments. A last section on “What can be done?” describes practical ways governments – which have the lead role in scaling up efforts – can improve maternity protection and health through workplaces. And with the social partners, they can help ensure that paid work does not threaten the health of pregnant and nursing women or their newborns. Also listed are ILO publications on maternity protection and related issues.

### ***Protéger l’avenir: maternité, paternité et travail***

[www.ilo.org/gender/Events/Campaign2008-2009/WCMS\\_094380/lang--fr/index.htm](http://www.ilo.org/gender/Events/Campaign2008-2009/WCMS_094380/lang--fr/index.htm)

Cette brochure, préparée en 2008 dans le cadre d’une campagne de sensibilisation de l’OIT sur «l’égalité hommes-femmes au cœur du travail décent», souligne les questions clés et les tendances, notamment le rôle de soutien des pères. Les réponses de l’OIT et des partenariats entrepris pour améliorer la protection de la maternité y sont présentés, avec des exemples d’approches nationales et multi-sectorielles favorisant la santé maternelle et néonatale. Des aperçus sont également fournis sur les initiatives prises par les organisations d’employeurs et de travailleurs pour soutenir la protection de la maternité, ainsi que les bonnes pratiques auxquelles ont recours les gouvernements. Une dernière section, «Que peut-on faire?», décrit les moyens pratiques des gouvernements – qui occupent un rôle de premier plan dans l’intensification des efforts – pour améliorer la protection de la maternité et de la santé par le biais des lieux de travail. En agissant avec les partenaires sociaux, ils peuvent également veiller à ce que le travail rémunéré ne menace pas la santé des femmes enceintes et allaitantes ou de leurs nouveau-nés. Les publications de l’OIT sur la protection de la maternité et les questions connexes sont également répertoriées.

### ***Proteger el futuro: Maternidad, paternidad y trabajo***

[www.ilo.org/wcmstp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_106517.pdf](http://www.ilo.org/wcmstp5/groups/public/---dgreports/---gender/documents/publication/wcms_106517.pdf)

Este folleto, preparado para una campaña de sensibilización de la OIT en 2009 sobre “La igualdad de género como eje del trabajo decente”, pone de relieve las principales cuestiones y tendencias, incluyendo el apoyo al rol del padre. Un resumen de las respuestas de la OIT y alianzas para mejorar la protección de la maternidad, presenta ejemplos de enfoques para promover los abordajes nacionales y multisectoriales en pos de mejorar la salud materno-infantil. Nos proporciona también información sobre las iniciativas de las organizaciones de empleadores-as y de trabajadores-as para apoyar a la protección de la maternidad, así como buenas prácticas por parte de los gobiernos. Una última sección sobre “¿Qué podemos hacer?”, describe formas prácticas de los gobiernos – que tienen una función rectora a la hora de intensificar los esfuerzos – encaminados a mejorar la protección y la salud maternas a través de

los lugares de trabajo. Y junto con los interlocutores sociales, pueden asegurar de que el trabajo no supone una amenaza para la salud de las mujeres embarazadas o lactantes ni de los recién nacidos. También se enumeran las publicaciones de la OIT sobre protección de la maternidad y otras cuestiones conexas.

***Work and family: The way to care is to share!***

ILO Bureau for Gender Equality, and ILO Conditions of Work and Employment Programme, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_101758.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_101758.pdf)

Growing evidence from around the world shows that the lack of effective policies to address work-family conflicts can cause major problems for working women and men, enterprises and societies. This brochure, prepared as part of an ILO awareness campaign in 2009 on “Gender equality at the heart of decent work”, observes that poor work-family reconciliation has contributed to declining fertility rates in many countries since women, who mostly bear the burden of childcare and unpaid domestic work, find it difficult to combine a job or career with children. Many parents face difficult decisions when childcare is lacking – including enlisting older children – often girls – to care for younger ones, or taking them to work where the children can end up in child labour. Women may be compelled to leave the labour market or take up part-time work, which impact negatively on their earnings, skills development, and rights to voice and social protection. Examples are provided of good practice work-family policies from Chile, Croatia, India and South Africa.

***La famille et le travail: Vouloir et pouvoir partager c'est ce qui compte!***

[www.ilo.org/gender/Events/Campaign2008-2009/WCMS\\_101749/lang--fr/index.htm](http://www.ilo.org/gender/Events/Campaign2008-2009/WCMS_101749/lang--fr/index.htm)

On constate de plus en plus, à travers le monde, qu'un manque de politiques efficaces pour gérer les conflits travail-famille peut causer des problèmes majeurs pour les femmes et les hommes qui travaillent, ainsi que pour les entreprises et les sociétés. Cette brochure, préparée en 2009 dans le cadre d'une campagne de sensibilisation de l'OIT sur «l'égalité hommes-femmes au cœur du travail décent», observe qu'une mauvaise conciliation travail-famille a contribué à la baisse des taux de fécondité dans de nombreux pays, où les femmes qui, la plupart du temps portent seules les fardeaux de la garde d'enfants et du travail domestique non rémunéré, trouvent difficile de combiner un emploi ou une carrière avec des enfants à charge. Beaucoup de parents font face à des décisions difficiles quand ils sont confrontés au manque de services de garde, notamment le recours aux enfants plus âgés – souvent des filles – pour s'occuper des plus jeunes, ou emmener les jeunes enfants au travail, où ils risquent de se retrouver pris au piège du travail des enfants. Les femmes peuvent être forcées de quitter le marché du travail ou de se contenter d'un travail à mi-temps, ce qui a un impact négatif sur leurs revenus, sur le développement de leurs compétences, et sur leurs droits à la protection sociale et leur participation. Figurent également des exemples de bonnes pratiques travail-famille en provenance du Chili, de la Croatie, d'Inde et d'Afrique du Sud.

***Trabajo y familia: ¡Compartir es la mejor forma de cuidar!***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms\\_103430.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_103430.pdf)

Cada vez surgen más datos de todo el mundo que demuestran con mayor certeza que la falta de políticas eficaces para dar tratamiento al conflicto que existe entre las responsabilidades familiares y laborales puede derivar en problemas graves para las mujeres y hombres trabajadores, empresas y sociedades. Este folleto, preparado como parte de una campaña de sensibilización de la OIT en 2009 sobre “La igualdad de género como eje del trabajo decente”, observa que la falta de conciliación entre trabajo y vida familiar ha contribuido a la disminución de las tasas de fecundidad en muchos países, pues las mujeres que llevan la carga de cuidado de los niños y el trabajo doméstico no remunerado encuentran dificultad para compatibilizar un empleo o profesión con la crianza de los niños. Muchos padres se enfrentan a decisiones difíciles ante la falta de disponibilidad de servicios para el cuidado de los niños – como la de poner a los niños más grandes – a cargo de los más pequeños – a menudo las niñas, o llevarlos con ellos a trabajar, lo que en definitiva, los conduce a engrosar las filas del trabajo. Las mujeres pueden verse obligadas a abandonar el mercado laboral o a buscar trabajos a tiempo parcial, con consecuencias negativas para sus ingresos, para el desarrollo de competencias y para los derechos a expresarse y a tener protección social. Se proporcionan ejemplos de buenas prácticas de políticas que integran el trabajo y la vida familiar, en Chile, Croacia, India y Sudáfrica.

***WISE + Work Improvement in Small Enterprises – Action Manual***

ILO Conditions of Work and Employment Programme, Geneva, 2009

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/instructionalmaterial/wcm\\_041851.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/instructionalmaterial/wcm_041851.pdf)

Module 5 of this training manual – which observes that employees are not only often a significant investment but also hold the key to the success of a business – focuses on family-friendly measures. It aims to aid small and medium-sized enterprise owners or managers to understand family responsibilities; balancing of such responsibility with paid work and links with workers’ productivity; how to address maternity-related workplace issues; and ways to formulate and implement family-friendly workplace measures. Implementing such measures is a business strategy with the dual agenda of creating a win-win situation in order to achieve both organizational effectiveness and employee well-being. Four sections provide practical examples including family-friendly leave arrangements, maternity protection at the workplace, and help with care arrangements.

***1st World Women’s Conference: Conclusions and Recommendations***

International Trade Union Confederation (ITUC), Brussels, 2009

[www.ituc-csi.org/1st-world-women-s-conference,4822.html?lang=en](http://www.ituc-csi.org/1st-world-women-s-conference,4822.html?lang=en)

This succinct statement summarizes results of a conference on “Decent Work – Decent Life for Women: Trade Unions Taking the Lead for Economic and social

Justice and Equality”. Some 450 delegates from over 100 countries put forward recommendations and Action Plans for implementation at international, regional and national levels, including one on collective bargaining, social dialogue and gender equality. This Action Plan calls on all unions to ensure fair participation of women negotiators, and implement the action plan including for work-life balance, maternity rights, breastfeeding, paternity and parental leave, flexible working, childcare and eldercare support. The statement also stresses that “trade unions must work together to ensure the following equality international labour conventions are fully ratified, and implementation into national legislation effectively monitored: 100 on Equal Remuneration, 111 on Discrimination, 156 on Family Responsibilities and 183 on Maternity Protection, 175 on part-Time Work and 177 on Home Work”.

### ***1<sup>ère</sup> Conférence mondiale des Femmes: Conclusions et recommandations***

[www.ituc-csi.org/1ere-conference-mondiale-des,4823.html?lang=fr](http://www.ituc-csi.org/1ere-conference-mondiale-des,4823.html?lang=fr)

Cette brève déclaration résume les résultats d'une conférence sur «Un travail décent, une Vie décente pour les femmes: les syndicats se placent à l'avant-garde pour la justice économique et sociale et l'égalité». Quelque 450 délégués de plus de 100 pays ont formulé des recommandations et des plans d'action pour la mise en œuvre, aux niveaux international, régional et national, du dialogue social et de l'égalité des sexes. L'un des plans d'action, sur la négociation collective, appelle les syndicats à s'assurer d'une participation équitable des femmes dans les négociations et à mettre en œuvre le plan d'action, notamment par rapport à l'équilibre travail-vie, aux droits de maternité, à l'allaitement maternel, et aux congés parental et de paternité, au travail flexible, à la garde d'enfants et au soutien aux personnes âgées. La déclaration souligne également que «les syndicats doivent travailler ensemble pour veiller à ce que les conventions internationales du travail favorisant l'égalité soient pleinement ratifiées, et que leur mise en œuvre dans la législation nationale soit contrôlée de manière efficace: Conventions n° 100 sur l'égalité de rémunération, n° 111 sur la discrimination, n° 156 sur les responsabilités familiales, n° 183 sur la protection de la maternité, n° 175 sur le travail à temps partiel et no 177 sur le travail à domicile».

### ***La Conferencia Mundial para la Mujer: Conclusiones y recomendaciones***

[www.ituc-csi.org/1a-cmpm-conclusiones-y.html?lang=es](http://www.ituc-csi.org/1a-cmpm-conclusiones-y.html?lang=es)

Esta declaración sucinta resume los resultados de una conferencia sobre “Trabajo decente, vida decente para la mujer: Los sindicatos se sitúan a la vanguardia respecto a la justicia económica y social & la igualdad”. Unas 450 delegadas de más de 100 países presentaron recomendaciones y planes de acción para su implementación a escala internacional, regional y nacional, entre ellos uno sobre la negociación colectiva, diálogo social y la igualdad de género. Este Plan de Acción hace un llamamiento a todos los sindicatos para garantizar la participación apropiada de mujeres como negociadoras, y aplicar un Plan de Acción para conciliar vida laboral y personal, derechos de maternidad, permisos de lactancia, paternidad y maternidad, horarios flexibles, y ayudas para el cuidado de niños y ancianos. La declaración también hace hincapié en que “los sindicatos deben trabajar juntos para asegurarse de que los siguientes convenios internacionales del trabajo sean ratificados, y que se de

seguimiento a su plena implementación en la legislación nacional: Convenio núm. 100 sobre igualdad de remuneración; Convenio núm. 111 sobre discriminación; Convenio núm. 156 sobre trabajadores con responsabilidades familiares; Convenio núm. 183 sobre protección de la maternidad; Convenio núm. 175 sobre trabajo a tiempo parcial; y Convenio núm. 177 sobre trabajo a domicilio”.

***Managing diversity in the workplace: Training package on work and family***

ILO Bureau for Employers' Activities, and ILO Conditions of Work and Employment Programme, Geneva, 2008

[www.ilo.org/public/english/dialogue/actemp/whatwedo/projects/diversity.htm#2](http://www.ilo.org/public/english/dialogue/actemp/whatwedo/projects/diversity.htm#2)

This training package, also available as a CD-ROM, aims to enhance capacity of employers' to launch or further develop workplace diversity and equality initiatives. Case studies illustrate actual initiatives in different businesses operating both nationally and globally. A total of 25 factsheets, which can be printed individually or in combination depending on training purposes, provide concise information on different aspects of work and family. Ten activity sheets are designed to stimulate reflection and a better understanding of work and family issues, as well as how these can be adapted to national and local contexts. Five practical action sheets provide guidance and inspiration on designing and implementing a work family policy. A library section comprises reference materials and weblinks, including some 35 good practice examples from a variety of enterprises operating in different sectors and countries.

***Decent Work Decent Life for Women: Making Maternity Protection a Reality***

International Trade Union Confederation (ITUC), Brussels, 2008

[www.ituc-csi.org/ituc-leaflet-on-maternity.html](http://www.ituc-csi.org/ituc-leaflet-on-maternity.html)

This leaflet, produced as part of a global campaign for ratifying and applying Convention No. 183 on Maternity Protection, answers questions such as: Why is it important to ratify Convention 183?; Which legal instruments can we refer to?; What is our role as trade union organizations?; and, What concrete action can we take?. Campaign priorities are to preserve the health and wellbeing of mothers and children, ensure that working women are not punished financially for giving birth to or raising children, and application through national legislation and collective agreements for all working women of the minimum protection standards set by Convention No. 183 and its accompanying Recommendation. All precautions and safety measures should be taken to ensure pregnant or breast-feeding women and unborn children are not exposed to any risk as a result of work women do, and these protective measures should not have a negative impact on women's promotion and their pension rights nor be a source of discrimination.

***Pour un travail et une vie décente des femmes: la protection de la maternité doit devenir une réalité.***

[www.ituc-csi.org/IMG/pdf/ITUC-materniteFR.pdf](http://www.ituc-csi.org/IMG/pdf/ITUC-materniteFR.pdf)

Cette brochure, produite dans le cadre d'une campagne mondiale pour la ratification et l'application de la convention n° 183 sur la protection de la maternité, répond aux

questions telles que: pourquoi est-il important de ratifier la Convention n° 183; à quels instruments juridiques peut-on se référer; quel est notre rôle en tant qu'organisations syndicales; quelles mesures concrètes pouvons-nous prendre? Les priorités de la campagne sont de préserver la santé et le bien-être des mères et des enfants, de veiller à ce que les femmes qui travaillent ne soient pas punies financièrement en donnant naissance ou en élevant des enfants, et enfin l'application par la législation nationale et les conventions collectives des normes minimales de protection prévues par la convention n° 183 et sa recommandation. Toutes les précautions et les mesures de sécurité devraient être prises pour s'assurer que les femmes enceintes ou qui allaitent et les enfants à naître ne soient pas exposés à un risque en raison du travail. Ces mesures de protection ne devraient pas avoir un impact négatif sur la promotion des femmes et sur leurs droits à une pension, ni être une source de discrimination.

***Por un Trabajo y una Vida Decente para la mujer: La protección de la maternidad debe convertirse en realidad***

[www.ituc-csi.org/IMG/pdf/ITUC-materniteESP.pdf](http://www.ituc-csi.org/IMG/pdf/ITUC-materniteESP.pdf)

Este folleto, producido como parte de una campaña mundial para la ratificación y aplicación del Convenio núm. 183 sobre la protección de la maternidad, responde a preguntas como: ¿Por qué es importante ratificar el Convenio núm. 183?, ¿En qué instrumentos internacionales podemos apoyarnos?, ¿Cuál es nuestro papel en tanto que organizaciones sindicales?, y ¿Qué acciones concretas podríamos llevar a cabo?. Las prioridades de la campaña son salvaguardar la salud y el bienestar de la madre y del bebé, asegurarse de que la mujer trabajadora no sea penalizada económicamente por el hecho de traer al mundo o criar a sus hijos, y la aplicación a través de la legislación nacional y de los convenios colectivos, para todas las mujeres trabajadoras, de las normas mínimas de protección de la maternidad establecidas por el Convenio núm. 183 y la Recomendación núm. 191 que lo acompaña. Se deben tomar todas las precauciones y medidas de seguridad para asegurar que el trabajo no represente un peligro para la mujer embarazada o las madres lactantes, ni para los futuros bebés, y que estas medidas de protección no afecten negativamente su promoción en el trabajo, sus derechos en materia de pensión o jubilación, y que no constituyan una causa de discriminación.

***The Maternity Protection Campaign Kit – A breastfeeding perspective***

Maternity Protection Coalition, International Maternal and Child Health/Uppsala University, and United Nations Children's Fund, Penang, 2008

[www.waba.org.my/whatwedo/womenandwork/pdf/contents.pdf](http://www.waba.org.my/whatwedo/womenandwork/pdf/contents.pdf)

This kit was produced with inputs by NGOs that worked closely with international trade unions "to keep breastfeeding on ILO's maternity protection agenda". The kit provides breastfeeding advocates with information and insights about Convention No. 183 on Maternity Protection, in order to advocate for its ratification and application. Sections include analysis of women at work in parallel with their reproductive role; key elements of maternity protection such as scope, leave, benefits, and breast-

feeding breaks and facilities; legal frameworks for advocacy at all levels; and ILO and the ratification process. A section on tools for action lists key documents related to maternity protection, breastfeeding and human rights, and a resources section provides useful contacts and further information.

### ***Corporate Guide: Promoting Parenting Among Male Employees – A Challenge for Equal Opportunity***

Observatoire sur la Responsabilité Sociétale des Entreprises (ORSE) and Centre national d'information sur les droits des femmes et des familles (CNIDFF), Paris, 2008

This guide provides companies with practical advice on how to promote parenting among male staff as part of a larger strategy on gender equality. Themes include on challenges faced by companies in this area, difficulties encountered by male employees who wish to have a greater day-to-day presence with their children, and real solutions used by companies that have made progress. The guide is intended for all those involved at company level: management, human resources staff, personnel representatives, trade union representatives, public authorities, and professional organizations.

### ***Safe maternity and the world of work***

ILO Conditions of Work and Employment Programme, Geneva, 2007

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_62.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_62.pdf)URL

This succinct document summarizes reasons for maternal mortality and how the world of work is an entry point for promoting safe maternity, especially through Convention No. 183 on Maternity Protection. Sections cover the “how to” such as workplace education and services, and addressing HIV-positive women’s needs; implementing, extending and improving social health protection including maternity benefits schemes; and promoting decent work for health workers. A concluding chapter highlights strategies for mobilizing support. Priorities for action are: promote maternity protection for all women workers during pregnancy, childbirth and breastfeeding; step up education and services through workplaces for formal and informal economy workers including on HIV prevention, counseling and services; promote effective access to quality healthcare and provide financial protection against health-related costs; cover all women with adequate maternal benefits; and promote decent work for health sector workers.

### ***Maternité sans risques et le monde du travail***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_61.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_61.pdf)URL

Ce document résume brièvement les causes de la mortalité maternelle et explique comment le monde du travail représente un point d'entrée pour la promotion d'une maternité sans risques, en particulier par la convention no 183 sur la protection de la maternité. Les différentes parties élaborent sur les moyens de promouvoir la pro-

tection de la maternité, tels que l'éducation sur le milieu de travail, la réponse aux besoins des femmes positives au VIH, la mise en œuvre, l'élargissement et l'amélioration de la protection sociale, y compris les régimes de prestations de maternité, et la promotion du travail décent pour les travailleurs-euses de la santé. La conclusion souligne les stratégies pour mobiliser le soutien. Les priorités d'action consistent à promouvoir la protection de la maternité pour toutes les travailleuses pendant la grossesse, l'accouchement et l'allaitement; améliorer l'éducation et les services sur les lieux de travail pour les travailleurs de l'économie formelle et informelle, y compris sur la prévention du VIH et sur les conseils et les services existants ; promouvoir l'accès effectif aux soins de santé de qualité et fournir une aide financière permettant une protection contre les coûts liés à la santé, fournir à toutes les femmes une couverture des soins maternels et promouvoir le travail décent pour les travailleurs-euses du secteur de la santé.

### ***La maternidad sin riesgo y el mundo del trabajo***

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_60.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_60.pdf)

Este documento sucinto resume las razones de la mortalidad materna y cómo el mundo del trabajo es un punto de partida para promover la maternidad segura, especialmente a través del Convenio núm. 183 sobre la protección de la maternidad. Las secciones cubren el "cómo", por ejemplo la educación y servicios en el lugar de trabajo y abordar las necesidades de las mujeres seropositivas; aplicación, ampliación y mejora de la protección social incluyendo regímenes de prestaciones de maternidad; y la promoción del trabajo decente para el personal sanitario. El capítulo final destaca las estrategias para movilizar apoyo. Las prioridades de acción son: promover la protección de la maternidad para todas las trabajadoras durante el embarazo, el parto y la lactancia; fomentar la educación y los servicios a través del lugar de trabajo para las trabajadoras tanto de la economía formal como de la informal, incluida la prevención del VIH, el asesoramiento y la prestación de servicios; promover el acceso efectivo a una atención sanitaria de calidad y brindar protección financiera contra los costos relacionados con la salud; proporcionar a todas las mujeres prestaciones de maternidad adecuadas; y promoción del trabajo decente para el personal del sector de la salud.

### ***Statement on strong standards of maternity protection for all women workers***

International Trade Union Confederation (ITUC), Brussels, 2007

[www.ituc-csi.org/ituc-statement-on-maternity.html](http://www.ituc-csi.org/ituc-statement-on-maternity.html)

This statement, part of a campaign for maternal protection, calls for strong standards of maternity protection for all women. Despite the fact that many countries have legislation for paid maternity leave, and many others provide health benefits and employment protection, the gap between law and practice remains huge. Not all women workers enjoy the same coverage, and a large majority is excluded due to their atypical employment such as in the informal economy, agriculture, home-based work, domestic work or part-time work. Fully ensuring maternity protection is



a way to recognize the major contribution made by women to renewal of populations and the workforce. All trade union organizations are called on to prioritize maternity protection by negotiating application of ILO Convention No. 183 and accompanying Recommendation No. 191 in collective agreements and labour legislation. Unions should organize collective activities to raise awareness among policy leaders, employers and society about the critical importance of strong maternity protection standards.

***Normes solides en matière de protection de la maternité pour toutes les femmes travailleuses***

[www.ituc-csi.org/declaration-de-la-csi-pour-la.html?lang=fr](http://www.ituc-csi.org/declaration-de-la-csi-pour-la.html?lang=fr)

Cette déclaration, qui fait partie d'une campagne pour la protection maternelle, appelle à des normes strictes de protection de la maternité pour toutes les femmes. Bien que de nombreux pays aient adopté des lois pour les congés de maternité payés, ou fournissent des prestations de santé et une protection de l'emploi, l'écart entre le droit et la pratique reste énorme. Les femmes ne jouissent pas toutes de la même protection au travail, et une grande majorité d'entre elles sont exclues en raison du caractère atypique de leur emploi, par exemple dans l'économie informelle, le travail agricole, le travail à domicile, le travail domestique ou à temps partiel. Assurer une protection intégrale de la maternité est une façon de reconnaître la contribution majeure apportée par les femmes au renouvellement des populations et de la main-d'œuvre. Toutes les organisations syndicales sont appelées à donner la priorité à la protection de la maternité en négociant l'application de la Convention n° 183 et de la Recommandation n° 191, qui l'accompagne, dans les conventions collectives et dans la législation du travail. Les syndicats sont encouragés à organiser des activités collectives afin de sensibiliser les dirigeants politiques, les employeurs-euses et la société sur l'importance critique de normes solides de protection de la maternité.

***Normas firmes sobre protección de la maternidad para todas las mujeres trabajadoras***

[www.ituc-csi.org/IMG/pdf/Declaracion\\_8\\_de\\_marzo\\_ES-2.pdf](http://www.ituc-csi.org/IMG/pdf/Declaracion_8_de_marzo_ES-2.pdf)

Esta declaración, que forma parte de una campaña para la protección de la maternidad, exige normas estrictas de protección de la maternidad para todas las mujeres. A pesar de que muchos países cuentan con leyes que estipulan permisos de maternidad remunerados, y que muchos otros brindan prestaciones de salud y protección del empleo, la brecha entre la ley y la práctica sigue siendo considerable. No todas las mujeres disfrutan de la misma cobertura, y muchas se ven excluidas debido a su empleo atípico, bien sea en la economía informal, en la agricultura, trabajando a domicilio, en el servicio doméstico o con puestos de trabajo a tiempo parcial. Garantizar plenamente la protección de la maternidad es una manera de reconocer la importante contribución realizada por las mujeres a la renovación de la población y de la mano de obra. Se hace un llamamiento a todas las organizaciones sindicales para que den prioridad a la protección de la maternidad, negociando la aplicación del Convenio núm. 183 de la OIT y la Recomendación núm. 191 que lo acompaña, en los convenios colectivos y la legislación laboral. Los sindicatos deberían organizar actividades colectivas para sensibilizar a los líderes políticos, empleadores-as y a la opinión pública, respecto a la importancia vital de contar con normas firmes sobre protección de la maternidad.

***Promoviendo la igualdad de género – Convenios de la OIT y los derechos laborales de las mujeres***

Equipo de Trabajo Decente et Oficina de Países de la OIT para el Cono Sur de América Latina, Santiago, 2006

[http://oit.org.pe/WDMS/bib/publ/libros/promoviendo\\_igualdad\\_genero%5Bosr-stgo%5D.pdf](http://oit.org.pe/WDMS/bib/publ/libros/promoviendo_igualdad_genero%5Bosr-stgo%5D.pdf)

Aquí se presentan, en una versión ilustrada y comentada, cuatro importantes Convenios de la OIT que tienen en común el objetivo de contribuir a superar situaciones discriminatorias que viven las mujeres en su inserción y permanencia en el mundo del trabajo. También se entrega información actualizada sobre la normativa nacional de Argentina, Brasil, Chile, Paraguay y Uruguay de particular relevancia para la igualdad de género. Después en el capítulo I sobre “Conozcamos la OIT”, capítulo II sobre “Conozcamos los convenios de la OIT” incluye una descripción del cuarto Convenio incluyendo el Convenio núm. 156 sobre trabajadores con responsabilidades familiares y Convenio núm. 183 sobre la protección de la maternidad. El capítulo III explica los mecanismos de control del cumplimiento de los convenios. El capítulo V examina los derechos laborales de las mujeres en los países del Cono Sur, y los Convenios relativos al género y a la igualdad y su ratificación por parte de los países del Cono Sur.

***Joint ILO/WHO guidelines on health services and HIV/AIDS***

ILO and World Health Organization, Geneva, 2005

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---ilo\\_aids/documents/publication/wcms\\_116240.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/publication/wcms_116240.pdf)

These guidelines were developed by ILO and WHO specialists on HIV and health-care and adopted by expert representatives of workers, employers and governments in an official tripartite meeting. The guidelines provide practical approaches to the disease’s challenges to the sector and cover protection, training, screening, treatment, confidentiality, and prevention. Also addressed are how to minimize health workers’ occupational risks to HIV infection, as well as related care and support issues. Strategies, including on maternity care services, are suggested in order to benefit from the essential role of social dialogue among governments, and employers’ and workers’ organizations in responding to HIV and AIDS-related challenges in the sector.

***“Modern daddy – Norway’s progressive policy on paternity leave”***

Article in World of Work, no. 54, ILO, Geneva, August 2005

[www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS\\_081359/lang--en/index.htm](http://www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_081359/lang--en/index.htm)

This article examines how Norway promotes gender equality at work by facilitating equal responsibility for childcare. At the time of publication, statutory provisions for parental leave applied equally to both parents, and each was entitled to up to one year of unpaid leave per child – extended up to two years for a single parent. A

paternity quota of four weeks was introduced in 1993 to encourage more fathers to take up their entitlement. The quota cannot be transferred to the mother and are lost if the father doesn't use them. Fathers are granted the quota regardless of whether the mother remains at home, or not, after delivery. Although the amount of the father's quota depends on the mother's employment prior to delivery, his entitlement is independent of the mother's eligibility. The scheme has significantly increased the number of fathers taking paternity leave; although in 1997 an estimated 75 per cent of fathers with a right to the paternity quota had taken their entitlement, by 2004 almost 90 per cent were estimated to have taken it.

***“Les nouveaux pères – Le congé de paternité en Norvège”***

[www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/dwcms\\_080675.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/dwcms_080675.pdf)

Cet article examine la façon dont la Norvège promeut l'égalité des sexes au travail, en facilitant une responsabilité égale pour la garde d'enfants. Au moment de la publication de cet article, les dispositions légales relatives au congé parental s'appliquaient de façon égale aux deux parents, et chacun avait droit à un maximum d'un an de congé sans solde par enfant – prolongé jusqu'à deux ans pour un parent seul. Un «quota» paternel de quatre semaines a été introduit en 1993 pour encourager davantage de pères à faire valoir leur droit. Ce quota ne peut pas être transféré à la mère et est perdu si le père ne l'utilise pas. Les pères y ont droit, que la mère reste à la maison ou non après l'accouchement. Bien que le montant du quota dépende de l'emploi de la mère avant l'accouchement, le droit au quota est indépendant de l'admissibilité de la mère. Ce plan a augmenté de façon significative le nombre de pères qui prennent un congé de paternité: si, en 1997, 75 pour cent des pères ayant droit au quota avaient pris leur droit, le pourcentage était passé à 90 en 2004.

***“Papá moderno: La política progresista de Noruega sobre permiso de paternidad”***

[www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS\\_081438/lang--es/index.htm](http://www.ilo.org/global/publications/magazines-and-journals/world-of-work-magazine/articles/WCMS_081438/lang--es/index.htm)

En este artículo se examina la forma en la que Noruega promueve la igualdad de género en el trabajo, facilitando la misma responsabilidad de cuidado de los niños. En el momento de la publicación, las disposiciones legales relativas al permiso parental se aplican por igual a padre y madre, y cada uno tiene derecho a un máximo de un año de permiso no retribuido por hijo – ampliable a dos años en el caso de familia monoparental. Una cuota de paternidad de cuatro semanas se introdujo en 1993 para animar a más padres a que asuman su derecho. La cuota no puede cederse a la madre y se pierden si el padre no las utiliza. La cuota se concede a los padres con independencia de que la madre se quede en casa tras el parto o no. Aunque la cantidad de la cuota del padre depende del empleo de la madre antes del parto, su derecho es independiente de la elegibilidad de la madre. El sistema establecido ha dado lugar a un aumento significativo del número de padres que toman el permiso de paternidad, aunque en 1997 se estima que el 75 por ciento de los padres con derecho a la cuota de paternidad había tomado su derecho, para el año 2004 se calcula que casi el 90 por ciento lo habían tomado.

***Healthy beginnings: Guidance on safe maternity at work***

Paul, J., ILO Conditions of Work and Employment Programme, Geneva, 2004

[www.ilo.org/public/libdoc/ilo/2004/104B09\\_106\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2004/104B09_106_engl.pdf)

This guide uses Convention No. 183 on Maternity Protection and Recommendation No. 191 as the basis for setting out principles and information on workplace reproductive hazards and how to prevent them. Annexes provide practical tools for identifying such risks and finding solutions. The guide is for general use instead of only by medical experts, and mainly for workplaces in the formal economy. The guide can serve as a reference tool for employers, workers, trade union leaders, occupational safety and health advisors, labour inspectors, and civil society organizations. Practical steps to protect women workers and unborn children cover different stages including working during pregnancy, after a recent birth, returning to work after pregnancy, and breastfeeding upon return. Checklists help identify hazards and workers at risk, as well as actions needed to avoid these. Useful resources and websites are also listed.

***The “family-friendly” workplace***

ILO Conditions of Work and Employment Programme, Information Sheet no. WF-3, Geneva, 2004

[www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-3.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-3.pdf)

This information sheet gives tips on implementing family-friendly workplace measures and describes the benefits for workers and businesses. Employers can enhance their ability to attract a broader range of job candidates; retain high-quality women and men employees in a competitive job market; reduce staff turnover thus lowering recruitment, induction and training costs; reduce absenteeism and lateness; improve productivity through better performance and motivation; and create a working environment for a competitive edge and innovation. Four types of arrangements are: working hours (such as flexible, part time, job-sharing and telecommuting); child- and eldercare (workplace nurseries or subsidies, breastfeeding facilities, workplace support for employees who care for a family member); statutory and non-statutory leave (maternity, family emergencies, career breaks, illness or care of family members) and information services and training (information kits, contact during leave, and courses).

***Making work arrangements more family-friendly***

ILO Conditions of Work and Employment Programme, Information Sheet no. WF-5, Geneva, 2004

[www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-5.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-5.pdf)

Working hours and place are usually the most important factors in determining whether paid work is compatible with family responsibilities. When overtime is required, advance notice is important for workers, especially those with family responsibilities so that arrangements for childcare can be made. Although part-time work seems to be a solution for many with care responsibilities – which fall heavily on

women – there is debate about the implications for gender equality. This is because such a choice tends to reinforce the “male breadwinner” model, with women taking a secondary role in the labour market for family responsibilities. Since employees who work part-time usually want to do so for a specific period in their life, such as when children are young, a provision is being increasingly incorporated in national legislation so that persons can reduce their working hours and move between full and part-time work. Job sharing, in which one job is filled by two or more part-time employees, is another way to balance work and family responsibilities, as is teleworking. Examples of flexible work schedules include shift swapping, flexitime and time-banking, all of which are described.

### ***Leave and family responsibilities***

ILO Conditions of Work and Employment Programme, Information Sheet no. WF-6, Geneva, 2004

[www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-6.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-6.pdf)

Leave entitlements are linked to the ability of workers to be absent for a short period to deal with a family emergency or take a prolonged leave for caring responsibilities. Leave that is available at the same time as the rest of the family, such as school holidays for children, is important for the quality of family life. In addition to maternity leave, the main such entitlements of importance to workers with family responsibilities are annual leave (which applies to all workers), emergency leave, parental leave and paternity leave. Each are described, along with examples of legislation in the Netherlands on leave for caring, “compassionate” leave in Uganda, and leave provisions for new fathers in national legislation in Algeria, Brazil, Belgium, Paraguay, Philippines, Romania, Seychelles, Sweden, Togo and the United Kingdom.

### ***Partnerships for childcare***

ILO Conditions of Work and Employment Programme, Information Sheet no. WF-7, Geneva, 2004

[www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-7.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-7.pdf)

Childcare arrangements for working parents include care by household employees such as a nanny; child minders who look after children in minders’ homes; and group facilities such as crèches or pre-school. Resources to cover such costs can come from the child’s family; central government; municipalities and local government; NGOs, religious organizations and trade unions; international organizations and bilateral donors; and employers. In a few advanced welfare states, such as in Sweden, the government provides most of these resources. On the other hand, in most poor countries government budgets don’t allow for significant contributions. Strategic partnerships are important in making childcare more available to workers. Examples of community arrangements are pre-primary schools in Kenya, municipality partnerships for pre-schools in Brazil, a formal system in France for local registration of child minders, and low-cost home- or community centre-based daycare for children in Peru. Examples of workplace initiatives include on-site crèches in Singapore, and mobile crèches on construction sites in India.

***Work-family reconciliation: What trade unions are doing***

ILO Conditions of Work and Employment Programme, Information Sheet no. WF-8, Geneva, 2004

[www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-8.pdf](http://www.ilo.org/public/english/region/eurpro/moscow/areas/gender/wf-8.pdf)

Trade unions negotiate various types of measures to help reconcile work and family responsibilities. These include collective agreement clauses on job security for pregnant workers, and improving on maternity leave legislation by increasing the length or payments. Sometimes in collective bargaining there may be more scope for non-wage benefits than for wage increases. Such visible gains by the union can comprise flexible working time arrangements or short leave for a family emergency, which may be more important to employees than a small wage increase. Another key role of trade unions is to help ensuring that family-friendly legislation and collective bargaining agreements are implemented, especially where government control mechanisms are weak. In order that workers can exercise their rights they must know these, and trade unions can play an essential role in disseminating work-family information through newsletters, information kits, study circles, training, and in social media, as well as advocacy at national level.

***Working time family measures***

ILO Conditions of Work and Employment Programme, Information Sheet no. WT-11, Geneva, 2004

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_170707.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_170707.pdf)

Working time family-friendly measures help make workplaces more responsive to the needs of workers with family responsibilities, while contributing toward more equal opportunities and increased productivity. Examples include flexitime and staggered hours; shorter hours such as part-time; compressed four-day working weeks; work-sharing and job-sharing; certain types of shift work; and “time-banking” in which workers arrange their hours over the working week or a longer period. When determining how to make working time more family-friendly, consider the following concerns: predictable hours of work; adequate employment and social security; adequate care services – or if these don’t exist establishment of childcare services with firms; adjusting school hours to better coincide with needs of working parents; flexible leave arrangements, so that both men and women can use these; an entitlement right for workers to get flexible working hours and a right to return to work after family leave; and consultation with workers, which is essential when developing such working time measures.

***How are workers with family responsibilities faring in the workplace?***

ILO, Geneva, 2004

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_travail\\_pub\\_4.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_travail_pub_4.pdf)

This booklet examines discrimination related to family responsibilities and shows how it can lead to reduced incomes and a vicious cycle of poverty. Examples are based on

in-depth interviews with workers in Botswana, Honduras, Mexico, Russian Federation, United States and Vietnam. Striking commonalities and concerns were raised by workers across countries. These highlight the impact of work and family issues on parents' ability to get a job, pressures on caregivers to settle for a job with poor conditions, pay loss due to family responsibilities, job loss that results from poor work-family conditions, and the cycles of poverty that result from work-family conflict.

### ***Work sharing and job sharing***

ILO Conditions of Work and Employment Programme, Information Sheet no. WT-17, Geneva, 2004

[www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_169673.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_169673.pdf)

Work-sharing involves reducing working time so that a given volume of work is spread over a larger number of employees; this may be used to avoid layoffs or increase employment. The decrease in working hours is usually coupled with cuts in wages and benefits, which in turn may be compensated partially by government wage subsidies or social benefits such as unemployment compensation. Job-sharing is a voluntary arrangement where two persons take joint responsibility for one full-time job; a common form is to split a full-time job into two part-time ones. Unlike work-sharing, job-sharing is usually not used to avoid layoffs. In addition to its helping employees achieve better work-life balance or have more time for family responsibilities, job-sharing enables firms to retain skilled women after maternity leave, and parents who cannot work fulltime because of family responsibilities. Job-sharing also helps employers to cover absent workers in case of maternity leave, sickness, annual leave and training.

### ***Gender Equality: A Guide to Collective Bargaining***

Olney, S.; Goodson, E.; Maloba-Caines, K. and O'Neill, F., InFocus Programme on Strengthening Social Dialogue, and ILO Bureau for Workers' Activities, Geneva, 2002

<http://actrav.itcilo.org/english/library/socdiag/v07000.htm>

In some countries where there is no national legislation for maternity protection, collective agreements are often the only source of such rights. However, usually these agreements aim to improve on any protection and benefits that may be provided by law. Users of this kit's module on maternity protection and family responsibilities should view maternity protection as a package that covers non-discrimination, job security, maternity leave, cash benefits, health protection measures, and nursing breaks (all discussed in the module). Concerning family responsibilities, users are advised to address and negotiate clauses during collective bargaining on paternity, parental and family leave; family care services; and protection against discrimination and victimization. Checklists for negotiating on the two themes are also provided.

### ***Égalité entre les sexes: manuel de négociation collective***

[www.ilo.org/public/libdoc/ilo/1998/98B09\\_13\\_fren.pdf](http://www.ilo.org/public/libdoc/ilo/1998/98B09_13_fren.pdf)

Dans les pays où il n'existe pas de législation nationale pour la protection de la maternité, les conventions collectives sont souvent la seule source en la matière. Normalement, ces

accords visent à améliorer toute protection et tous avantages prévus par la loi. Le module sur la protection de la maternité et les responsabilités familiales doit être considéré comme un ensemble couvrant la non-discrimination, la sécurité de l'emploi, le congé de maternité, les prestations en espèces, les mesures de protection de la santé et les soins infirmiers (tous abordés dans le module). En ce qui concerne les responsabilités familiales, les utilisateurs sont invités à aborder et négocier des clauses lors de la négociation collective sur la paternité, les congés parental et familial, les services de soins de la famille et la protection contre la discrimination et la victimisation. Des listes de contrôle pour mener à bien des négociations sur les deux thèmes sont également fournies.

***Maternity Protection: making it work – Interpreting the new ILO Convention 183 on Maternity Protection: Questions about national laws, regulations and practices***

World Alliance for Breastfeeding Action (WABA) Activity Sheet 11, Penang, June 2002  
[www.unicef.org/malaysia/ILO\\_Convention\\_Factsheet11.pdf](http://www.unicef.org/malaysia/ILO_Convention_Factsheet11.pdf)

This succinct activity sheet explores “gains” for breastfeeding women at work under Convention No. 183, such as recognized nursing breaks as a woman’s right. “Losses” include that countries can exclude categories of employed women if employers, workers and government agree – although they must report periodically on what they are doing to extend the Convention’s coverage to those groups. Other sections address increased flexibility of the Convention. A question-and-answer section addresses queries such as, Who will bear the cost of nursing facilities at the workplace? and, How will the frequency and length of nursing breaks be determined?”. A final section explains how to form partnerships to promote the Convention’s ratification and application.

***The Gender Dimensions of Social Security Reform in Central and Eastern Europe – Training Guide***

ILO Decent Work Team and Country Office for Central and Eastern Europe, Budapest, 2004

[http://ilo-mirror.library.cornell.edu/public/english/region/eurpro/budapest/download/soc\\_sec\\_gender\\_training\\_guide.pdf](http://ilo-mirror.library.cornell.edu/public/english/region/eurpro/budapest/download/soc_sec_gender_training_guide.pdf)

Maternity protection and unpaid care responsibilities are the themes addressed in this training guide. Sections for participatory exercises include training objectives for each theme, suggested methods, workshop materials needed, and a facilitator programme. Among themes are “Dealing with periods outside the workforce: providing for caring credits” and “From gender equal entitlements to a gender-equal distribution of care responsibilities”. The guide can also be used by individuals interested in strengthening their knowledge on the gender dimensions of social security, as well as for sharpening their arguments when participating in social security reform debates.

***Video on maternity protection in the workplace***

International Trade Union Confederation (ITUC), Brussels, date not cited  
[www.ituc-csi.org/ituc-video-on-maternity-protection,6091.html](http://www.ituc-csi.org/ituc-video-on-maternity-protection,6091.html)

This short video portrays the consequences when working women don’t have maternity protection.



**The Bureau for Gender Equality** supports the implementation of the ILO's Policy on Gender Equality and Mainstreaming. This entails offering advice to constituents and ILO staff on measures to help ensure that policies, legislation, programmes and institutions are more gender-equitable. Such measures include ratifying and implementing relevant labour standards, increasing the number of women in decision-making positions, promoting women's entrepreneurship and paying attention to situations where women are particularly vulnerable in the labour market.

The Bureau reports directly to the ILO Director-General who keeps the Organization's Governing Body and International Labour Conference apprised of contemporary gender issues in the four strategic objectives of employment, social protection, social dialogue and rights at work. It coordinates the ILO global Gender Network, which comprises Senior Gender Specialists and gender focal points in the field offices and at headquarters in Geneva. It carries out participatory gender audits (PGAs), technical cooperation projects, knowledge sharing and awareness-raising activities to help strengthen the capacities of constituents, ILO staff and other stakeholders to address the gender dimension in their areas of work.

The Bureau participates in United Nations inter-agency activities and initiatives aimed at promoting gender equality and the empowerment of women. These include the Millennium Development Goals (MDGs) and especially MDG 3 on gender equality, the Beijing Platform for Action and the Convention on the Elimination of Discrimination against Women (CEDAW). The Bureau contributes to Expert Group meetings to prepare the Commission on the Status of Women (CSW) and participates in the yearly CSW thematic discussions panels. The Bureau supports gender mainstreaming in "Delivering as One" initiatives at the country level and in United Nations Development Assistance Frameworks (UNDAFs).

The Bureau liaises with civil society groups, academic institutions and a broad range of actors committed to gender equality.

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ISBN 978-92-2-126582-5



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