

Good Global Legal Practices
TO PROMOTE GENDER EQUALITY
in the Labor Market



Good Global Legal Practices
TO PROMOTE GENDER EQUALITY
in the Labor Market



© 2013 Asian Development Bank

All rights reserved. Published in 2013.
Printed in the Philippines.

ISBN 978-92-9254-357-0 (Print), 978-92-9254-358-7 (PDF)
Publication Stock No. RPT136183-3

Cataloging-in-Publication Data
Asian Development Bank.

Good global legal practices to promote gender equality in the labor market.
Mandaluyong City, Philippines: Asian Development Bank, 2013.

1. Gender equality 2. Labor market I. Asian Development Bank.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not necessarily reflect the views or policies nor constitute an endorsement by the Asian Development Bank (ADB) or the International Labour Office (ILO), or their respective Board of Governors or the governments they represent.

Neither ADB nor ILO guarantees the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use.

By making any designation of or reference to a particular territory or geographic area, or by using the term “country” in this document, neither ADB nor ILO intends to make any judgments as to the legal or other status of any territory or area.

Reference to names of firms and commercial products and processes does not imply their endorsement by ADB nor ILO, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ADB encourages printing or copying information exclusively for personal and noncommercial use with proper acknowledgment. Users are restricted from reselling, redistributing, or creating derivative works for commercial purposes without the express, written consent of ADB.

Note:

In this publication, “\$” refers to US dollars.

6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
Tel +63 2 632 4444
Fax +63 2 636 2444
www.adb.org

For orders, please contact:
Public Information Center
Fax +63 2 636 2584
adbpub@adb.org

Contents

Abbreviations	vi
Foreword	viii
Acknowledgments	ix
I. Introduction	1
II. Essential Gender Equality and Nondiscrimination Law	3
Introduction	3
General International Standards	3
Approach to Discussion	4
Equality and Discrimination	4
Specific International Standards	4
Discussion of Principles and Examples of Good Legislation	5
Exemptions	6
Inherent Requirements of the Job	6
Special Measures	7
Modification of Procedures in Discrimination Cases	12
Discussion of Principles	12
Examples of Good Legislation	12
III. Promoting Opportunities for Women to Get Work	14
Introduction	14
International Standards	14
Discussion of Principles and Examples of Good Legislation	15
Access to Work for Waged Working Women	16
Employment Agencies	17
Recruitment	18
Promotion	20
Access to Work for Nonwaged Working Women	22
Introduction	22
Land	22
Credit and Finance	25
Inheritance	26
Prerequisites for Access to Work	28
International Standards	28
Discussion of Principles	28
Examples of Good Legislation	29

IV. Promoting Equality of Treatment for Working Women	30
Relevant International Standards	30
Minimum Wages	31
International Standards	31
Discussion of Principles and Examples of Good Legislation	31
Equal Remuneration for Work of Equal Value	33
Specific International Standards	33
Discussion of Principles and Examples of Good Legislation	34
Hours of Work	35
Specific International Standards	35
Discussion of Principles and Examples of Good Legislation	35
Sexual Harassment	36
International Standards	36
Discussion of Principles and Examples of Good Legislation.	37
Labour Clauses in Public Contracts	41
International Standards	41
Discussion of Principles and Examples of Good Legislation	41
V. Work and Security in Employment and Occupation	43
General Discussion	43
Employment and Occupation	43
Formal and Informal Employment	44
Security in Employment	45
An International Standards Approach	45
Good Legislative Practice	46
Formal Employment	47
Part-Time Work	47
Short-Term Contracts	49
Home Workers	51
Domestic Workers	52
Rural Workers	52
Informal Employment	53
Informal Sector Employment	53
Entrepreneurs	55
Cooperatives	58
VI. Social Protection for Working Families	60
Introduction	60
International Standards	61
Discussion of Principles and Examples of Good Legislation	62
Maternity Care	65
International Standards	65
Discussion of Principles and Examples of Good Legislation	65
Paternity/Parental/Family Leave	68
International Standards	68
Discussion and Examples of Good Legislative Practice	69
Family Responsibilities and Child Care	71
International Standards	71
Discussion and Examples of Good Legislation	72

VII. Protecting Collective Freedom and Social Dialogue	75
Freedom of Association and Collective Bargaining	75
Introduction	75
International Standards	76
Freedom of Association	77
Specific International Standards	77
Discussion of Principles and Examples of Good Legislation	78
Collective Bargaining	83
Specific international Standards	83
Discussion of Principles and Examples of Good Legislation	83
Social Dialogue	86
References	88

Abbreviations

ADB	– Asian Development Bank
CARP	– Comprehensive Agrarian Reform Act
CEACR	– Committee of Experts on the Application of Conventions and Recommendations
CEDAW	– Convention on the Elimination of All Forms of Discrimination against Women
COE	– Council of Europe
Eurofound	– European Foundation for the Improvement of Living and Working Conditions
ICCPR	– International Covenant on Civil and Political Rights
ICESCR	– International Covenant on Economic, Social and Cultural Rights
ILO	– International Labour Organisation
MGNREGA	– Mahatma Gandhi National Rural Employment Guarantee Act
MSMEs	– micro, small, and medium-scale enterprises
NGO	– nongovernment organization
NMW	– national minimum wage
OECD	– Organisation for Economic Co-operation and Development
POEA	– Philippine Overseas Employment Agency
SEWA	– Self Employed Women’s Association
SMEs	– small and medium-sized enterprises
UDHR	– Universal Declaration of Human Rights
UNDP	– United Nations Development Programme
UNIFEM	– United Nations Development Fund for Women
WIEGO	– Women in Informal Employment: Globalizing and Organizing

International Labour Organization Conventions

C1	–	Hours of Work (Industry) Convention
C2	–	Unemployment Convention
C3	–	Maternity Protection Convention
C11	–	Right of Association (Agriculture) Convention
C26	–	Minimum Wage-Fixing Machinery Convention
C30	–	Hours of Work (Commerce and Offices) Convention
C87	–	Freedom of Association and Protection of the Right to Organise Convention
C88	–	Employment Service Convention
C94	–	Labour Clauses (Public Contracts) Convention
C96	–	Convention Concerning Fee-Charging Employment Agencies (revised)
C98	–	Right to Organise and Collective Bargaining Convention
C99	–	Minimum Wage Fixing Machinery (Agriculture) Convention
C100	–	Equal Remuneration Convention
C102	–	Social Security (Minimum Standards)
C103	–	Maternity Protection Convention (Revised)
C111	–	Discrimination (Employment and Occupation) Convention
C131	–	Minimum Wage Fixing Convention
C135	–	Workers' Representatives Convention
C141	–	Rural Workers' Organisations Convention
C142	–	Human Resources Development Convention
C151	–	Labour Relations (Public Service) Convention
C154	–	Collective Bargaining Convention
C156	–	Workers with Family Responsibilities
C168	–	Employment Promotion and Protection against Unemployment
C175	–	Part-Time Work Convention
C177	–	Home Work Convention
C181	–	Private Employment Agencies Convention
C183	–	Maternity Protection Convention

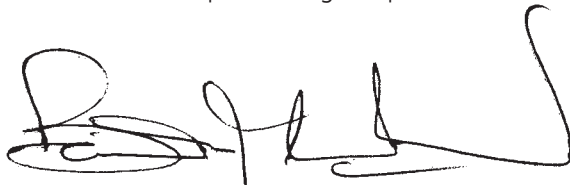
Foreword

Increasing job opportunities and decent work for women are essential for inclusive growth, and they are vital for advancing economic and social development in a country. This approach to attaining economic and social wealth is based on reliable academic and statistical evidence and is increasingly accepted by international and national financial and development organizations across the globe, including in Asia. However, attitudes toward providing decent work to men and women alike, irrespective of their ethnic origin and class, continue to be ambiguous, complex, and controversial, because the issue touches on deeply felt societal values in interpersonal relations, culture, religion, economics, and politics.

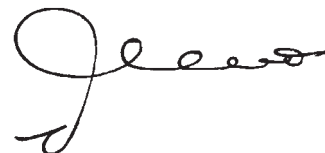
In Asia, as in other parts of the world, it is mostly women who continue to experience the greatest disadvantages resulting from gender inequalities and entrenched discrimination in work and in life. The economic and social contributions made by women in the family, the workplace, and society tend to be devalued. There are, however, many strategies which have been developed to counter gender discrimination and promote equality for working men and women through legislation and social and economic policies to reverse the unequal labor market outcomes for women.

In order to document the nature and extent of gender inequalities in the labor market, as well as to capture and share these promising initiatives, the Asian Development Bank (ADB) initiated studies in three countries—Cambodia, Kazakhstan, and the Philippines—to identify how these countries promote gender equality in their labor markets. In addition, in view of the interest in sharing good practices in developing member countries, ADB, in cooperation with the International Labour Office in Bangkok, supported the production of two global good practice reports—one on legislation and legal practices and the other on economic and social policy practices—as well as updates for Cambodia and the Philippines.

The product of this combined project is five reports. The two global reports, authored by Robyn Layton and Fiona MacPhail, illustrate how the combination of good practices in law and social and economic policies working together can improve equitable employment opportunities, remuneration, and treatment for women and men at work. It is important for social justice and is also smart economics. Another report, also authored by Robyn Layton and Fiona MacPhail, analyzes and makes recommendations for gender equality in the labor market in Cambodia, Kazakhstan, and the Philippines. The series concludes with two updated reports on gender equality in the labor market, focused on the situation in Cambodia and the Philippines, to support the development of good practices for decent work and gender equality in these countries.



Bindu N. Lohani
Vice-President for Knowledge Management
and Sustainable Development
Regional and Sustainable Development Department
Asian Development Bank



Yoshiteru Uramoto
Assistant Director General and
Regional Director
Asia and the Pacific Region
International Labour Organization

Acknowledgments

We would like to thank the author, Robyn Layton, former Judge of the Supreme Court of South Australia, now Adjunct Professor of Law, University of South Australia, for her dedication in writing this wide-ranging global report. Appreciation is also extended to Imrana Jalal of the Asian Development Bank (ADB) for guiding and technically supporting the preparation of the report and to Armin Bauer of ADB for his positive review. Our gratitude goes out to Nelien Haspels of the International Labour Organization for her careful and invaluable inputs. We also thank Henry Winter who contributed to aspects of research as well as editing. The careful editing of the report by Jennifer Verlini is also gratefully acknowledged.

We hope that readers will find this a useful tool to assist in legislative reform and also provide ideas to improve legal practices to enhance the employment of women in all countries.

Introduction

Irrespective of the particular legal tradition of a country, labor legislation¹ can fulfill four crucial roles in relation to the promotion and provision of decent work for women:

- (i) establishing a legal system that facilitates productive individual and collective employment relationships;
- (ii) providing a framework within which employers, workers, and their representatives can interact on work-related issues;
- (iii) providing an important vehicle through which harmonious industrial relations based on workplace democracy can be achieved; and
- (iv) providing a clear and constant reminder and guarantee of fundamental principles and rights at work (including gender equality) and establishing the processes through which these principles and rights can be implemented and enforced.

In all countries, there is a need to find a balance in labor between the functions of social protection and equity, and the considerations of economic efficiency. Irrespective of the particular legal tradition of a country, the challenge of labor law reform in recent years has been twofold: first, to afford better protection for the basic rights of workers, including their trade union rights; and second, to provide for a greater measure of flexibility for social partners to regulate the employment relationship in a manner that is more conducive to, and enhancing of, productivity and economic growth.

The most efficient way of ensuring that these conditions and needs are fully taken into account is if those concerned are closely involved in the formulation of the legislation through processes of social dialogue.

The International Labour Organization (ILO) in its *Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work* expressed the view that in relation to the elimination of discrimination and the realization of equality at work, legislation was “an indispensable first step” (ILO 2011f, 58). The Global Report also assessed the legislative trends and noted (14–16):

“... two major trends are evident: equality and nondiscrimination legislation is covering an increasingly broad set of grounds for discrimination; and it provides more comprehensive protection in employment and occupation. These two trends suggest a greater recognition, at the national level, of the importance of more effectively responding to the evolving and

In all countries, there is a need to find a balance in labor between the functions of social protection and equity, and the considerations of economic efficiency

¹ Legislation in this context includes constitutional provisions, laws, regulations, orders, directives, or legislative codes of conduct.

complex realities of discrimination with legislative measures.

... In many, legislation fails to prohibit sexual harassment and also lacks provisions ensuring equal remuneration for women and men for work of equal value, a right embodied in Convention No.100....

In many countries, certain categories of workers continue to be excluded from legal protection on equality and nondiscrimination in employment. Particular examples are casual workers, domestic workers, all workers in the agricultural sector and export processing zones, which are often excluded from the practical application of labour laws and therefore from their provisions on nondiscrimination.

Provisions maintaining the burden of proof on the claimant in discrimination cases limit the effectiveness of protection in judicial proceedings and the possibility of seeking remedies for damages inflicted.”

These concerns are also addressed in this review.

Another important function of national legislation is that it can flesh out the international instruments and their requirements. The ILO conventions are international *minimum* standards; they are not the high water mark. They are the minimum conditions that countries should apply when they are parties to international covenants and they have ratified conventions. Thus, whether or not a country has ratified a particular convention, the content of conventions is indicative of international standards on the particular topics covered by the instruments.

Good legislative practice requires some detail in legislative provisions; otherwise, there can be a tendency for the interpretation to be literal and restrictive, rather than correctly interpreting the international standards upon which the legislation is based. This is understandable in the context of interpreting obligations on the part of one party and remedies on the part of the other having regard to domestic law. Good legislative practice requires a sufficient degree of specificity and detail to enable the standards to be applied and enforced.

Another important point is that legislation and economic and social policies need to be working in tandem. Finding the right balance between regulation to improve conditions of work, on the one hand, and sufficient flexibility in the marketplace, on the other, is not easy to achieve. In order to achieve this balance, legislative practice needs to be based on international standards, but also tailor-made to the particular level of development of a country. This must be done in a way that ensures that women are not discriminated against, and, in appropriate situations, this may require special legislative measures to promote and protect women’s employment in order to redress existing disadvantage.

Finally, it is worth noting that a country may have very good legislative provisions, but there may be no proper implementation to enable the provisions to be effective in practice. As the ILO Global Report (2011f, 16) noted: “In some countries, getting a discrimination case heard before a court is very difficult, if not impossible, owing to inadequate complaints procedures.” However, this review has not included any assessment of the proper implementation of labor legislation; such an assessment is beyond the requirements of this project.

The ILO conventions are international minimum standards; they are not the high water mark. They are the minimum conditions that countries should apply when they are parties to international covenants and they have ratified conventions

Essential Gender Equality and Nondiscrimination Law



Legislation that guarantees equality and prohibits discrimination on the basis of gender is fundamental to ensuring that women are not disadvantaged in employment and occupation. Legislation enables enforcement and can provide remedies for breaches. Indirect discrimination is so frequently misunderstood that it is best set out in legislation. As the disadvantage suffered by women in employment and occupation is so embedded, the most effective means of redressing this imbalance is through legislation that provides for special measures. Good practice legislation also includes modifying the procedures that are applied in the hearing of legal cases.

Introduction

General International Standards

There are a number of general international standards, as well as some specific international standards, which assist in identifying the parameters of essential gender equality and nondiscrimination law. The most general is the so-called International Bill of Human Rights, which is the term used to collectively refer to the three general human rights instruments drafted by the United Nations Commission on Human Rights and adopted by the General Assembly: the Universal Declaration of Human Rights (UDHR);² the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols;³ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴ These three instruments refer to aspects of decent work in various ways.

The most relevant articles in each of these instruments are as follows:

- UDHR, Articles 2, 23(1), and 24;⁵

As the disadvantage suffered by women in employment and occupation is so embedded, the most effective means ... is through legislation that provides for special measures

² General Assembly resolution 217A (III), UN Doc A/810 at 71 (1948).

³ General Assembly resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force 3 January 1976. For the Optional Protocols, see General Assembly resolution 63/117.

⁴ General Assembly resolution 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNTS 3, entered into force 3 January 1976.

⁵ Article 2 of the UDHR declares the general entitlement to the rights and freedoms set out in the declaration without distinction of any kind, including sex. This entitlement is applied to Article 23(1) that declares the right to work, free choice of employment, and protection against unemployment, and also Article 24 that declares the right to reasonable limitation of working hours and periodic holidays with pay.

- ICCPR, Articles 2 and 26;⁶ and
- ICESCR, Articles 2(2), 3, 6, and 7.⁷

Another important and more specific UN instrument containing provisions relevant to this review is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).⁸

There are also a number of relevant ILO conventions which contain international standards that have a particular impact on women's employment. These are discussed throughout this review.

Approach to Discussion

There are a number of important principles that are common to, or connected with, international norms on equality of treatment and opportunity. They will be discussed under three major headings:

- Equality and discrimination
- Exemptions
- Modification of procedures in discrimination cases

Equality and Discrimination

Specific International Standards

Article 1 of CEDAW defines the term "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Discrimination is defined in the ILO's Discrimination (Employment and Occupation) Convention (C111) in a similar way: "any distinction, exclusion or preference... which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (ILO 1958a).

Under both definitions, the expression "has the effect of nullifying or impairing" addresses both direct discrimination and indirect discrimination.

⁶ Article 2 of ICCPR requires the States Parties to guarantee the rights in the covenant to be exercised without discrimination on several bases, including sex. Article 26 sets out the general principle of equality before the law, equal protection without discrimination, and that the law shall prohibit such discrimination that includes sex.

⁷ Article 2 (2) of ICESCR requires the States Parties to guarantee the rights in the covenant to be exercised without discrimination on several bases, including sex. Article 3 requires the States Parties to ensure equal rights of men and women to the enjoyment of all economic, social, and cultural rights. The most relevant rights to this review are set out in Articles 6 and 7. Article 6 recognizes the right to work and calls on the States Parties to take steps to realize this right; specifying that it "shall include technical and vocational guidance and training programmes policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual." Article 7 recognizes the right of everyone to the enjoyment of just and favorable conditions of work, to ensure equal opportunities and reasonable limitation of working hours and periodic holidays with pay.

⁸ General Assembly resolution res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46, entered into force 3 September 1981.

Discussion of Principles and Examples of Good Legislation

“Direct discrimination” against women exists when unequal treatment stems directly from laws, rules, or practices making an explicit difference on the ground of sex or gender. Examples include laws that do not allow women to sign contracts, explicitly exclude women from certain occupations, or prevent women from owning land in their own name.

“Indirect discrimination” against women refers to laws, rules, and practices which appear neutral, but which in practice lead to disadvantages primarily suffered by women. For example, requirements that are irrelevant for the job in question and typically can only apply to, or are disproportionately met by, men, such as certain height and weight levels. Indirect discrimination against women can also occur through reference to criteria that appear nondiscriminatory, but which in practice affect a disproportionately large number of women, such as referring to “heads of household” or “full-time sector workers” who are more likely to be men. Another example is where certain groups of employees, such as part-time workers, who, because of their predominant pattern of role distribution in society, contain far greater numbers of women than men, are excluded without any reason from payments granted by the employer to the remainder of an establishment’s workforce. Therefore, there is indirect discrimination against women. Often, this is not intentional, but the effect is “nullifying or impairing” conditions of women’s employment.⁹

Indirect discrimination against women can also occur through reference to criteria that appear nondiscriminatory, but which in practice affect a disproportionately large number of women, such as referring to “heads of household” or “full-time sector workers” who are more likely to be men

A good example of law that specifically refers to direct and indirect discrimination is set out in the Constitution of the Republic of South Africa, 1996 (see Good Practices Example 1), and another recent example is found in Croatia’s Anti-Discrimination Act of 2008 (see Good Practices Example 2).

Good Practices Example 1: The Constitution of the Republic of South Africa, 1996

Section 9

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Source: Republic of South Africa. Act No. 108 of 1996. Chapter 2. Bill of Rights.

⁹ Indirect discrimination is often not well understood. For further information and training purposes, see ILO (2012d).

Good Practices Example 2: Croatia's Anti-Discrimination Act, 2008

Sections 2 and 9(1) define and prohibit direct and indirect discrimination “in all its manifestations,” both in the private and public sectors. The legislation also goes beyond international requirements as it creates a category of “more serious forms of discrimination,” which includes multiple, repeated, and continued discrimination, and provides that such elements should be taken into account by the courts when determining the compensation for the victim and the fine for the perpetrator. Furthermore, section 8 of the Anti-Discrimination Act explicitly covers a broad range of work and working conditions; access to self-employment and occupation, including selection criteria, recruitment, and promotion conditions; access to all types of vocational guidance, vocational training, professional improvement, and retraining; education; and social security, including social welfare, pension, and health and unemployment insurance.

Source: Republic of Croatia. Official Gazette 85/08 of 9 July 2008.

Exemptions

Inherent Requirements of the Job

The committee stated that a specific requirement for a particular job may be justified if it is necessary because of the characteristics and nature of the job, so long as it is in proportion to its inherent requirements

Specific International Standards

Both CEDAW and C111 contain provisions that permit exemption from the application of discrimination in employment. In the case of C111, Article 1(2) provides: “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”

Discussion of Principles and Examples of Good Legislation

The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR) addressed this topic in its *Special Survey on Equality in Employment and Occupation*.¹⁰ The CEACR indicated that Article 1(2) of C111 should be interpreted restrictively. The committee stated that a specific requirement for a particular job may be justified if it is necessary because of the characteristics and nature of the job, so long as it is in proportion to its inherent requirements. In each instance, there should be a careful examination of each individual case and it should be determined on an objective basis. Furthermore, it should not be generically applied, such as to the “rural sector” or the “public sector” as a whole. As a general rule, the employer is required to prove either that the special treatment is justified by objective reasons, unrelated to a discriminatory criterion, or that the criterion constitutes an essential (or bona fide or legitimate) requirement for the work involved.

These provisions for exemption are important to women because they underscore the need to ensure that they are not excluded from jobs because of inappropriate stereotypes. At the same time, Article 1 of CEDAW and Article 1(2) of C111 also reinforce that exemptions may be required where the inherent nature of the job requires a person of the female sex. A common example is with respect to jobs that involve particular physical intimacy, for example, working in the women’s underwear section of a store or in occupations such as airport police jobs that require female officers to carry out body searches on female passengers.

A good example of legislation that articulates aspects of the duties of a job that may warrant exemption is Australia’s Sex Discrimination Act 1984 (see Good Practices Example 3).

¹⁰ ILC 83rd session 1996. See paragraphs 118–122.

Good Practices Example 3: Australia's Sex Discrimination Act, 1984 Section 30

- (1) Nothing in paragraph 14(1)(a) or (b), 15(1)(a) or (b) or 16(b) [which ban discrimination] renders it unlawful for a person to discriminate against another person, on the ground of the other person's sex, in connection with a position as an employee, commission agent or contract worker, being a position in relation to which it is a genuine occupational qualification to be a person of the opposite sex to the sex of the other person.
- (2) Without limiting the generality of subsection (1), it is a genuine occupational qualification, in relation to a particular position, to be a person of a particular sex (in this subsection referred to as the "relevant sex") if:
- (a) the duties of the position can be performed only by a person having particular physical attributes (other than attributes of strength or stamina) that are not possessed by persons of the opposite sex to the relevant sex;
 - (b) the duties of the position involve performing in a dramatic performance or other entertainment in a role that, for reasons of authenticity, aesthetics or tradition, is required to be performed by a person of the relevant sex;
 - (c) the duties of the position need to be performed by a person of the relevant sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex;
 - (d) the duties of the position include the conduct of searches of the clothing or bodies of persons of the relevant sex;
 - (e) the occupant of the position is required to enter a lavatory ordinarily used by persons of the relevant sex while the lavatory is in use by persons of that sex;
 - (f) the occupant of the position is required to live on premises provided by the employer or principal of the occupant of the position and:
 - (i) the premises are not equipped with separate sleeping accommodation and sanitary facilities for persons of each sex;
 - (ii) the premises are already occupied by a person or persons of the relevant sex and are not occupied by any person of the opposite sex to the relevant sex; and
 - (iii) it is not reasonable to expect the employer or principal to provide separate sleeping accommodation and sanitary facilities for persons of each sex.

Source: Australia. Sex Discrimination Act 1984. Act No. 4 of 1984.

The principles of exemption from discrimination on the basis of inherent requirements of the job can sometimes overlap with the exemption on the basis of special measures. This overlap will be discussed above.

Special Measures

Specific International Standards

International standards require provisions for "temporary special measures" in appropriate circumstances in order to accelerate achieving de facto equality of women with men (CEDAW 2004; C111, Article 5). Both CEDAW and C111 recognize the fact that women have suffered, and continue to suffer, from various forms of discrimination solely because of their gender. Taking a purely formal legal or programmatic approach is not sufficient to achieve women's de facto equality with men.

Article 5 of C111, provides as follows:

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

International standards require provisions for "temporary special measures" in appropriate circumstances in order to accelerate achieving de facto equality of women with men (CEDAW 2004; C111, Article 5)

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 4 of CEDAW provides:

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Discussion of Principles and Examples of Good Legislation

The committee drew a distinction between special measures provided for in labor standards [...] and measures designed to meet particular needs of certain groups

The CEACR has discussed the scope of special measure in its *Special Survey on Equality in Employment and Occupation*.¹¹ The committee drew a distinction between special measures provided for in labor standards (for example, maternity protection, which requires differential treatment) and measures designed to meet particular needs of certain groups for special protection or assistance by reason of present or past disadvantage.

The CEDAW Committee has published the most comprehensive standard in its *General Recommendation No. 25 (2004) on Temporary Special Measures*. This recommendation provides a detailed description of situations and scenarios that call for temporary special measures to be implemented in accordance with the requirements of the convention, and also provides an overview of how such measures should be implemented.

The whole of the General Recommendation is instructive, but some paragraphs are highlighted here:

8. ... the Convention requires that women be given an equal start and that they be empowered by an enabling environment to achieve equality of results. It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.

14. The Convention targets discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms. It aims at the elimination of all forms of discrimination against women, including the elimination of the causes and consequences of their de facto or substantive inequality. Therefore, the application of temporary special measures in accordance with the Convention is one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.

Furthermore, of particular relevance to this review is the emphasis given by the CEDAW Committee to the need for legislation, namely that:

¹¹ ILC 83rd session 1996 at paragraphs 131–141.

31. States parties should include, in their constitutions or in their national legislation, provisions that allow for the adoption of temporary special measures. The Committee reminds States parties that legislation, such as comprehensive anti-discrimination acts, equal opportunities acts or executive orders on women's equality, can give guidance on the type of temporary special measures that should be applied to achieve a stated goal, or goals, in given areas. Such guidance can also be contained in specific legislation on employment or education. Relevant legislation on non-discrimination and temporary special measures should cover governmental actors as well as private organizations or enterprises.

[Paragraphs 32 and 33 refer to other means of implementation].¹²

The CEDAW provisions specifically indicate that special measures are “temporary,” that is, limited in time. Although not expressly mentioned in C111, the measures have been interpreted as being temporary, since the justification for employing such measures ceases once the unfairness has been redressed. However, “temporary” measures may be in place for many decades, as evidenced by the Affirmative Action Executive Orders for race equality in the United States.¹³

A large number of countries have recently adopted either specific laws on this subject for private and/or public employment, or they have included such provisions in amendments to their labor legislation. Legislation for affirmative action is a policy decision that requires thorough debate, as certain employers may perceive it to be an unnecessary interference in the labor market. Some national constitutions contain affirmative action clauses that either require or permit positive measures to be taken in all areas of social and economic action. For example, this is the case in Argentina, Fiji, India, Malaysia, Namibia, and South Africa. Including special measures in the basic law could be beneficial for many countries and would amount to good practice.

A good example of legislation that provides clearly expressed examples of the purpose of affirmative action and the measures for implementation through consultation with the social partners can be found in Canada's Employment Equity Act (see Good Practices Example 4).

Another good practices example is Italy's Providing for Affirmative Action to Achieve Equal Treatment of Men and Women in Employment Act, which also shows that the legislative process is intended to attain substantive equality between men and women in employment, while simultaneously specifying that affirmative action is also aimed at promoting a balance between family and work responsibilities. This additional aspect is a good example, which demonstrates the wider policy objective of promoting the equality of workers with family responsibilities. A final example from a developing country is Namibia's Affirmative Action (Employment) Act (see Good Practices Examples 5 and 6).

¹² 32. The Committee draws the attention of States Parties to the fact that temporary special measures may also be based on decrees, policy directives and/or administrative guidelines formulated and adopted by national, regional or local executive branches of government to cover the public employment and education sectors. Such temporary special measures may include the civil service, the political sphere and the private education and employment sectors. The Committee further draws the attention of States Parties to the fact that such measures may also be negotiated between social partners of the public or private employment sector or be applied on a voluntary basis by public or private enterprises, organizations, institutions and political parties.

33. The Committee reiterates that action plans for temporary special measures need to be designed, applied and evaluated within the specific national context and against the background of the specific nature of the problem which they are intended to overcome.

¹³ See, for example, Executive Order 11246 of 24 Sep 1965, appear at 30 FR 12319, 12935, 3 CFR, 1964–1965 Comp. p. 339.

Good Practices Example 4: Canada's Employment Equity Act, 1985

2. The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.
4. An employer shall, in consultation with such persons as have been designated by the employees to act as their representatives or, where a bargaining agent represents the employees, in consultation with the bargaining agent, implement employment equity by:
 - (a) identifying and eliminating each of the employer's employment practices, not otherwise authorized by a law, that results in employment barriers against persons in designated groups; and
 - (b) instituting such positive policies and practices and making such reasonable accommodation as will ensure that persons in designated groups achieve a degree of representation in the various positions of employment with the employer that is at least proportionate to their representation:
 - (i) in the workforce; or
 - (ii) in those segments of the workforce that are identifiable by qualification, eligibility or geography and from which the employer may reasonably be expected to draw or promote employees.

Source: Canada. Bill C-62 of 1985.

Good Practices Example 5: Italy's Providing for Affirmative Action to Achieve Equal Treatment of Men and Women in Employment Act, 1991

Section 1

- (1) The provisions of this act are intended to promote the employment of women and to attain substantial equality between men and women at work, in particular by the adoption of measures categorized as affirmative action in favour of women, in order to eliminate any obstacles that, in practice, are preventing the realization of equal opportunities.
- (2) The affirmative action referred to in subsection (1) is intended in particular:
 - (a) to eliminate the differences in practice affecting women in academic and vocational training, in access to employment, in career advancement, in work life, and in mobility;
 - (b) to promote diversification in the vocational options available to women, in particular by providing academic and vocational guidance and access to training; to promote possibilities for self-employment and access to management as well as to occupational skills training for self-employed and business women;
 - (c) to eliminate conditions and systems of organizing and distributing work which give rise to different effects, depending on the gender of the worker, thereby prejudicing them with regard to training and occupational and career advancement, as well as in terms of economic and wage conditions;
 - (d) to promote the integration of women into activities, occupations and positions in which they are under-represented, and in particular in high technology sectors and in high positions of responsibility; and
 - (e) to promote a balance between family and occupational responsibilities, and a better distribution of these responsibilities between men and women, by measures including work reorganization with regard to working conditions and different work schedules.

continued on next page

Example 5 *continued*

Section 2 – Implementation and financing of positive measures

- (1) Enterprises, including cooperatives, partnerships, public bodies of a commercial nature, trade union associations, and professional training centers which are involved in affirmative action projects as defined in section 1, may request from the Ministry of Labour and Social Security complete or partial reimbursement of any expenses incurred in the implementation of such projects, with the exception of those referred to in section 3.

Source: Italy. Act No. 125 of 10 April 1991.

Good Practices Example 6: Namibia's Affirmative Action (Employment) Act, 1998

Section 17

- (1) For the purposes of this Act "affirmative action" means a set of affirmative action measures designed to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer.
- (2) Without limiting the generality of the definition in subsection (1), an affirmative action measure referred to in that subsection includes, but is not limited to –
 - (a) identification and elimination of employment barriers against persons in designated groups;
 - (b) making reasonable efforts in the workplace to accommodate, physically or otherwise, persons with disabilities; and
 - (c) instituting positive measures to further the employment opportunities for persons in designated groups, which may include measures such as –
 - (i) ensuring that existing training programmes contribute to furthering the objects of this Act;
 - (ii) establishing new training programmes aimed at furthering the objects of this Act; and
 - (iii) giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer.
- (3) To determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, the Commission shall take into account, in addition to such other factors as it may determine –
 - (a) the availability of suitably qualified persons in that designated group for such positions of employment; and
 - (b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

Source: Republic of Namibia. Act No. 29 of 1998.

Modification of Procedures in Discrimination Cases

Discussion of Principles

Effective antidiscrimination legislation should include enforcing compliance through simple and inexpensive complaint mechanisms and procedures, as well as providing adequate remedies. One particular problem with enforcement is the difficulty of proving an allegation of discrimination. If a person files a complaint stating that he or she has been discriminated against, the burden is usually on the person making the complaint to prove the facts of that discrimination. The nature of discrimination cases often makes meeting that burden difficult, because the complainant has little or no information on the employer's internal policies and procedures, and the employer is usually in possession of all of the documents and other evidence relevant to the alleged discriminatory treatment. The employer may simply defend a case without providing any evidence and argue that the case has not been made out.

It is generally national legislation that determines the levels of proof required in the case.

If a person files a complaint stating that he or she has been discriminated against, the burden is usually on the person making the complaint to prove the facts of that discrimination

In order to facilitate the legal pursuit of rights for victims of discrimination, the CEACR has recommended a modification to the burden of proof (ILO 2012a). A growing number of national legal systems, as well as the European Union (EU), have modified the general rule. The modification recommends that if the person discriminated against is able to show some evidence pointing to discriminatory conduct, the burden of proof should then shift to the employer to refute such allegations. The aim of this modification is to provide fairness and a more effective means to enable a complainant to redress discriminatory treatment in the workplace.

Examples of Good Legislation

Examples of good legislative practice on the burden of proof can be found in Guatemala's Labour Code of 1967, Hungary's Labour Code, and Guyana's Prevention of Discrimination Act (see Good Practices Examples 7, 8, and 9).

Good Practices Example 7: Guatemala's Labour Code of 1967, amended 1992

Section 89

In complaints brought by workers alleging wage discrimination on the ground of sex, it is incumbent on the employer to prove that the work carried out by the complainant was of inferior quality and value.

Source: Guatemala. Law Code. Amended on 2 December 1992 (translation from Spanish).

Good Practices Example 8: Hungary's Labour Code, 1992

Section 5

- (1) A negative discrimination against employees in their employment relationship based on sex, age, nationality, race, origin, religion, political convictions, membership in an organization representing their interests or involvement in any related activities, or any other factor unrelated to their employment shall be prohibited. Discriminatory treatment arising unequivocally from the type or nature of the work shall not be considered negative discrimination.
- (2) If any dispute arises with respect to the violation of the prohibition of negative discrimination, the employer must produce evidence that his action did not contravene the provisions set out under subsection (1).
- (3) Employers must provide an opportunity to their employees for promotion to higher positions without discrimination, and solely on the grounds of seniority, occupational ability, experience and performance.
- (4) Employment rules may prescribe affirmative action in respect of a specific set of employees working under identical conditions.

Source: Hungary. Act No. 22 of 4 May 1992.

Good Practices Example 9: Guyana's Prevention of Discrimination Act, 1997

Section 23

Except where otherwise provided in this Act, the person alleging a violation of this Act shall bear the burden of presenting a prima facie case of discrimination or of an offence related to discrimination under this Act, whereupon the burden of proof shall shift to the respondent to disprove the allegations.

Section 24

Where by any provision of this Act, conduct is excepted from conduct that is unlawful under this Act or that is a contravention of this Act, the onus of proving the exception lies upon the party claiming the exception.

Source: Cooperative Republic of Guyana. Act No. 26 of 1997.



Promoting Opportunities for Women to Get Work

Nonwaged working women, or self-employed women, have different needs and are often hampered because of a lack of resources available to them. They are frequently disadvantaged in their ability to access resources to obtain, maintain, or improve employment prospects because of impediments to ownership of land and inheritance rights, and in obtaining credit and financing at all levels

Equality in employment and occupation for women includes the opportunity to gain access to work for both waged workers and nonwaged or self-employed workers on an equal basis with men. Access to work for both categories of workers begins with preemployment vocational guidance and training. Access to work for waged working women includes the processes of recruitment, selection, promotion, and on-the-job training. Public and private employment agencies are a vital link for women to obtain employment. The agencies need to be appropriately regulated to ensure nondiscriminatory practices; particularly with respect to temporary workers. Nonwaged working women, or self-employed women, have different needs and are often hampered because of a lack of resources available to them. They are frequently disadvantaged in their ability to access resources to obtain, maintain, or improve employment prospects because of impediments to ownership of land and inheritance rights, and in obtaining credit and financing at all levels. A legislative framework in conjunction with appropriate employment policies, codes, and guidelines may best redress the multiple levels of disadvantage suffered by women. At the same time, specific legislation to protect women from discrimination is usually required to address the various forms of disadvantage.

Introduction

International Standards

C111 provides that the terms “employment” and “occupation” include access to vocational training, access to employment and to particular occupations, and conditions of employment (ILO 1958a, Article 1(3)). The accompanying Recommendation (R111) states that a nondiscrimination policy should be applied by means of legislation (or collective agreements or any other manner consistent with national conditions and practice) to, among other things, cover the following (ILO 1958b, para. 2):

- access to vocational guidance and placement services;
- access to training and employment of the worker’s own choice on the basis of individual suitability for such training or employment;
- advancement in accordance with the worker’s individual character, experience, ability and diligence; and
- selection criteria.

Article 11 of CEDAW specifies the areas in which equality in employment must be achieved. Relevant to this portion of review are the right to

- the same employment opportunities, including the application of the same criteria for selection in matters of employment;

- free choice of profession and employment, the right to promotion, job security, and all benefits and conditions of service; and
- vocational training and retraining, including apprenticeships, advanced vocational training, and recurrent training.

Discussion of Principles and Examples of Good Legislation

The scope of employment is broad and covers access to employment (which includes recruitment and selection as well as promotion, transfer, and training) through to treatment while employed and the cessation of employment (including termination of employment, dismissal, and redundancy).

Gaining access to employment, whether paid or unpaid, can be difficult for many women. This can be due to a lack of education, training, or skills. Some legislation particularizes these aspects of discrimination, so that they highlight matters that can otherwise frequently be overlooked. This is good practice.

“Vocational training”¹⁴ is important to enable women to access work. It differs from general education, which in itself is a prerequisite to obtaining access to work, as vocational training provides skills-based training that is necessary for a career in the technical or practical fields. Discrimination against women regarding vocational training may take two forms: “direct discrimination”¹⁵ or “indirect discrimination.”¹⁶ Vocational training is vital to open up a wide range of potential occupations for women. It must be free of prejudice based on stereotypes; for example, a situation in which certain trades or occupations are reserved for a particular gender. Early vocational guidance for women and girls should aim at widening the scope of available training so that it is not confined to typically “female” spheres of employment (domestic service, needlework, cooking, care work, etc.). Vocational training programs should be enabled for women who wish to reenter the workforce after a break for child rearing.

Legislation should make it clear that discrimination can start from the point of setting admission requirements for training, which in itself may directly or indirectly exclude women. For example, requiring courses to be undertaken at night or through internships away from the home environment may have a disproportionate impact on women, who tend to undertake additional family responsibilities. Vocational training is an area that often requires special measures and affirmative action programs to ensure that women obtain equal access to employment. A good example of legislation that ensures that educational materials do not contain gender stereotypes, and encourages enrollment of women in “nontraditional skills training” comes from the Philippines (see Good Practices Example 10).

Another example is contained in the Republic of South Africa’s Employment Equity Act, 1998 (see Good Practices Example 11).

Legislation should make it clear that discrimination can start from the point of setting admission requirements for training, which in itself may directly or indirectly exclude women. For example, requiring courses to be undertaken at night or through internships away from the home environment may have a disproportionate impact on women, who tend to undertake additional family responsibilities

¹⁴ See C111 and R111, and ILO (1975b, 1975d).

¹⁵ For example, omitting or refusing to accept a woman as an applicant for training.

¹⁶ For example, when the setting of apparently neutral admission requirements leads to the exclusion of women.

Good Practices Example 10: The Philippines' Act Providing for the Magna Carta of Women, 2009.

Chapter IV

Section 9 – Equal Access and Elimination of Discrimination in Education, Scholarships and Training

- (a) The State shall remove gender stereotypes and images in educational materials and curricula. Gender-sensitive language shall be used at all times. Capability-building on Gender and Development (GAD), peace and human rights, education for teachers and all those involved in the education sector shall be pursued. Partnerships between and among players of the education sector, including the private sector and churches/faith groups, shall be encouraged.
- (b) Enrolment of women and men in nontraditional skills training in vocational and tertiary levels shall be encouraged.
- (c) Expulsion, non-readmission, prohibiting the enrolment and other related discrimination of women students and faculty due to pregnancy outside of marriage shall be outlawed.

Source: Philippines. Republic Act No. 9710 of 14 August 2009.

Good Practices Example 11: South Africa's Employment Equity Act, 1998

Section 5 – Elimination of unfair discrimination

Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.

Section 6 – Prohibition of unfair discrimination

- (1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.

Source: Republic of South Africa. Act No. 55 of 1998.

Access to Work for Waged Working Women

In the case of access to paid employment, discriminatory practices can also occur in the preemployment processes. The preemployment process may start at employment agencies or with job advertising. In each instance, neither the advertisement nor the process should exclude women either directly or indirectly. Setting up a legal framework for private employment agencies is a complex task, and there are differences between highly developed labor markets and those that are less developed.¹⁷

¹⁷ National conditions, capacities, and available resources are also taken into consideration. Furthermore, national legislature and social partners are needed to identify an appropriate approach within a country.

Employment Agencies

International Standards

The importance of public employment agencies was recognized very early in the mandate of the ILO (1919b), as illustrated by the Unemployment Convention, 1919 (C2). This convention, which was designed to prevent unemployment, required states to establish a system of free public employment agencies. It also required states to coordinate the operations of public and free private employment agencies, in instances where the latter existed. Later, a series of specific ILO conventions emerged (ILO 1948b, 1949). Then in 1997, the Private Employment Agencies Convention, 1997 (C181) and the accompanying Recommendation (R188) was adopted (ILO 1997a, 1997b).

The Private Employment Agencies Convention (C181) was a response to the rapidly expanding and flexible marketplace, and the recognition of some of the constraints of public employment services.

C181 was a response to the rapidly expanding and flexible marketplace, and the recognition of some of the constraints of public employment services. The convention sets a clear framework for regulation and licensing, including self-regulation of private employment agencies. It recognizes that private employment agencies were not only matching jobseekers with job opportunities, but there was an increasing trend for them to act as temporary work agencies to employ workers directly and make them available to third parties. C181 requires member states to determine the conditions governing the operation of private employment agencies and in particular to ensure that the agencies do not either directly or indirectly charge any fees or levies to workers. Article 5 requires member states to ensure that private employment agencies treat workers without discrimination, which includes discrimination on the basis of sex. Articles 11(j) and 12(i) specifically refer to the need for national law and practice to ensure adequate protection for workers employed by private employment agencies in respect of maternity protection and benefits, and parental protection and benefits.

In November 2008, the EU's Directive on Temporary Agency Work was enacted.¹⁸ This directive sought to harmonize the law across the common market to protect one aspect of the work of employment agencies, namely the conditions of work of those employed by employment agencies for temporary work with third parties. The aim of the directive is set out in Article 2, which states:

"The purpose of this Directive is to ensure the protection of temporary agency workers and to improve the quality of temporary agency work by ensuring that the principle of equal treatment, as set out in Article 5, is applied to temporary agency workers, and by recognising temporary-work agencies as employers, while taking into account the need to establish a suitable framework for the use of temporary agency work with a view to contributing effectively to the creation of jobs and to the development of flexible forms of working."

Article 5.1 sets out the principle of equal treatment and includes the need for the basic working and employment conditions of temporary agency workers to be at least those that would apply if they had been recruited directly by that undertaking. It specifies that:

"(a) protection of pregnant women and nursing mothers and protection of children and young people; and

(b) equal treatment for men and women and any action to combat any discrimination based on sex, race or ethnic origin, religion, beliefs, disabilities, age or sexual orientation;

must be complied with as established by legislation, regulations, administrative provisions, collective agreements and/or any other general provisions."

¹⁸ Directive on Temporary Agency Work. 2008/104/EC. This is the third piece of legislation of the EU employment package to protect atypical working.

Article 6.5 provides that:

“Member states shall take suitable measures or shall promote dialogue in order to:

(a) improve temporary agency workers’ access to training and to child care facilities in the temporary-work agencies, even in the periods between their assignments, in order to enhance their career development and employability.”

Article 5.5 requires member states to take appropriate measures with a view to preventing misuse and in particular to prevent successive assignments designed to circumvent the provisions of the directive.

Discussion of Principles and Examples of Good Legislation

The EU directive is an example of good legislative practice with respect to the vulnerable group of workers employed through employment agencies. It can provide valuable guidance beyond EU member states.

[T]he ILO has also indicated that there is a direct correlation between economic growth and the state of the employment agency industry

The ILO has recognized the positive contributions that employment agencies have provided in relation to sustained job recovery. In the 2009 Global Jobs Pact, the ILO (2009) made reference to the important role of employment agencies and referred specifically to “establishing or strengthening effective public employment services and other labour market institutions.” Importantly, the ILO has also indicated that there is a direct correlation between economic growth and the state of the employment agency industry (3).

Employment agencies are particularly important for casual, temporary, and seasonal workers. As such, the ILO is encouraging ratification of C181.

In 2007, the ILO (2007b) published the *Guide to Private Employment Agencies: Regulation, Monitoring and Enforcement*, the purpose of which was to assist national legislators with drafting laws in accordance with international standards. It also provides a comprehensive overview of regulatory frameworks based on C181 and R188. The guide expressly acknowledges that setting up a legal framework for private employment agencies is a complex task. The guide does not promote a “one size fits all” approach. It emphasizes that there are differences between highly developed labor markets and those that are less developed, as well as national conditions, capacities, and available resources. It also emphasizes that the national legislature and social partners need to identify an appropriate approach within a country. There are, however, particular areas in which specific legislation is absolutely necessary, such as in cases dealing with domestic workers and placement of workers abroad, as well as in the national market.¹⁹ In relation to discrimination against women, the guide highlights approaches taken by two private employment agencies themselves, which can inform good self-regulation practice for both private and public agencies (see Good Practices Example 12).

Recruitment

The requirements of nondiscrimination under international standards apply at all stages of the employment process, from the recruitment process through to the hiring of a person. They include advertising, short listing, interviewing, and the final selection for hiring. The primary responsibility of an employer is to ensure that there is no discrimination at any stage. Good management practices would suggest that this is best achieved by applying consistent selection at all stages,

¹⁹ With these qualifiers and indicators in mind, and having particular regard to this project, some examples of good practice are to be found in the Philippines’ Migrant Workers and Overseas Filipinos Act (R8042) of 1995 and also the Philippine Overseas Employment Administration (POEA), Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002.

Good Practices Example 12: Adecco and Manpower

Adecco is a leading private employment agency based in Canada, which has established a number of measures to promote equal opportunity in temporary jobs. These include a diversity statement, antidiscrimination and antiharassment policy, a free line for temporary workers alleging discriminatory treatment and training for its employees. There is an obligation to report antidiscriminatory treatment and an indication that Adecco will promptly investigate and take action to correct such treatment, including disciplinary action and dismissal.

Manpower is an international agency that has a proactive diversity policy in the United States. It has also pioneered promoting diversity in the workplace as an essential corporate social responsibility policy. Manpower defines diversity as differences of race, national origin, religion, cultural background, gender, age, disability, sexual orientation, and gender identity. This means promoting mutual respect and understanding between people with different personal situations and backgrounds. There are detailed guidelines on what amounts to discrimination and harassment and a complaint process.

Source: Adecco. *Employee Handbook*. pp. 10, 17–20. Available at http://www.adeccousa.com/Employees/Documents/adecco_handbook_for_web.pdf; and ManpowerGroup. Code of Business Conduct and Ethics.15, 17-19. Available at http://www.manpowergroup.com/wps/wcm/connect/60cbd442-6ba3-473e-a743-4c9938d7b69d/English_Code_of_Business_Conduct_and_Ethics.pdf?MOD=AJPERES

including the terms and conditions of employment. All potential employees should know these criteria. The selection criteria should be objective and genuinely related to the requirements of the job irrespective of sex, unless a situation of exemption applies.

There are many ways in which selection criteria can apply and discriminate against women, either directly or indirectly. Discrimination can occur because selection is based on physical characteristics, appearance, or prohibited features that are not inherent characteristics of the job. Discrimination may also occur in the interview process. Employers should ensure that questions are asked which are relevant to the requirements of the job, such as experience, educational or trade qualifications, technical skills, personal qualities required for the job, and other physical skills required for the job. Questions that are unrelated to the job may have a tendency to discriminate against women, for example, questions as to their marital status or child care arrangements.

Employers frequently lack a full appreciation of indirect discrimination. Guidelines that assist both employers and potential employees can make an important contribution in reducing discrimination against women in the recruitment process.

A legislative example of good practice is the approach taken by Hong Kong, China in section 69 of its Sex Discrimination Ordinance of 1995, which enabled the Equal Opportunities Commission to publish codes of conduct. Pursuant to that section, the commission recently published a Code of Practice on Employment, which includes sections under the heading “Practical guidelines for employers.” The code is a succinct, coherent, and simply expressed guide to help employers avoid sex discrimination (see Good Practices Example 13).²⁰

Discrimination can occur because selection is based on physical characteristics, appearance, or prohibited features that are not inherent characteristics of the job. Discrimination may also occur in the interview process

²⁰ Equal Opportunities Commission, *Code of Practice on Employment under the Sex Discrimination Ordinance*. Available at [http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs%20on%20Employment\(DO\)&fld=content](http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs%20on%20Employment(DO)&fld=content) (accessed 8 October 2013).

Good Practices Example 13: Hong Kong, China's Code of Practice on Employment, 1995

Practical Guidelines for Employers

11. Guidelines for recruitment
 - Advertising
 - Short listing
 - Vetting applications
 - Interviewing
 - Medical information
 - Tests
 - Post-hiring enquiries
 - Recruitment through employment agencies and employment services
12. Guidelines for terms and conditions of employment, benefits, facilities and services
 - Equal pay for equal work
 - Equal pay for work of equal value
 - Job titles
 - Part-time work
 - Considerations for individual differences in pay
 - Workplace policies
13. Guidelines for promotion, transfer and training
14. Guidelines for dismissals, redundancies and unfavourable treatment of employees
15. Guidelines for grievance procedures

Source: Hong Kong, China. Chapter 480 of 1995. Section 69: Codes of Practice.

Promotion

Specific International Standards

R111 states that one of the areas in which there should not be discrimination in employment is the “advancement in accordance with individual character, experience, ability and diligence.” This concept is more commonly referred to as “promotion.” CEDAW also refers to the right to promotion (ILO 1958b, Article 11(c)).

Discussion of Principles and Examples of Good Legislation

A description of the various ways in which there can be discrimination against women in relation to promotion is discussed in the *ILO's Special Survey on Equality in Employment and Occupation* (ILO 1996b, [103]–[105]).

The conditions for promotion and transfers are not usually set out in legislation but are instead stipulated in guidelines that are promulgated by employers. However, it is good practice to have legal provisions that refer to promotion and transfer as being areas of employment that may be subject to antidiscrimination practice.

A good example of a code that refers to both advancement and promotion is set out in Côte d'Ivoire's Labour Code. This example also refers to "performance and distribution of work" which is frequently overlooked as giving rise to discrimination (see Good Practices Example 14).

Another good example of law is from Croatia. The former Labour Act, together with an associated ordinance, set out a number of jobs that women must not perform.²¹ This highly discriminatory act was repealed by a new Labour Act, which entered into force on 1 January 2010. This amended act explicitly prohibits direct and indirect discrimination "in the field of labour and labour conditions, which includes selection criteria, employment and promotion requirements, vocational guidance and training, additional training and retraining."²²

Once employers have developed guidelines, they should be promulgated to all employees irrespective of their sex. The nature and manner of promulgation would be dependent on the size of the employment entity. Consistent with equal opportunity, all employees should be informed of promotion, transfer, and training opportunities and be encouraged to pursue such opportunities whenever they are available and advantageous. Up-and-coming vacant positions should be advertised in a systematic and equitable manner, and the selection criteria used should not be discriminatory. A promotional plan should be introduced into the workforce whereby all job promotion opportunities are made known. Furthermore, they should encourage participation by those who traditionally have been excluded from promotions such as women. Transfer opportunity should be available to all employees to avoid a situation where individuals or members of a certain sex become segregated or stratified within the workplace.

As with other aspects of discrimination in employment, evaluation and appraisal criteria should be objective and solely related to the performance of the functions of the job and uniformly applied to all employees regardless of sex. Again, this is an area that calls for guidelines to be drawn up and promulgated by employers.

A good example of a code that refers to both advancement and promotion is set out in Côte d'Ivoire's Labour Code.

Good Practices Example 14: Côte d'Ivoire's Labour Code, 1995

Section 4

Subject to the explicit provisions of the present Code, or any other legislative text or regulation protecting women and children, as well as provisions respecting the situation of foreign nationals, no employer may take into consideration the sex, age, national extraction, race, religion, political or religious opinion, social origin, membership or non-membership of a trade union or trade union activity of workers as a basis for decisions relating, among others, to recruitment, the performance and distribution of work, vocational training, advancement, promotion, remuneration, the granting of social benefits, discipline or the termination of the contract of employment.

Source: Republic of Côte d'Ivoire. Act No. 95-15 of 12 January 1995.

²¹ Republic of Croatia. Official Gazette 30/04 of 21 September 2004. Section 63(1).

²² Republic of Croatia. Official Gazette 149/09 of 4 December 2009. Section 5(4).

Access to Work for Nonwaged Working Women

Introduction

In relation to nonwage employment, there can be an impediment because of direct or indirect discrimination due to a lack of access to material goods and services.

The CEACR in their *Special Survey on Equality in Employment and Occupation* described the situation in the following way:

Discriminatory practices in relation to ownership of land may deprive [women] of an ability to have collateral security for loans

“There should be no discrimination in access to the material goods and services (land, investment credit, etc.) required to carry on the occupation in question (in some countries, single women with no dependants cannot own land, and in others, such as those in transition towards a market economy, some persons... have unjustified privileges for access to land or credit) which may result in discrimination against those less well-placed. Discrimination, especially on the basis of sex, arising from rules concerning marital or personal status must be countered, as in the cases where the inheritance system excludes certain categories of persons or where the right to enter into contracts is restricted by a requirement for the authorisation of a third party (for example, family law in some countries requires a married woman to have her husband’s consent in order to carry on a professional activity and perform the related transactions).”

(ILO 1996b, 90)

These observations are still true today. There is more use now of financial services and credit in order to have sufficient start-up funding for self-employment. However, women often lack the requisite security for such funding. Discriminatory practices in relation to ownership of land may deprive them of an ability to have collateral security for loans. There can also be discriminatory practices against them in relation to inheritance, which has a similar effect. These matters go beyond issues contained in a labor code. Other legislative provisions may be required to address the problems.

Land

International Standards

The most specific international standards in relation to ownership of land by women and its relationship to finance and credit are set out in Articles 13–16 of CEDAW.

Article 13 obliges States Parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(b) The right to bank loans, mortgages and other forms of financial credit.

Article 14(2) requires States Parties to take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

Article 15(2) provides that States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property.

Article 16 requires States Parties to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and, in particular, shall ensure, on a basis of equality of men and women and in particular:

- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Discussion of Principles and Examples of Good Legislation

A paper published in 2003 titled “Women’s Property and Inheritance Rights: Improving Lives in a Changing Time” summarized the situation of women in relation to ownership of land in the following terms:

“Women make up an increasing proportion of the world’s formal labor force and heads of households...Yet despite these patterns, women own only an estimated 1–2 percent of all titled land worldwide and are frequently denied the right to inherit property. There are numerous cultural, social, political, and legal factors that influence women’s lack of property and inheritance rights, and specific patterns of ownership and disenfranchisement vary widely. Lack of control over both productive and nonproductive resources in both rural and urban settings places women at a strong disadvantage in terms of securing a place to live, maintaining a basis for survival, and accessing economic opportunities. For instance, the widespread lack of official title to land and property among women means that they have virtually no collateral with which to obtain loans and credit. These factors exacerbate women’s generally low status and high levels of poverty when compared to men. Furthermore, women’s lack of property and inheritance rights has been increasingly linked to development-related problems faced by countries across the globe, including low levels of education, hunger, and poor health.”

[O]ften the implementation of [property] rights is impeded by existing practices and discriminatory patterns

(Steinzor 2003, v)

Frequently, property rights are guaranteed to women through constitutions and laws in many countries, but often the implementation of these rights is impeded by existing practices and discriminatory patterns. Consistent with countries being obliged to ensure these rights, there need to be effective means to take action to prevent or redress discrimination.

The Philippines has a number of laws designed to promote gender equality in the exercise of agricultural self-employment, some of which are set out as special measures. The legislation is important because the provisions specifically emphasize that women are required to be treated equally to men.

Early legislation, passed in 1988, was the Comprehensive Agrarian Reform Act, which instituted a land reform and land distribution program. This piece of legislation set out retention limits and covered all private and public agricultural lands. It allowed for a broad range of persons to apply to be beneficiaries of land and also provided for support services including irrigation, infrastructure, credit facilities, financial assistance, and cooperative management training (see Good Practices Example 15).

Another example is the Philippines’ Women in Development and Nation Building Act, 1992, which aims to promote the integration of women as full and equal partners with men in development and nation building (see Good Practices Example 16).

Good Practices Example 15: The Philippines' Comprehensive Agrarian Reform Act (CARP), 1998

Section 40(5)

All qualified women members of the agricultural labor force must be guaranteed and assured (of) equal rights to ownership of land, equal shares of the farm's produce, and representation in advisory or appropriate decision-making bodies.

Source: Republic of the Philippines. Republic Act 6657 of 10 June 1988.

Good Practices Example 16: The Philippines' Women in Development and Nation Building Act, 1992

The act contains a number of provisions expressing women's equal rights.

Full legal capacity to act and to enter into contracts, regardless of marital status (section 5)

Development assistance, which targets women through the National Economic and Development Authority (sections 2(1) and 9)

Equal access to membership in social, civic and other organisations (section 6)

Legal capacity to borrow and obtain loans (section 5(1)) and equal access to all government and private sector programmes granting agricultural credit, loans and non-materials resources (section 5(2)).

Source: Republic of the Philippines. Republic Act 7192 of 12 February 1992.

Finally, there is also the Philippines' Agriculture and Fisheries Modernization Act (AFMA), 1997 (see Good Practices Example 17).

Good Practices Example 17: The Philippines' Agriculture and Fisheries Modernization Act, 1997

This act includes:

1. a declaration of policy on credit to promote and address to credit for farmers and fishers, particularly the women involved in the production processing and trading of agriculture and fisheries products (sec 20)
2. special training programmes for women (sec 107)
3. marketing particularly for women with timely accurate and responsive business information and efficient trading services (sec 38)

Source: Republic of the Philippines. Republic Act 8435 of 28 July 1997.

While these acts have resulted in significant gains for women, the beneficiaries are still predominantly men. There have been a number of problems related to administration, such as slow implementation and funding issues, which apply to both men and women. The administration needs to be improved so that the legislative provisions are applied in practice. For example, training programs need to increase the representation and participation of women on decision-making bodies. Furthermore, there should also be changes to access for funding and credit to better accommodate the needs of women. This is where the innovative program, the Gender-Responsive Economic Actions for the Transformation of Women (GREAT Women) Project, can work with national government agencies to strengthen the application of these legislative measures to better assist rural women.

Issues relating to entry into a profession or trade are sometimes covered by legislation or by regulation. These provisions contain seemingly neutral requirements covering the possibility of joining a profession or carrying on an occupation, but may involve indirect discrimination based on one of the prohibited grounds. Where the exercise of an independent activity or a profession is conditional on possession of a license or title issued by a national authority or by an autonomous professional body, the authority or body must be completely objective in examining the various professional qualifications of the different candidates and must apply neutral legal provisions in accordance with the principles of equality.

Issues relating to entry into a profession or trade are sometimes covered by legislation or by regulation. These provisions contain seemingly neutral requirements covering the possibility of joining a profession or carrying on an occupation, but may involve indirect discrimination based on one of the prohibited grounds

Credit and Finance

International Standards

CEDAW contains the most explicit standards on access to credit and finance for women.

Article 13:

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

[...]

(b) The right to bank loans, mortgages and other forms of financial credit

Article 14:

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes

Discussion of Principles and Examples of Good Legislation

In relation to obtaining credit and loans, there is increasing concern about credit and microfinancing facilities, most specifically that they should not be regarded as a substitute for social protection measures. There are also issues concerning the need to regulate aspects of

credit and microfinancing facilities, notably when the institutions that provide these loans are not banks, but are commercial institutions and not cooperative institutions for members only.²³

An example of good practice is India's Microfinance Institutions (Development and Regulation) Bill, 2011 (see Good Practices Example 18).

The bill as presently drafted does not seek to cover credit and loans provided through the cooperatives. This will not impinge on the good work of India's SEWA Bank. SEWA Bank was set up by the trade union of the Self Employed Women's Association (SEWA) in 1974. SEWA comprises almost 700,000 women workers engaged in the informal economy. The union and the bank support informal workers across all categories of employment.²⁴ This support includes the operation of the SEWA Bank as well as an integrated insurance scheme that covers life, health, and assets of insured members (Jhabvala and Sinha 2006).

Good Practices Example 18: India's Microfinance Bill, Andhra Pradesh 2011

The Microfinance Bill seeks to address concerns about unregulated microfinancing and the need to protect clients from excessive interest rates and poor operational standards through registration and being subject to guidelines utilising the Reserve Bank of India's regulatory powers and to delegate the powers to regulate to the National Bank for Agriculture and Rural Development (NABARD). The bill also provides for penal sanctions for violation of rules.

Source: Republic of India. Microfinance Institutions. (Development and Regulation) Bill. 20 June 2011.

Inheritance

International Standards

The international standards set out in ICESCR and CEDAW require equal rights in inheritance. The importance to women of inheritance has been discussed in relation to land as set out earlier.

Discussion of Principles and Examples of Good Legislation

Countries should pass legislation that prohibits discrimination against women in inheritance and explicitly allows women to inherit property and land on an equal basis with men. Laws governing lines of succession should ensure equality of rank between mothers and fathers, between brothers and sisters, between daughters and sons, and between spouses. A country should also repeal any laws that terminate interests upon remarriage for the widow, but not the widower.

Inheritance practices that discriminate against women have been, and continue to be, a contentious issue. There are sometimes differences between inheritance of land and inheritance of other property. There are also cultural, religious, and customary practices that have impeded

²³ For a general discussion about the issue, see ADB (2000a, chapter 6).

²⁴ For example, street vendors, home-based workers, small producers, manual labourers, and service providers.

equality for women. Many reports²⁵ have canvassed the various approaches of countries.²⁶ The HIV/AIDS pandemic has highlighted the effect of discriminatory inheritance on the welfare and livelihood of women in different countries, notably in Africa and Asia.

A recent example of good legislation is Rwanda's Law to Supplement Book One of the Civil Code and to Institute Part Five Regarding Matrimonial Regimes, Liberties and Successions, which addresses both the effect of marriage and inheritance upon death in a country where cultural and customary practice discriminated against women (see Good Practices Example 19).

Good Practices Example 19: Rwanda's Law No. 22/99

Article 66

In the case of marriage under the regime of separation of property, the order of heirs in succession shall be as follows:

- (i) the children of the deceased;
- (ii) the father and mother of the deceased;
- (iii) the full brothers and full sisters of the deceased;
- (iv) the half brothers and half sisters of the deceased; and
- (v) the uncles and aunts paternal as well as maternal of the deceased.

With the exception of the father and the mother of the deceased, all other legatee heirs who died before the deceased shall be represented at the succession by their descendants.

Article 68

Succession of each of the spouses married under the regime of separation of property is possible, in case of death to his/her own heirs in the order provided in article 66 of this law.

There are also provisions concerned with succession of spouses married under the regime of community or property to ensure equality (Articles 70 and 71).

Source: Republic of Rwanda. Law No. 22/99 of 15 November 1999.

²⁵ See Panda et al. (2010).

²⁶ For example, India's Hindu Succession Act, 1956 applies to all persons who practice the Hindu religion but also those who are included as Hindus or treated at law as being Hindu, but excludes Muslims. The act abolished the limited owner status of women, and, instead, women who had acquired property before or after the act were granted absolute ownership of that property with power to deal with or dispose of it as they chose. Later, the legislation was amended by the Hindu Succession (Amendment) Act, 2005, which extended the rights of inheritance of daughters of a deceased to be equal with the rights of sons. It is to be noted that the act is not devoid of all discriminatory provisions and there is still a lineage of heirs by categories and in an order which favors men.

Prerequisites for Access to Work

International Standards

The term “vocational training” in C111, applies to all forms of employment and occupation and it differs from general education. The population as a whole should have access to general education. Part of the population may then acquire more specialized vocational training in order to hold jobs that are as productive as possible. If women are unable to attain the same level of education as men, this constitutes discrimination within the ambit of C111.

Discrimination in access to training may take two forms: direct discrimination, which omits or refuses to accept a person’s application on a discriminatory basis; or indirect discrimination, when the setting of apparently neutral admission requirements may lead to exclusion of women on grounds referred to in C111.

C111 also refers to access to “vocational guidance.” As a general rule, this refers to professional assistance given to young people and adults in order to help them choose an occupation. Vocational guidance is intended to play an important role in opening up a wide range of occupations that are free of prejudices based on stereotypes, for example, that certain trades or occupations are reserved for a particular sex.

R111 states, at paragraph 2, that a nondiscrimination policy should be applied by means of legislation (or collective agreements or any other manner consistent with national conditions and practice) to cover employment and promotion requirements, vocational guidance, and training, as well as additional training and retraining.

The ILO’s Human Resources Development Convention (C142) requires ratifying states to develop policies and programs of vocational guidance and training that are closely linked to employment, particularly through public employment services. The application of this convention would enable vocational guidance to be given to women and girls for the purpose of widening the scope of training so that it is not confined to typically “female” spheres of employment (domestic science, needlework, cooking, care work, etc.). It would also enable vocational training programs for women who wish to reenter work after a break for child rearing.

The related Human Resources Development Recommendation (R150) provides for the adoption and development of policies and programs of vocational guidance and vocational training for all persons, on an equal basis and without any discrimination whatsoever (ILO 1975b). It calls on member states to aim at ensuring that all have equal access to vocational guidance and vocational training. In respect of particular groups (for example, illiterate or uneducated persons, older workers, etc.), it provides that measures should be taken to enable them to enjoy equality in employment and improved integration into society and the economy. It also encourages the adoption of measures to improve the employment situation for women and promote their equality of opportunity in employment and in society as a whole.

Discussion of Principles

As the international standards indicate, this is an area in which women warrant having their disadvantage redressed by affirmative action in respect of vocational training and guidance to promote equality of opportunity.

Legislative texts on training should make it clear that discrimination can start from the point of setting admission requirements for training, which may directly or indirectly exclude women. For example, requiring courses to be undertaken at night or by internships away from the home

environment may have a disproportionate impact on women who tend to undertake additional family responsibilities. The same is true of weekend study trips.

Examples of Good Legislation

An innovative legislative approach to support women who have had a career break to have or care for children, or care for family members, is one from the Republic of Korea (see Good Practices Example 20).

A good example of nondiscrimination skills training legislation is contained in the South African Skills Development Act 1998, amended by the Skills Development Bill, 2003 (see Good Practices Example 21).

Good Practices Example 20: The Republic of Korea's Act on the Promotion of the Economic Activities of Career-Break Women, etc. 2008, amended 2010

Articles 1 and 2 express that the purpose is to contribute to women's economic self-reliance and self-realization and that it applies to women who want to be employed but have discontinued their economic activities for reasons such as childbirth or the care of family members. The law is also applicable to women who have never engaged in economic activities before undertaking care duties. The Minister of Gender Equality and Family and the Minister of Employment and Labor are required to establish a basic plan for the promotion of economic activity. They are required to undertake regular fact-finding surveys, provide or support appropriate vocational educational training, conduct internship support, and also operate or support a Career Break Women Support Center that can provide comprehensive services including counselling. There are also obligations on the state, local government and employers to make efforts to create a working environment that promotes economic activity.

Source: Republic of Korea. Act No. 9101 of 2008, amended 2010.

Good Practices Example 21: South Africa's Skills Development Act 1998, amended 2003

Section 2

- (1) The purposes of this Act are –
- (a) to develop the skills of the South African workforce –
 - ii. to improve the quality of life of workers, their prospects of work and labour mobility;
 - iii. to improve productivity in the workplace and the competitiveness of employers;
 - iv. to promote self-employment; and
 - v. to improve the delivery of social services;
 - (b) to increase the levels of investment in education and training in the labour market and to improve the return on that investment;
 - (c) to encourage employers –
 - i. to use the workplace as an active learning environment;
 - ii. to provide employees with the opportunities to acquire new skills;
 - iii. to provide opportunities for new entrants to the labour market to gain work experience; and
 - iv. to employ persons who find it difficult to be employed;
 - (d) to encourage workers to participate in learnership and other training programmes.

Source: Republic of South Africa. Act No. 97 of 20 October 1998, as amended by the Skills Development Act 2003.

IV

Promoting Equality of Treatment for Working Women

[The] gender wage gap is frequently caused by a lack of application of the international standard of “equal pay for work of equal value”

Working women face multiple forms of discrimination. A key problem is the difference in the amount of wages paid to working women in comparison to wages paid to men. This gender wage gap is frequently caused by a lack of application of the international standard of “equal pay for work of equal value.” Commonly, there is no proper understanding or application of that standard nor do frameworks for objective evaluation of job tasks exist to ensure that women are appropriately paid for their level of skill. Another related issue is the need to set minimum wages to address the circumstance where women are disproportionately represented in low-paid jobs. A second concern is the hours of work and hours of rest that should reflect the needs of women who still bear “a triple burden”: caring for family, domestic chores, and bearing and rearing children. More flexible approaches need to be adopted in respect of conditions of their employment. A third major issue that affects equality of treatment for working women is the problem of sexual harassment in the workplace. This common form of discrimination predominantly affects women and is best dealt with by a combination of legislation and guidelines or codes. Finally, good practice, which is increasingly being used by governments to help ensure that women are given opportunities and are not discriminated against in employment under government contracts, is the insertion of labor clauses into public contracts. Legislation on each of these topics is an important means of promoting equality of treatment for working women and also ensuring implementation of many relevant international standards.

Relevant International Standards

The relevant international standards that guide good practice include the following covenants and conventions:

- UDHR, which in Article 23 states that “everyone, without any distinction, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration insuring for himself and his family and existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.”
- ICESR, which in Article 6 provides that “States Parties... recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: remuneration which provides all workers, as a minimum, with: fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (also) a decent living for themselves and their families...”
- CEDAW, which in Article 11(1)(d) states that “Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular... the right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work.”

Also of relevance in this context are the following ILO conventions and recommendations:

- Equal Remuneration Convention (C100) and Recommendation (R90);²⁷
- Discrimination (Employment and Occupation) Convention (C111) and Recommendation (R111);
- Conventions on Minimum Wages (Nos. 26, 99, and 131);²⁸ and
- Labour Clauses (Public Contracts) Convention (C94) and Recommendation (R84).²⁹

Minimum Wages

International Standards

The most relevant convention on minimum wages in the context of this review is the ILO's Convention Concerning Minimum Wage Fixing, with Special Reference to Developing Countries (C131).³⁰

The whole of C131 is relevant. In essence, C131 requires member states that ratify the convention to

- undertake to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate;
- undertake tripartite consultation between the government, representative organizations of employers, and workers concerned to determine the groups of wage earners to be covered; and
- list the groups of wage earners to be covered.

There are also provisions relating to the requirements of economic development, levels of productivity, and the desirability of attaining and maintaining a high level of employment (Article 3). In addition, there are instructive provisions whereby states agree to create or maintain machinery adapted to national conditions and requirements to ensure that minimum wages for groups of wage earners can be fixed and adjusted from time to time (Article 4).

Regardless of whether a country has ratified C131, the convention's principles are also encapsulated within earlier conventions (such as C26 and C99)³¹ that have been widely ratified. C131, however, better articulates their application to developing countries.

[T]here is “compelling international evidence” that minimum wages reduced inequality by raising pay at the bottom of the distribution relative to the middle

Discussion of Principles and Examples of Good Legislation

It has become increasingly accepted that there is an interrelationship between the setting and application of national minimum wages (NMWs) and the reduction of inequality between the sexes in employment. The interconnection relates to the fact that a minimum wage sets a wage floor that influences wage levels for women who tend to be at the bottom end of the free income distribution (Romeyn, Archer, and Leung 2011, 69). Healy (2009) has indicated that there is “compelling international evidence” that minimum wages reduced inequality by raising pay at the bottom of the distribution relative to the middle. A similar conclusion was noted by Robinson (2002) who, when reflecting on debate in the United Kingdom in which commentators asserted that women were disproportionately represented among the low-paid, concluded that

²⁷ See ILO (1951b, 1951c).

²⁸ See ILO (1928, 1951a, 1972).

²⁹ See ILO (1949a, 1949d).

³⁰ Note that the introductory paragraphs of C131 refer to Conventions 26, 99, and 100.

³¹ See ILO (1928, 1951a).

a NMW could assist in reducing the gender pay gap. Similar views have also been expressed by other commentators.³²

The ILO's (2008a, 34) *Global Wage Report* noted that NMWs have enjoyed "something of a revival" and that they had been reinvigorated by the approach taken by the European Union. In particular, the European Commission's (2007, 64) Group of Experts on Gender, Social Inclusion and Employment identified three broad approaches taken by the countries it reviewed and concluded that there should be

- equal pay policy aimed at tackling direct or indirect gender discrimination (e.g., antidiscrimination laws);
- wages policies aimed at reducing wage inequality and improving the remuneration of low-paid and female-dominated jobs (e.g., introduction of a mandatory minimum wage to provide a floor to the wage structure); and
- equal opportunity policy aimed at encouraging women to have continuous employment patterns, and desegregating employment by gender (e.g., child care, parental leave, education, vocational and career guidance, work-life balance).

The ILO noted the importance of states using national minimum wages as an instrument of social protection to provide a decent wage floor

The *Global Wage Report* noted that the revival of NMWs was to be contrasted with the low and/or declining rates of collective bargaining coverage in a number of countries. The ILO (2008a, 53–57) stated that in some countries, complex systems of NMWs had emerged to compensate for the absence of effective collective bargaining arrangements. The ILO noted the importance of states using NMWs as an instrument of social protection to provide a decent wage floor, but at the same time it cautioned that NMWs should not be a substitute for bargaining among social partners.³³

A study conducted in 2009 identified three basic forms revealed by national practice: government legislated, bargaining process, and consultation process (Boeri 2009). It noted that these categories can be blurred, and there can be a combination of different processes. In New Zealand, for example, there is a legislated NMW, but the government engages in significant consultation with the employer and union representatives and other interest groups. The study found that a government-legislated NMW was on the whole lower than a wage floor set within collective agreements or by other means.

Drawing from these studies, Australia first set up a Minimum Wages Panel pursuant to the Fair Work Act 2009,³⁴ later renamed the Expert Panel, for annual wage reviews operating from October 2013. It is an excellent example of good practice in this field. Another good example of an independent wage-setting process for minimum wages is the mechanism used in the Republic of Korea (see Good Practices Examples 22 and 23).

³² See also DiNardo, Fortin, and Lemieux (1996) who concluded that there was a clear relationship between the decline in the real value of the minimum wage in the United States and the levels of wage inequality and an increase in the gender pay gap.

³³ See also Romeyn, Archer, and Leung (2011, 85–100).

³⁴ See Romeyn, Archer, and Leung (2011, 85–100).

Good Practices Example 22: The Expert Panel for Annual Wage Reviews under the Australia Fair Work Act 2009, as amended in 2012

The strong feature of this panel is that it is independent and its work is transparent. The panel comprises three full-time members and three part-time members. The full-time members of the panel are chosen by the President of the Fair Work Australia Tribunal and are quasi-judicial members. The part-time members are appointed by the federal government and are obliged to have knowledge of or experience in one or more of the fields of workplace relations; economics; social policy; or business, industry, or commerce. The panel conducts annual wage reviews. The annual wage review involves consideration of written submissions from interested organizations and individuals, consultations before the Minimum Wage Panel, and, importantly, research commissioned by the panel. All submissions and research outcomes are published. The research is undertaken or commissioned by the Minimum Wages and Research Branch of Fair Work Australia and is endorsed by a Minimum Wage Research Group. The research group itself is tripartite and includes representatives of nominated by the Chambers of Commerce and Industry, the Council of Social Services, the Council of Trade Unions, the Australian government, as well as the state and territory governments.

Sources: Australia. Fair Work Act 2009 section 620 and Schedule 2, as amended in 2012. See also Fair Work Commission. Available at <http://www.fwc.gov.au/index.cfm?pagename=minabout>

Good Practices Example 23: The Republic of Korea's Minimum Wage Act No. 3927, 1986, amended 2012

The Minister of Employment and Labor requests the Minimum Wage Council to deliberate, decide, and submit a proposal. The Minister determines the wage accordingly unless (1) a representative of workers or employers has an objection to the proposal and the Minister deems the objection to be reasonable, or (2) the Minister deems it difficult to accept the proposal. In either case, the Minister can resubmit the proposal to the Council and request it to redeliberate indicating the reasons for the objection/request. The Council then submits the result of the redeliberation to the Minister. Importantly, if the Council decides either to change the proposal or to reaffirm the original proposal, the Minister determines the minimum wage according to the proposal of the Council. The Council consists of nine worker representatives, nine employer representatives, and nine public interest members. The Chair and Vice Chair are elected from among the public interest members. In addition, there can be three special members who are public officials. The functions of the Council include conducting research and hearing the opinions of workers, employers, or persons concerned with the wage-setting process. The Council may also appoint technical committees from among its members.

Source: Republic of Korea. Act No. 3927 of 31 December 1986, amended 2012.

Equal Remuneration for Work of Equal Value

Specific International Standards

Although not required under C100, minimum wages have been recognized by the ILO as being an important means by which C100 may be applied. The ILO (1951b, Article 3) has indicated that the bodies responsible for determining applicable NMW levels should do so in accordance with C100 which requires "objective appraisal of jobs on the basis of work to be performed" without gender bias.

Relevant articles of C100 include the following:

- Article 1 (a), which defines the term remuneration as including “the ordinary, basic or minimum wage or salary and any additional monuments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment”;
- Article 1 (b), which states that “the term equal remuneration for men and women workers for work of equal value refers to the rates of remuneration established without discrimination based on sex”;
- Article 2, which requires governments to ensure the application of the principle by means such as national laws or regulations, legally established or recognized machinery for wage determination, collective agreements between employers and workers, or a combination of these various means; and
- Article 3, which requires the government take measures to promote objective appraisals of jobs on the basis of the work to be performed.

Discussion of Principles and Examples of Good Legislation

The failure to appropriately address the requirement that there be equal remuneration for work of equal value has an important effect on the gender pay gap

The CEACR noted in 2006, that the majority of countries that have ratified C100 had not fully reflected the principle of “equal remuneration for men and women for work of equal value” in their national legislation. In a number of countries, national legislation continues to refer only to “equal pay for equal work.” Although some countries have correctly introduced the principle of “equal remuneration for work of equal value” in their law, they have subsequently narrowed the scope of “work of equal value” to mean only “equal work.”

The failure to appropriately address the requirement that there be equal remuneration for work of equal value has an important effect on the gender pay gap, which is very prevalent in many developing countries. The report by the European Foundation for the Improvement of Living and Working Conditions (Eurofound), *Addressing the Gender Pay Gap: Government and Social Partner Actions*, concluded that a significant portion of the gender pay gap could be explained by occupational and sectoral segregation (Eurofound 2010). In addition, the ILO’s *Global Report on Equality at Work: the Continuing Challenge* referred to the 2008 Labour Force Survey undertaken in the United Kingdom, which revealed that women occupied two-thirds of jobs in low-paid occupations compared to two-fifths in other occupations (Low Pay Commission 2009, 98; cited in ILO 2011f, 22). Further, the Labour Force Survey showed that women accounted for 76% of all workers in part-time employment in the United Kingdom, noting that this was a matter of concern since part-time workers were twice as likely to be paid a minimum wage (Low Pay Commission 2009, 98). This situation is not limited to the United Kingdom.

In 2006, the CEACR expressed its concern about the failure of countries to comply with the requirements of C100, and it published a General Observation, which made the following points:

- In order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved.
- This examination must be undertaken on the basis of entirely objective and nondiscriminatory criteria to avoid an assessment being tainted by gender bias.
- Analytical methods of job evaluation have been found to be the most effective.
- Such methods should analyze and classify jobs on the basis of objective factors relating to the jobs to be compared such as skill, effort, and responsibilities or working conditions.
- Particular care must be taken to ensure that they are free from gender bias.
- Often, skills considered to be “female,” such as manual dexterity and those required in care professions, are undervalued or even overlooked in comparison with traditionally “male” skills, such as heavy lifting. Measures for the objective evaluation of jobs can be taken at the enterprise, sector, or national level, in the context of collective bargaining, as well as through national wage-fixing mechanisms.

Subsequently, the ILO (2008b) published *Promoting Equity-Gender-Neutral Job Evaluation for Equal Pay: A Step-by-Step Guide*, which sets out good practice. The steps required for an objective and fair assessment of jobs free from gender bias, include the following sequence of operations:

- developing a weighting grid free from gender bias;
- assigning points to jobs based on levels of subfactors and identifying jobs of the same value;
- calculating the total points assigned to each job; and
- grouping jobs into point intervals.

More recently, the ILO has published a practical guide of good practice that clarifies the concepts and ways to address the application of equal pay (ILO 2013; see also discussion of good practices from 10 selected Organisation for Economic Co-operation and Development countries in Layton, Smith, and Stewart 2013, Chapter 2.4 and Appendix C).³⁵

Hours of Work

Specific International Standards

The duration of time for work and time for rest are an essential condition of decent work. A limitation on working time and the recognition of the right to rest are recognized in article 24 of the UDHR that recognizes that everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. Similarly Article 7 (d) of the ICESCR refers to the same rights, as well as remuneration for public holidays.

The standards on hours of work are primarily concerned with the safety and health of workers

The ILO's (1919a, 1930) Hours of Work Conventions (C1 and C30) sets the general standard at 48 regular hours of work per week, with a maximum of 8 hours per day. This is similar to a European Council Directive,³⁶ which states in the preamble that account should be taken of the principles of the ILO with regard to organizational working time, including those related to night work. However, the European Council Directive has taken a more flexible approach beyond the topic of hours of work, as it includes provisions on daily and weekly rest periods, maximum weekly working time, annual leave, night work, shift work, and patterns of work.

Discussion of Principles and Examples of Good Legislation

Standards with respect to working hours are of increasing importance because of the modern forms of working time arrangements, such as part-time work, compressed work weeks, staggered hours, variable daily shift length, annualized working hours, flexitime, and on-call work. The standards on hours of work are primarily concerned with the safety and health of workers. They have a particular effect on women and their employment in a number of ways. Women sometimes have to interrupt their employment to care for children and family members. Consequently, women are often not appointed to managerial or leadership positions, because they are unable to fulfill the hours of work required for those positions. There have also been many discussions about night work conventions that have prohibited women's employment in such work. Daytime family commitments have in fact prevented women from doing certain types of night work that would otherwise suit them.

A recent survey conducted by the CEACR in 2005 entitled "Hours of Work: From Fixed to Flexible?" made a number of pertinent observations about the relationship between working time and nonworking time and the need to allow a fair balance between work and family lives (ILO 2005a).

³⁵ See also discussion of good practices from 10 selected Organisation for Economic Co-operation and Development countries in Layton, Smith, and Stewart (2013, Chapter 2.4 and Appendix C).

³⁶ Council Directive 93/104/EC of 23 November 1993.

The CEACR concluded that C1 and C30 did not fully reflect modern realities and that they were too rigid in their prescription. The committee suggested that there was a need to have a more flexible approach, and a number of recommendations were made suggesting a new instrument. The committee also reflected on the fact that an increasing number of countries have their hours of work governed by collective agreements or awards instead of laws or regulations. However, some countries have reflected a flexible approach within a legislative framework.

An example of good legislation that takes a flexible approach to the circumstances of women can be found in the Labour Code of the Republic of Moldova, 2003 (see Good Practices Example 24).

Good Practices Example 24: Moldova's Labour Code, 2003

Article 97 – Partial working time

(1) A partial and weekly working day can be agreed upon by the employer and employee at the moment of employment, as well as later. The employer is also obliged to establish a shortened working day or a shortened working week when requested to do so by a pregnant employee, a female employee who has children up to 14 years of age or disabled children up to 16 years of age (including ones under her guardianship) or a female employee who looks after a sick family member and can produce a medical certificate.

(2) Labour remuneration in the cases stipulated in paragraph (1) shall be made proportional to the time worked or shall be calculated depending on the volume of performed work.

(3) The activity under the conditions of partial working time does not imply limitation of the employee rights regarding calculation of length of service, duration of annual rest leave or of any other work rights.

Source: Republic of Moldova. N154-XV of 28 March 2003.

Sexual Harassment

Sexual harassment leads to workplace tensions, which in turn can impede teamwork and performance, and encourage absenteeism

An important aspect of equality of treatment in employment and occupation, which has special significance for women, is sexual harassment in the workplace. Apart from the direct harmful effects sexual harassment can have on workers, it also carries negative implications for the employers' organization. It leads to workplace tensions, which in turn can impede teamwork and performance, and encourage absenteeism, all of which ultimately lower productivity.

International Standards

In 1991, the ILO passed a Resolution on ILO Action on Women Workers and then in 1995 passed an additional Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment. These resolutions, based on the provisions of C111 and C100, called sexual harassment "a violation of the fundamental rights of workers," and "a safety and health hazard, a problem of discrimination, an unacceptable working condition and a form of violence, usually against women workers" (Haspels et al. 2001, 29 154).

In 2001, a report published by the ILO indicated that sexual harassment is a form of gender discrimination based on sex and that it is a manifestation of unequal power relations between men and women. This is not so much related to the actual biological differences between men and women—rather, it relates to the gender or social roles attributed to men and women in social and economic life, and perceptions about male and female sexuality in society that can lead to unbalanced male–female power relationships.³⁷ Although both men and women can be subjected to sexual harassment, quantitative and qualitative research shows that women are much more likely to be victims and men perpetrators (Haspels et al. 2001, 154).

CEDAW has also noted the seriousness of the issue, describing sexual harassment in the workplace as gender discrimination and a form of gender-based violence in the CEDAW Committee’s General Recommendation No. 19. The CEDAW Committee (1992) has called on States Parties to the convention to take steps to address the problem: “States Parties should include in their reports information on sexual harassment, and on measures to protect women from sexual harassment and other forms of violence or coercion in the workplace.”

Discussion of Principles and Examples of Good Legislation.

In many Asian countries, sexual harassment has only relatively recently been acknowledged as a concern. In countries that traditionally have been more patriarchal and conservative, victims may be reluctant to come forward with complaints or confront their harassers because they may be shy, ashamed or fearful of retaliation (Haspels et al. 2001).

While there are still no binding international standards that specifically mention sexual harassment, a growing list of economies have taken legislative action to recognize it as abusive behavior, and to punish and prevent it. Progress has been made in a number of Asian economies to institutionalize ways of dealing with the problem:

- In 1995, the Philippines passed the Anti-Sexual Harassment Act, and the Civil Service Commission adopted guidelines to promote zero-tolerance for workplace sexual harassment. The provisions of the Anti-Sexual Harassment Act, 1995 are broad and provide legislative protection and remedies that would amount to good legislative practice (see Good Practices Example 25).³⁸
- Thailand amended its Labour Code in 1998 to include penalties for sexual violations by superiors.³⁹
- Malaysia adopted its Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace in 1999 that provides guidelines to employers on forms of sexual harassment, complaint and grievance procedures, disciplinary rules and penalties, and protective and remedial measures. The Malaysian Trade Unions Congress also incorporated a sexual harassment clause in its collective agreement (McCarthy 1997). Malaysia’s 2012 Employment (Amendment) Act defines sexual harassment and obliges employers to respond to complaints.⁴⁰

Although both men and women can be subjected to sexual harassment, [Q]uantitative and qualitative research shows that women are much more likely to be victims and men perpetrators

³⁷ See Haspels et al. (2001). This publication is based on 12 country studies in Asia and the Pacific. It refers to the discussions and outcomes of an ILO Regional Seminar on workplace sexual harassment held in Malaysia in 2001. It covers the different perceptions and attitudes toward sexual harassment in the region.

³⁸ For the Anti-Sexual Harassment Act, 2995, see <http://www.hsph.harvard.edu/population/womenrights/philippines.women.95.pdf>. For Civil Service Commission Regulation No. 01-0940: Administrative Disciplinary Rules on Sexual Harassment Cases, see <http://oash.upd.edu.ph/wp-content/uploads/2012/02/CSC-Resolution-01-0940.pdf>. For the National Commission on the Role of Filipino Women, see <http://www.lawphil.net/administ/ncrfw/ncrfw.html>. For general information on sexual harassment legislation in the Philippines from the Philippine Commission on Women, see Expanding the Anti-Sexual Harassment Law at <http://pcw.gov.ph/wpla/sexual-harassment>.

³⁹ Thailand. Act B.E. 2541 of 1998. For the text of the law code, see http://thailaws.com/law/t_laws/tlaw0132a.pdf.

⁴⁰ Malaysia. Act A1419. An Act to Amend the Employment Act 1955. See <http://www.mkma.org/Notice%20Board/2012/EmploymentAmendedAct2012.pdf>. For a definition of sexual harassment, see section 2g. For details relating to the employers obligation to respond to an accusation of sexual harassment, see Part XVa of the act, paragraphs 81A–81F.

- In 1996, the Sex Discrimination Ordinance, which includes explicit provisions on sexual harassment in employment, came into force in Hong Kong, China.⁴¹
- In Bangladesh, the Suppression of Violence against Women and Children Act of 2000 provides for a monetary fine and prison term for sexual harassment.
- The Law of the People's Republic of China (PRC) on the Protection of the Rights and Interests of Women (Revised), 2005 prohibits sexual harassment against women and provides for a complaints procedure, while the 2012 Regulation on the Labour Protection for Women Workers obliges employers to prevent and stop sexual harassment against women in the workplace.⁴²
- Cambodia's Labor Law, 1997 strictly forbids all forms of sexual violation (harassment).⁴³
- In Pakistan, the Protection against Harassment of Women at the Workplace Act 2010⁴⁴ was signed by the President on 9 March 2010.
- Japan's Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, 1973, amended in 2006, covers sexual harassment against both women and men.⁴⁵
- The Law of Mongolia on the Enforcement of the Law on Promotion of Gender Equality 2011 outlaws both quid pro quo and hostile working environment, and obliges employers to prevent sexual harassment through training and redress of sexual harassment complaints.⁴⁶
- The 2012 Labor Code of Viet Nam prohibits maltreatment and sexual harassment of workers, in particular domestic workers.⁴⁷

The Government of Indonesia adopted guidelines to encourage the realization of nondiscrimination at work and the prevention of sexual harassment in the workplace (ILO 2011a). They also act as an educational tool for workers, employers, and other stakeholders (see Good Practices Example 26).

While legislation provides an important framework for the prohibition of sexual harassment, the subtlety of its application and the aspects of prevention cannot be fully articulated in the legislation itself. Subsequently, either guidelines or codes of practice are also required as a matter of good practice.

⁴¹ Hong Kong, China. Law of 3 April 1992, revised 28 August 2010. For text of code, see ILO, NATLEX at http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=CHN&p_classification=05&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY

⁴² For the 2005 law, see <http://www.china.org.cn/english/government/207405.htm>. In particular, Article 40 deals with sexual harassment provisions. For more information about the 2012 regulations, see <http://intemploy.blogspot.com/2012/06/china-new-rules-on-protection-for.html>.

⁴³ Cambodia. Labor Law of 13 March 1997. This is covered in article 172 of the law code. See http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav-ilo_aids/documents/legaldocument/wcms_150856.pdf.

⁴⁴ Pakistan. Act No. F. 9 (5)/2009- Legis of 11 March 2010. For full text, see <http://www.fos-workplace.org/act.pdf>. For the Federal Ombudsman for Protection Against Harassment of Women at Workplace (Pakistan), see <http://www.fos-workplace.org/index.php>.

⁴⁵ Japan. Act No. 113 of 1972 as last amended by Act No. 82 of 2006. For a discussion of the 2006 sexual harassment amendments, see Yamada (2013).

⁴⁶ Mongolia. Law of 2 February 2011. For the text of the law code, see http://legislationline.org/download/action/download/id/4518/file/Mongolia_law_gender_equality_2011_en.pdf. See, in particular, Article 11 for general issues of gender equality in the workplace, and Articles 11.4 and 11.6 for regulations relating specifically to the prevention of sexual harassment in the workplace. For more background information on the formulation of this act, see ADB (2011b).

⁴⁷ Viet Nam. Code No. 10/2012/QH13 of 2012. For the text of the law, see <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/91650/106402/F-1475261172/VNM91650%20Eng.pdf>. For specific issues of maltreatment and sexual harassment, see Article 8 Sections 1 and 2.

Good Practices Example 25: The Philippines' Anti-Sexual Harassment Act, 1995

Section 3 – Work, education or training-related sexual harassment defined

Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, [and other named persons in occupations] who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests for otherwise requires any sexual favour from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of the said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:

- (1) the sexual favour is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favourable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favour results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
- (2) the above acts would impair the employee's rights or privileges under existing labour laws; or
- (3) the above acts would result in an intimidating, hostile or offensive environment for the employee.

There are also similar prohibitions in an education or training environment which include when the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance, or other benefits, privileges, or considerations.

Furthermore, "Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act."

Section 4 places a duty of the employer or head office in a work-related, education, or training environment which includes obligations to promulgate appropriate rules and regulations and create a committee on decorum and investigation of cases on sexual harassment.

Source: Republic of the Philippines. Republic Act 7877 of 8 Feb 1995.

Good Practices Example 26: Indonesia's Code of Practice on Sexual Harassment at the Workplace, 2011

Most recently, Indonesia's Ministry of Manpower and Transmigration issued *Guidelines on Sexual Harassment Prevention at the Workplace*. These guidelines provide a comprehensive description of conduct that would amount to sexual harassment and gives guidance and direction to employers on preventing and effectively responding to sexual harassment. Some aspects of the guidelines are summarized below:

Harassment frequently involves an abuse of power where the targets can experience difficulties in defending themselves. Harassment at the workplace is any unwelcomed and offensive action, or repeated and unreasonable act, addressed to a worker or a group of workers that causes difficulty in the performance of an assigned job or causes a worker to feel that he/she is working in a hostile work environment. This can also cause risk to the health and safety of the worker.

Sexual harassment is any unwanted conduct of a sexual nature, request for sexual favors, verbal or physical conduct or gesture of a sexual nature; or other behavior of a sexual nature that makes the recipient feel humiliated, offended, and/or intimidated, where such reaction is reasonable in the situation and condition, or made into a work requirement or create an intimidating, hostile, or inappropriate work environment. It is further described as including misuse of sexual behavior, requests for a sexual favor, verbal statements or physical actions or gestures that describe a sexual act, or unwanted action of a sexual nature.

Unwanted conduct is any conduct that is not requested or invited by the recipient, and the recipient of the conduct considers such conduct to be undesirable or disrespectful. Whether the behavior was unwelcome is a subjective question from the perspective of the particular person alleging sexual harassment. Whether the behavior is considered acceptable for other people or has been accepted as part of the work environment in the past is not relevant. In this regard, it is the way in which the conduct is perceived and experienced by the recipient that is important, not the intention behind the conduct.

Sexual harassment can occur between persons of the opposite or same sex. Both men and women can be victims or perpetrators of behavior that is considered rude, humiliating, or intimidating. It can take place between the employer/supervisor and an employee (vertical relationship), or between an employee and another employee (horizontal relationship), between an employer and contract or outsourced worker, and between employees and service providers, clients, or third parties. Unwanted behavior that is repeated or continuous or that is a single incident may be identified as sexual harassment.

Sexual harassment can take various forms. Broadly, there are five forms of sexual harassment, each of which is individually defined. Physical harassment includes unwelcome touching in a sexual manner such as kissing, patting, pinching, glancing, or staring full of lust. Verbal harassment includes unwelcome comments about the private life or body parts or a person's appearance. It can also involve sexually suggestive jokes and comments. Gestural harassment includes sexually suggestive body language and or gestures, repeated winks, gestures with fingers, and licking lips. Written or graphic harassment includes display of pornographic materials, sexually explicit pictures, screen savers or posters, or harassment via emails and other modes of electronic communication. Psychological/emotional harassment consists of persistent proposals and unwelcome requests, unwanted invitations to go out on dates, insults, taunts, or innuendo of a sexual nature.

There are also provisions with respect to reasonableness of conduct. Whether the behavior of the perpetrator is offensive, humiliating, or intimidating is an objective test, based on whether a reasonable person would have anticipated that the behavior would have this effect. An objective test can be taken based on the condition that a person could have anticipated such conduct to cause a humiliating and intimidating effect. It must be considered within the context in which it occurs.

Source: International Labour Organization (ILO). 2011. *Guidelines on Sexual Harassment Prevention at the Workplace, Issued by the Circular Note of the Minister of Manpower and Transmigration No. SE.03/MEN/IV/2011*. Jakarta: Government of Indonesia, Ministry of Manpower and Transmigration, and ILO. Available at: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_171329.pdf (accessed 12 September 2013).

Labor Clauses in Public Contracts

Another means of providing a wage floor and reducing inequality of the wages and conditions of employment between the sexes is by the use of labor clauses in public contracts. Labor clauses, which set minimum standards, and ensure fair wages and working conditions, are required for government contracts and consequently prevent substandard employment conditions. They also enable special measures to be included for women. Labor clauses need to be achieved through legislation, coupled with effective enforcement measures.

International Standards

The Labour Clauses (Public Contracts) Convention, 1949 (C94) and Recommendation (R84) provides ILO standards in relation to public works and contracts (ILO 1949a, 1949b). The basic notion behind C94 is that public authorities, when contracting for the execution of construction works or for the supply of goods and services, should involve themselves with the working conditions under which the operations are carried out. The underlying concern is that government contracts are usually awarded to the lowest bidder and that contractual arrangement may be tempted, by reason of competition, to minimize labor costs. It is generally recognized that governments should not be seen as entering into contracts involving the employment of workers under conditions below certain levels of social protection, but instead should set an example as model employers.

Another means of providing a wage floor and reducing inequality of the wages ... is by the use of labor clauses in public contracts

Discussion of Principles and Examples of Good Legislation

This general approach contained in C94 accords with the approach taken by ADB. ADB has indicated its commitment to harmonizing and aligning procedures and practices of its development partners (ADB 2005, 4 para. 23). ADB requires that the multilateral development bank harmonized conditions for contracts be used for the procurement of works financed by the bank. Further, ADB (2007, 26) is also involved in supporting governance activities in priority areas such as a public financial management and procurement reform, which are sectors and subsectors in which ADB is active. As such, ADB activities offer opportunities for promoting the implementation of C94, although it has fallen short when promoting core labor standards that include such clauses. Nonetheless, the expression of commonly agreed assessment indicators by governments will enhance respect for obligations under ratified ILO conventions (ADB 2000b).

The provisions of C94 represent a high proportion of formal economic activity in both developed and developing countries. There is a concern that international competition, especially in the presence of multinational companies with large and efficient infrastructures, can push ahead with enterprises to compress labor costs, which consequently results in reduced wages, longer hours, poorer conditions, and diminished social protections. Labor clauses that set minimum standards ensure the most advantageous working conditions and continue to be a valid means of ensuring fair wages and work. This needs to be achieved through legislation, coupled with effective enforcement measures.

Two examples of good legislative provisions are contained in Finland's Public Procurement Act, 2007 and Austria's Federal Law on Public Procurement, 2006 (see Good Practices Examples 27 and 28).

Good Practices Example 27: Finland's Public Procurement Act, 2007

Section 49

(2) before signature of a public contract, a clause has to be added requiring that the employment conditions be at least aligned with the minimum requirements prescribed by national laws and collective agreements.

Source: Finland. Act No. 348/2007 adopted in March 2007.

Good Practices Example 28: Austria's Federal Law on Public Procurement, 2006

Section 84 refers to a certain number of International Labour Organization (ILO) conventions including C94 and requires that the standard in these instruments is to be respected in the bidding process. The ILO conventions referred to are the Fundamental Conventions (C29, 87, 98, 100, 105, 111, and 138), as well as C182 and C183.

Source: Austria. Act BGB1, No. 17/2006 adopted in 2006.

Work and Security in Employment and Occupation

V

Recent economic trends, particularly at times of financial crises, have generally led to less security for workers in the marketplace. There has been a significant increase in the number of casual workers, temporary or short-term contracts, part-time work, and also home-based work. It has had a greater impact on women's employment than that of men. Furthermore, a disproportionate number of women in comparison to men work in the informal sector in jobs that are either atypical or precarious. Particular categories of employment include domestic work, rural work, and work in cooperatives or as entrepreneurs. Good practice suggests that there needs to be both legislation and economic and social policies working in tandem. Finding the right balance between regulation to improve conditions while still allowing sufficient flexibility in the marketplace is not easy to achieve. Good legislative practice needs to be tailor-made to the particular level of development of a country in order to achieve the much-needed balance. Further, it must be done in a way that ensures that women are not discriminated against, and, in many instances, special measures are needed to promote and protect women's employment to redress disadvantage.

Good practice suggests that there needs to be both legislation and economic and social policies working in tandem.

General Discussion

Employment and Occupation

Historically, the term "employment," which has been used and protected within the ILO framework, has been a standard form of contractual relationship involving subordination, control, and payment by an employer to an employee for services rendered.

The ILO (2006b, para. 5) has defined employment as "a legal notion widely used in countries around the world to refer to the relationship between a person called an 'employee' (frequently referred to as 'a worker') and an 'employer' for whom the 'employee' performs work under certain conditions in return for remuneration." The ILO (2006b) has further indicated that "It is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer. The employment relationship has been, and continues to be, the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security. It is the key point of reference for determining the nature and extent of employers' rights and obligations towards their workers." This description is to be contrasted with a contractual relationship involving independent contractors, which was not regarded by the ILO as constituting employment.

“Occupation” has been defined as a “set of jobs whose main tasks and duties are characterised by a high degree of similarity” (ILO 1990). The definition includes the trade, profession, or type of work performed by a person and is not dependent on professional status.

Market forces and changed economic circumstances have blurred these simple distinctions. In the 1980s and 1990s, there was an increase in ambiguous work situations that did not sit easily with the standard form of relationship of employment or with a person being characterized as an independent contractor. This period saw the rise of concealed or disguised employment relationships, an increase in self-employment, and also triangular employment situations in which intermediaries were involved. The ILO was eager to try and provide protection for some of these workers. The employers’ group was adamant that the scope of protection should not be extended to cover persons who were self-employed. This became manifest at the point when the Home Work Convention (C177) was being drafted and debated. The convention (ILO 1996a) was nonetheless adopted by the 83rd International Labour Conference in 1996.

In other words, [I]nformal sector employment is defined by what it lacks, namely many of the trappings, entitlements, and social security protections generally associated with formal employment

In May 2000, the ILO (2000a, para. 102) released a technical document which concluded that “there is a category of workers who appear to be excluded from the protection provided by the employment relationship, but who in fact carry out work within the framework of concealed or disguised employment relationships. At the same time, there are objectively ambiguous situations, which are on the increase, which merit protection, since the workers involved are placed in situations of dependency, but in respect of which the scope of legislation may be too narrow... in addition to this situation, there is also the significant phenomenon of the non-application or poor application of labour legislation.”

The debate with employer groups has continued and the ILO has responded by limiting “employment” to the standard contract of employment and only extending “employment” to protect dependent workers who are either disguised employees or objectively ambiguous self-employed workers. Thus, “employment” has excluded self-employment and triangular employment relationships, being the categories which the employers’ group was anxious should not become an employer responsibility.⁴⁸

Formal and Informal Employment

“Employment” is also to be contrasted with “informal employment,” which has been defined as:

...all informal jobs, whether carried out in formal sector enterprises, informal sector enterprises or households – employees are considered to have informal jobs if their employment relationship is, in law or in practice, not subject to labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severances of pay, paid annual or sick leave, etc.).

(ILO 2003)

In other words, informal sector employment is defined by what it lacks, namely many of the trappings, entitlements, and social security protections generally associated with formal employment. There is ongoing debate about nomenclature,⁴⁹ including whether the correct term should be the “informal sector,” “informal workers,” or the “informal economy.”⁵⁰ As discussed

⁴⁸ For a detailed discussion, see Fudge and Owens (2006).

⁴⁹ “Informal economy” is the preferred term used by WIEGO to capture the diversity and that “informal workers” are not confined to the “informal sector” and instead cover a diversity of the working arrangements. See discussion generally of definitional problems in Hensman (2011, 164–169).

⁵⁰ This review will use the term “informal sector.”

later,⁵¹ best legal practice trends are moving toward extending social protections and decent working conditions to include workers in the informal sector.

Security in Employment

Access to decent work and security of work in the marketplace has been declining for both men and women. There are global pressures to move workers out of large, formal sector firms into small, dispersed firms or even workers' own homes, where conditions of work are harder to regulate. Even in developed economies, more workers are moving to part-time or temporary work. Employers often seek to increase profitability by keeping the employee pool flexible so that they can increase or decrease the number of employees depending on the demand. They also look to various means of obtaining workers with flexible remuneration and conditions in order to reduce overheads. This has resulted in increasing use of temporary work, casual work, part-time work, short-term contracts, labor contracting, and home work, where previously this work may have been performed by permanent employees. As a consequence, formal employment has become more precarious, while simultaneously the number of workers in informal sector employment has increased.

Informal, part-time, and temporary workers have a number of features in common. They are less likely to have access to social security, health insurance, maternity leave, and other protections. They are also less likely to be represented by unions, which undermines the union voice overall as well as the ability of individual workers to have a say in working conditions (Floro and Meurs 2009). This general trend has had the greatest impact on women rather than men. The proportion of women working in the informal sector, or in various forms of contract labor, atypical, or precarious employment (such as home work) is often high. Also, the participation rates of women in the formal sector are often lower and they tend to suffer from occupational segregation⁵² and disadvantage in terms of their conditions of employment,⁵³ and receive unequal pay for work of equal or similar value.

There are global pressures to move workers out of large, formal sector firms into small, dispersed firms or even workers' own homes, where conditions of work are harder to regulate

Overcoming gender inequality requires not only legislation but also broad policy initiatives that go well beyond the legislative framework.

An International Standards Approach

The ILO and the EU are two of the major bodies that have been attempting to deal with these trends. The ILO approach has more recently moved toward adopting promotional conventions,⁵⁴ in combination with nonbinding recommendations, which contain minimum standards that the ILO urges member states to adopt through the development of national policies and the introduction of legislation to enforce the standards. The EU, in particular from 1997, has taken a similar approach through its directives. The EU directives provide greater flexibility and expressly encourage the development of a national policy and legislation on standards, following social dialogue.

However, leaving aside the specific wording used in the various instruments, both the ILO and the EU generally appear to be taking a more flexible approach by proceeding on the premise that policies and legislation based on social dialogue are best able to respond to a dynamic global market in the interests of both employers and workers. Whether the instruments are merely

⁵¹ See section on Informal Employment.

⁵² Traditional female jobs such as craft work and service industries.

⁵³ Examples include part-time women workers who would prefer full-time employment.

⁵⁴ Promotional conventions are those that suggest a methodology and indicate criteria, and thereafter allowing countries themselves to define, establish, and implement the measures and standards by enacting law and/or developing and implementing policy.

promotional or formally binding in nature, the process of their adoption means that they still comprise international standards.

The promotional approach adopted by the ILO appears to encourage states to pass specific tailor-made legislation on the various categories of working relationships, while having regard to the particular country circumstances of member states. At the same time, this approach has highlighted debate about the relationship and potential tension between labor regulation and employment creation.

Part-time work,
with conditions
that prevent
discrimination,
gives those workers
greater opportunities
to reconcile
work and family
responsibilities...

Using the example of part-time workers, some commentators have expressed the view that the lack of legally binding minimum international standards, which had previously been the hallmark of ILO conventions, has resulted in a lowering of social justice standards.⁵⁵ Other commentators have taken a cautious view, pointing out some of the advantages of part-time work, particularly in developing countries when it is freely chosen by workers who are in a relatively strong position in the labor market. It is noted that part-time work, with conditions that prevent discrimination, gives those workers greater opportunities to reconcile work and family responsibilities. At the same time, it is noted that even in developed countries part-time workers are overrepresented in the lowest income groups and suffer from restricted access to social protection benefits and rights. Furthermore, this does not necessarily protect such workers from being involved in schedules outside the standard daytime hours and they have to undertake higher rates of evening, night work, and weekend work than full-time workers (Eurofound 2007).

Good Legislative Practice

Whether or not particular legislation qualifies as good practice is highly dependent upon the style of labor market policies appropriate to a particular country having regard to its level of development, whether a passive or active labor market policy has or should be adopted, the extent of the informal sector, the level of development of social dialogue, and the strength of governance in the country. A useful discussion of these issues in an Asian context is contained in the ILO publication *Is Asia Adopting Flexicurity? A Survey of Employment Policies in Six Countries*.⁵⁶ The paper (Vandenburg 2008) illustrates the difficulties of finding the right balance between regulation, employment, income, employability, and social protection. It also highlights the distinct subregional patterns in the countries surveyed.

Another recent discussion about minimum standards and active labor legislation is contained in the ADB publication *Toward Higher Quality Employment in Asia*. This report cautions against “overly strict legislation [which] can raise the costs of expanding employment, lower productivity, and impede FDI flows” (ADB 2011c, 3–54). Observations are also made about the need to be careful about imposing strict minimum standards in circumstances where they hamper or stop employment. Balance is required.

There are a number of ways in which this topic could be divided for the purpose of discussion, bearing in mind the multiple permutations of employment and occupation and the blurring of formal and informal workers. The approach taken in this review is to look first at standards in respect of formal employment, and, second, to address standards in respect of the informal employment sector and particular occupational arrangements. Inevitably, there will be some areas of overlap.

⁵⁵ For example, Murray (1999).

⁵⁶ The countries surveyed were the People’s Republic of China, the Republic of Korea, India, Malaysia, Singapore, and Sri Lanka.

Formal Employment

Part-Time Work

Specific International Standards

The Part-Time Work Convention, 1994 (C175) and Recommendation (R182) require the ratifying states to ensure that part-time workers receive the same protection, basic wage, and social security, as well as employment conditions, equivalent to those accorded to comparable full-time workers (ILO 1994a, 1994b). It focuses on ensuring part-time workers have the same rights as their full-time counterparts, including in areas of occupational health and safety, discrimination, rights to organize and bargain collectively, and leave entitlements. It also requires that part-time workers receive a basic wage that, proportionately, is no lower than the basic wage of a full-time worker.

The EC Directive concerning the Framework Agreement on Part-Time Work (97/81/EC) was concluded in 1997.⁵⁷ The express purpose of this directive is to eliminate discrimination against part-time workers and to improve the quality of part-time work. It also aims to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organization of working time in a manner that takes into account the needs of employers and workers. The directive provides that in respect of employment conditions, part-time workers may not be treated in a less favorable manner than comparable full-time workers solely because they work part-time, unless different treatment is justified on objective grounds. Further, the directive indicates that “The social partners and/or member states after consulting the social partners may, where appropriate, make access to particular conditions of employment subject to a period of service, time worked or earnings qualification.”⁵⁸

Discussion of Principles and Examples of Good Legislation

It is important to note that neither C175 nor Directive 97/81/EC cover casual part-time workers; therefore, their efficacy is somewhat limited in the present economic climate. For example, in an industrialized country such as Australia, which has only recently ratified C175, over half of all Australian part-time workers are employed on a casual basis.

There is also a difference in emphasis between C175 and Directive 97/81/EC. This in part is due to the fact that Directive 97/81/EC has been developed having regard to EU member states being developed economies. The level of flexibility is greater and states are encouraged to facilitate the development of part-time work on a voluntary basis. Specifically, the directive requires that social partners and/or member states, after consulting the social partners, should identify and review obstacles that may limit the opportunities for part-time work and, where appropriate, eliminate them.

The majority of part-time workers globally, including in both developing and developed countries, are women with low levels of wages, social protection, and benefits, and few prospects of improving their employment situation, so the standards in C175 are highly relevant. The acceptance by women of part-time work is not always a deliberate choice; sometimes, they are forced to do so because of their double burden of work in employment and in the family.

An example of good legislative practice in a developed country is the Netherlands’ Equal Treatment (Working Hours) Act, which became law in the Netherlands in 1996 (Portegijs, Boelens, and Keuzenkamp 2002; see also Good Practices Example 29).

Another example of improved protection for employees on both part-time and fixed-term contracts is the Act on the Protection of Fixed-Term and Part-Time Employees from the Republic of Korea (see Good Practices Example 30).

The majority of part-time workers globally ... are women with low levels of wages, social protection, and benefits, and few prospects of improving their employment situation

⁵⁷ Council Directive Concerning the Framework Agreement on Part-Time Work. 1997/81/EC.

⁵⁸ See clause 4.4.

Good Practices Example 29: The Netherlands' Equal Treatment (Working Hours) Act, 1996

This act prohibits an employer from discriminating between full-time and part-time employees, unless there is an objective justification for doing so. It is unlawful to discriminate between part-timers who work more or fewer hours. A part-time worker is proportionally entitled to the same pay, the same bonuses, and the same number of days' holiday. This also applies to pension rights.

In 1999, two-thirds of the collective agreements in the Netherlands contained provisions on the adjustment of working hours for individuals.

Later, aspects of the content of collective agreements became enshrined in the Part-Time Employment Act (Deeltijdwet) was passed in 2000. This act gives employees the right to reduce or increase their working hours, with employers able to deny employee requests for such changes only on the grounds of specific conflicting business interests. This act is part of the framework Work and Care Act (Kaderwet Arbeid en Zorg), which brings together numerous existing and new leave provisions (such as time off to care for family members) aimed at helping reconcile employment and family care responsibilities.

Source: Netherlands. Wet verbod op onderscheid naar arbeidsduur, WOA. 1996; European Foundation for the Improvement of Living and Working Conditions (Eurofound). 2007. Part-Time Work in Europe 13. Dublin.

Good Practices Example 30: The Republic of Korea's Act on the Protection of Fixed-Term and Part-Time Employees, 2006

The purpose of the act is to redress undue discrimination against fixed-term and part-time employees and strengthen their working conditions. It applies to all businesses or workplaces of five workers or more who are not relatives or domestic workers.

Article 4 provides that an employer may employ a fixed-term employee on a contract not exceeding 2 years, or may employ a person for consecutive fixed-term contracts so long as the total period does not exceed 2 years. If an employer employs a fixed-term employee for more than 2 years, then such employee shall be considered a worker who has made a non-fixed-term labor contract, unless they fit within the specified exemptions. The exemptions are limited and include examples such as filling a vacancy or part of government welfare or unemployment measures. Contracts are required to be in writing with conditions which must be specified.

Article 5 provides that if an employer intends to make a non-fixed-term contract, he/she shall make efforts to instead preferentially employ a fixed-term employee engaged in the same or similar kinds of work in the business or workplace.

Article 7 also requires an employer to preferentially hire part-time employees instead of a full-time employee, and further if a worker applies to work part-time on account of household duties, study, or any other reason, the employer shall make efforts to convert the worker to a part-time employee. There are also provisions preventing discrimination on the basis of being a part-time employee and the Labor Relations Commission is empowered to conduct an inquiry in relation to such allegations.

Source: Republic of Korea. Act No. 8074 of 21 December 2006, as amended by Act No. 11273 of 2012.

Short-Term Contracts

International Standards

The Fixed-Term Workers Directive (99/70/EC) of 1999⁵⁹ is the second of a triptych of directives by which the EU has established minimum requirements relating to fixed-term work, aimed at ensuring equal treatment of workers and preventing abuse arising from the use of successive employment contracts or relationships of this type. The directive sets out the general principles and minimum requirements relating to fixed-term work, recognizing that their detailed application needs to take account of the specific national, sectoral, and seasonal situations. Further, it relates to the *employment conditions* of fixed-term workers, recognizing that matters relating to *statutory social security* are for decision by the member states.

The preamble of Directive 99/70/EC indicates that the framework in the directive represents a further contribution toward achieving a better balance between “flexibility in working time and security for workers.” The directive is based on the following expressed premises:

6. Whereas employment contracts of an indefinite duration are the general form of employment relationships and contribute to the quality of life of the workers concerned and improve performance;
7. Whereas the use of fixed-term employment contracts based on objective reasons is a way to prevent abuse;
8. Whereas fixed-term employment contracts are a feature of employment in certain sectors, occupations and activities which can suit both employers and workers;
9. Whereas more than half of fixed-term workers in the European Union are women and this agreement can therefore contribute to improving equality of opportunities between women and men.

There are express limitations, which include that it does not apply to workers placed by a temporary work agency.⁶⁰ It also stipulates special clauses to limit the administrative burdens that could ensue for SMEs from the application of these new standards.

The directive applies to fixed-term workers who have an employment contract or employment relationship as defined in law, collective agreements or practice in each EU member state. Clause 3 defines a “fixed-term worker” as “...a person having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.” There is also a definition on “comparable permanent worker.”⁶¹

An important clause is the “Measures to prevent abuse,” clause 5:

1. To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where

⁵⁹ Council Directive concerning the Framework Agreement on Fixed-Term Work, 1999/70/EC.

⁶⁰ At the same time, the directive indicates that “it is the intention of the parties to consider the need for a similar agreement relating to temporary agency work.”

⁶¹ The term “comparable permanent worker” means a worker with an employment contract or relationship of indefinite duration, in the same establishment, engaged in the same or similar work/occupation, due regard being given to qualifications/skills. Where there is no comparable permanent worker in the same establishment, the comparison shall be made by reference to the applicable collective agreement, or, where there is no applicable collective agreement, in accordance with national law, collective agreements, or practice.

there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

- (a) objective reasons justifying the renewal of such contracts or relationships;
 - (b) the maximum total duration of successive fixed-term employment contracts or relationships;
 - (c) the number of renewals of such contracts or relationships.
2. Member States after consultation with the social partners and/or the social partners shall, where appropriate, determine under what conditions fixed-term employment contracts or relationships:
- (a) shall be regarded as “successive”
 - (a) shall be deemed to be contracts or relationships of indefinite duration.

Another important clause is the “Information and employment opportunities,” clause 6:

2. As far as possible, employers should facilitate access by fixed-term workers to appropriate training opportunities to enhance their skills, career development and occupational mobility.

This directive sets the framework and enables the minimum standards to be applied across a wide variety of industries, including seasonal work. It provides useful guidance to all countries, whether EU members or otherwise, on the principles to be the subject of national legislation or contained in collective agreements.

Best legal practice should provide for minimum requirements relating to fixed-term work, aimed at ensuring equal treatment of workers and to prevent abuse arising from the use of successive employment contracts or relationships of this type

Discussion of Principles and Examples of Good Legislation

One of the greatest concerns in formal employment is the increasing use of multiple short fixed-term contracts for filling a single job, instead of providing a permanent indefinite contract or at least a longer-term fixed contract for that job. This practice often arises because employers wish to avoid the obligation to provide the benefits and protections that apply to permanent employees and instead employ the same person, or sometimes different people, on multiple short-term contracts.

Best legal practice should provide for minimum requirements relating to fixed-term work, aimed at ensuring equal treatment of workers and to prevent abuse arising from the use of successive employment contracts or relationships of this type. There is also a need for balance between flexibility in working time and security for workers. Alternatively, recent good legal practice provides that multiple contracts beyond a certain number of successive contracts should be automatically converted to permanent employment.

In the Republic of Korea, the Protection of Fixed-Term and Part-Time Employees Act No. 8074, amended in 2012 (referred to in Good Practices Example 30), seeks to address consecutive fixed-term contracts by limiting them to no more than 2 years. If an employer engages a fixed-term employee for more than 2 years, then such employee shall be considered a worker who has a non-fixed-term labor contract, unless they fit within certain specified content exemptions.

On 14 November 2011, the Philippines Department of Labor and Employment issued Department Order No. 18-A, which had two purposes: (i) it amended the rules governing contracting and subcontracting arrangements to provide clarity about outsourcing through “cabos” and contractors with ambiguous relationships through which “workers” were treated as “subcontractors” to avoid payment of benefits; and (ii) it imposed penalties on employers and subcontractors who repeatedly hire employees under rotating 5-month contracts. This is a good

approach to address the problem of multiple short-term contracts, which are used by employers to try to avoid payment of benefits which accrue to workers after 6 months (Pamaos 2011).

Home Workers

Specific International Standards

The Home Work Convention (C177) recommends that there should be national policies designed to implement and periodically review and promote, as far as possible, the equality of treatment between home workers and other wage earners and to improve home workers' situation particularly with regard to protection against discrimination, statutory social security protection, access to training and occupational health and safety, freedom of association, and equal remuneration for work of equal value.

C177 defines "home workers" as those who work from "his or her home or in any other premises of his or her choice, other than the workplace of the employer." An "employer" is defined in a way that makes it clear that the convention is referring to an identifiable employer and the existence of an employment relationship as a central plank for the application of the convention. It is to be contrasted with a worker who is genuinely self-employed or working on her or his own account.

R198 (ILO 2006c), which relates to C177, encourages governments to introduce legislation that defines the employment relationship. The recommendation lists a number of criteria to assist in that identification, which is of great assistance to countries formulating provisions concerning home workers in their domestic law.

Discussion of Principles and Examples of Good Legislation

To date, there have been few ratifications of C177. However, although India is not one of the ratifying countries, it has indirectly extended the definition of home worker beyond that described in the convention or the recommendation (see Good Practices Example 31).⁶²

The Home Work Convention (C177) defines "home workers" as those who work from "his or her home or in any other premises of his or her choice, other than the workplace of the employer"

Good Practices Example 31: India's Acts on Work and Security of Employment for Home Workers

In the Indian Beedi and Cigar (Conditions of Employment) Act 1996, the Contract Labour (Regulation and Abolition) Act, 1970, and the Minimum Wages Act, 1948, there is a recognition of "outworkers" who do not work from any establishment. This means that the definition extends beyond the International Labour Organization convention that is confined to work being performed in a place.

The Indian Unorganised Workers Social Security Act 2008, defines a "home-based worker" as meaning "a person engaged in the production of goods and services...irrespective of whether the or not the employer provides the equipment, materials or other inputs." This latter phrase permits a self-employed person/or person who works on his or her own account person to be embraced by the definition.

These definitions, therefore, enable a broader spectrum of workers to be entitled to better conditions of employment and protections under those acts.

Source: India. Beedi and Cigar (Conditions of Employment) Act 1996; India. Contract Labour (Regulation and Abolition) Act No. 37 of 5 September 1970; India. Minimum Wages Act No. 11 of 15 March 1948.

⁶² The relevant acts are the Beedi and Cigar (Conditions of Employment) Act 1996; Contract Labour (Regulation and Abolition) Act, 1970; and Minimum Wages Act, 1948. For a more general discussion, see Sudarshan and Sinha (2011).

Domestic Workers

The most recent ILO convention (2011h) is the Convention Concerning Decent Work for Domestic Workers (C189), which was passed in June 2011. Support for the new standard within the International Law Commission (ILC) was overwhelming.⁶³ The convention places a duty on governments to ensure domestic workers enjoy fundamental rights and effective protection against all forms of abuse harassment and violence. The ambit of the convention is specifically directed to work in an employment relationship and excludes those who perform domestic work only occasionally or sporadically. Furthermore, it expresses that terms and conditions of employment should be easily understandable and verifiable and, where possible, set down in writing.

Article 10 provides that:

Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

Further development of these features is set out in the accompanying Recommendation.

Rural Workers

While the working conditions of all rural workers are characterized by long hours, low incomes, and exposure to occupational health and safety hazards, women often bear the brunt of these because of the greater concentration in occasional and seasonal work

Specific International Standards

Article 14 of CEDAW concerns rural women and requires states parties to eliminate discrimination against women in rural areas by ensuring, for instance, equal access to training and education, both formal and informal, as well as to credit and loans.

Furthermore, the Right of Association (Agriculture) 1921 (C11); Convention concerning Rural Workers' Organisations 1975 (C141); and Recommendation concerning Rural Workers' Organisations 1975 (R149) all in essence indicate that women working in rural areas should be entitled to the same employment conditions as those working in other sectors (ILO 1921, 1975a, 1975c).

Discussion of Principles and Examples of Good Legislation

The special articulation of requirements for rural women, as set out in these conventions, is a response to the fact that the majority of the world's women workers are still concentrated in rural areas; occupied mostly in farming, but increasingly also in nonagricultural activities. Women's participation rates are often higher than in most other sectors, but this is simply a reflection of the nature of the work organizations in these sectors, which are basically composed of family-owned small farms and nonfarm units.

While the working conditions of all rural workers are characterized by long hours, low incomes, and exposure to occupational health and safety hazards, women often bear the brunt of these because of the greater concentration in occasional and seasonal work. In order to provide some protection against such adverse conditions, international labor standards on the right to freedom of association in agriculture were adopted as early as 1921, and covered all rural workers defined as persons engaged in agriculture, handicrafts, or related occupations in rural areas.

In practice, the prevalence of family-owned or self-employment farms, combined with a general ignorance of workers' rights, has prevented the spread of trade unions into rural areas.⁶⁴ This

⁶³ More than 83% of votes were cast in favor of adoption.

⁶⁴ Save to some extent in plantations.

applies specifically to women because of their higher illiteracy rates in comparison with men. Women working in agriculture are often not recognized as basic producers, and rural extension services mainly only concern men. Furthermore, support services, such as rural training and credit, are difficult for women to access. Consequently, women often have little negotiating power and even basic workers' rights are denied to them.

Women working in rural areas should be entitled to the same employment conditions as those working in other sectors. Legislation is a means of eliminating discrimination against women in rural areas by ensuring, for instance, equal access to both formal and informal training and education, as well as ensuring access to credit and loans. An innovative example of legislation is India's Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), which came into force on 2 February 2006 (see Good Practices Example 32).

Good Practices Example 32: India's Mahatma Gandhi National Rural Employment Guarantee Act, 2006

Pursuant to this act, job cards are issued to the rural unskilled labour by guaranteeing work for 100 days per rural household in a financial year at the prevailing minimum unskilled wage rate. At least one-third of jobs are reserved for women, with equal wages for work of equal value and the provision of a crèche when there are more than five women on a programme. The scheme covers 604 districts in India and was implemented in three phases. It provided employment opportunities for more than 4.47 million households in 2008–2009.

Source: India. Act No. 42 of 7 September 2005.

Due to its recent enactment, the success of this program is still being assessed. There are concerns about the continuing financing of the scheme, whether there is effective monitoring so as to curb corruption, and whether the standards are adhered to and that the scheme actually benefits the poorest communities. There are, however, some positive signs that the scheme has raised agricultural wages in some Indian states and it has acted as a form of insurance for rural workers against unemployment (Sjoblom and Farrington 2008).

As far as women's participation in the MGNREGA is concerned, there is a clear rise in the share of women in the program as a whole. The program is attractive to women because the work is available close to home. Indications also are that the MGNREGA provision of providing equal pay for work of equal value has a positive impact on women's agricultural wage and their bargaining power, given that actual unskilled agricultural wages paid to women are invariably lower than those paid to men, and women's wages more so than men's are below the minimum wages (Dasgupta and Sudarshan 2011, 1 and 18–19).

Women working in agriculture are often not recognized as basic producers, and rural extension services mainly only concern men. Furthermore, support services, such as rural training and credit, are difficult for women to access. Consequently, women often have little negotiating power and even basic workers' rights are denied to them

Informal Employment

Informal Sector Employment

In respect of informal sector work, the global trend is aimed at improving conditions of work by providing protections for that sector that are comparable to the formal sector. The ILO and ADB in 2011 indicated that the preferred approach is to promote decent work along an entire continuum from the informal to the formal ends, so as to create a "level playing field" (ADB 2011a). The strategy includes encouraging legal recognition⁶⁵ and protection for informal sector

⁶⁵ Such as simplified registration procedures and progressive registration fees, thereby encouraging the formalization of informal sector enterprises and workers.

workers.⁶⁶ It also promotes the use of three basic strategies: setting minimum wages, setting minimum social security platforms,⁶⁷ and protection through collective bargaining. This approach is aimed at lessening the differences between the formal and informal sectors so that workers may move toward formal jobs. On the topic of legal recognition and formalizing informal enterprises and informal jobs, the report concludes that:

A key issue is to ensure that formalization, whether of informal enterprises or informal jobs, is not just about regulation/registration but about conferring legally recognized rights and the benefits of operating formally or being employed formally by:

- Creating incentives for informal enterprises to formalize, such as simplified registration procedures and progressive registration fees and legal recognition of property rights;
- Creating incentives for socially responsible employment practices (such as encouragement of corporate social responsibility practices so that lead firms provide benefits covering workers along an entire supply chain); and
- Regulating labour markets to extend the same basic worker benefits and rights to informal wage workers as to formal workers.

(ADB 2011a)

A similar approach is promoted by Women in Informal Employment: Globalizing and Organizing (WIEGO), which supports promoting legal identity and rights of workers in the informal economy to include entrepreneurs, asset holders, and informal workers generally.⁶⁸

Some countries have introduced regulatory systems requiring employers to register employees and also for employees, own account workers, and entrepreneurs to register themselves. However, there are problems with cost, complexity, monitoring, and tax issues. Trying to get the regulatory balance right has been difficult to achieve.

An attempt has been made in India to create overarching legislation to provide protection for the informal sector. There was a significant buildup, with two separate bills for agricultural workers and nonagricultural workers, eventually culminating in the Unorganised Worker's Social Security Act 2008. This is an ambitious act, which potentially provides a model for the requirements necessary to protect informal sector workers. However, there are a number of deficiencies: it does not regulate the entire informal sector, it does not cover all forms of employment, and it does not provide universal social security coverage. Furthermore, registration is not compulsory, notably by employers, which means that universal coverage is not achieved. The act also excludes the majority of workers by applying it only to below-poverty-line households, which, apart from giving rise to problems of identification, also provides scope for corruption (Hensman 2011, 186–187 and 262–263).

The debate in India continues with the informal sector still actively seeking umbrella legislation that would regulate employment and welfare of all unorganized sectors. A suggestion is that the Indian Dock Workers (Regulation of Employment Act) 1948 would provide a basic model that could be extended and modified.

⁶⁶ Such as encouraging lead firms to provide social protection benefits across an entire supply chain which would include informal sector workers. In addition, it is interesting to note that India has passed an ambitious Act called the Unorganised Worker's Social Security Act 2008. This act provides social protection for sectors of agricultural and nonagricultural workers.

⁶⁷ See further discussion in Part VI.

⁶⁸ Referred to in ADB (2011a).

In the meantime, the global trend has been to tackle specific employment sectors or occupations. The approach has been to regulate informal sector work by extending social insurance, as well as increasing self-representation of workers through nontraditional, nonstate organizations. These and other innovative efforts are important in protecting access to decent work, as global pressures continue to change the organization of production.

Entrepreneurs

Specific International Standards

The Job Creation in Small and Medium-Sized Enterprises Recommendation (No. 189) suggests that member states should adopt measures that are appropriate to their national conditions and consistent with national practice, in order to promote small and medium-sized enterprises (SMEs) which promote employment and sustainable economic growth. Paragraph 5 of the recommendation describes the criteria for creating an environment, which is conducive to the growth of SMEs (ILO 1998b).⁶⁹ These criteria reflect a combination of legislative and policy areas.

Discussion of Principles and Examples of Good Legislation

The recommendation does not specifically refer to “microenterprises,” although generally speaking the measures that are suggested in the recommendation for the promotion of SMEs could also apply to microenterprises and allow for differential approaches to the measures for promotion.

There is no single definition of micro, small, and medium-sized enterprises (MSMEs). Furthermore, employee numbers may not be the sole defining criterion. SMEs are, however, generally considered to be nonsubsidiary, independent firms that employ less than a given number of employees. This number varies across countries. The most frequent upper limit is 250 employees⁷⁰ with small enterprises being fewer than 50 employees, while MSMEs have less than 10 or, in some country cases, 5. Financial assets and turnover are sometimes also used to define SMEs (Commission of the European Communities 2008).

Despite the call by the ILO for appropriate legal coverage, a substantial portion of workers and owners of SMEs across the world do not enjoy protection under the coverage of labor and labor-related laws. The low levels of coverage of labor and labor-related laws are an important part of the problem of the decent work deficit in SMEs, as they are directly related to shortcomings in levels of income (minimum wages), social protection, and job security (employment contracts). Formal work contracts are less common than in enterprises of a larger size and infringements of labor law and basic occupational health and safety regulations are frequent.

Some of the key reasons for the low coverage of labor law among SMEs have been identified as falling under three major headings:

- Exemptions, partial exclusions, and parallel labor law regimes.

[A] substantial portion of workers and owners of small and medium-sized enterprises across the world do not enjoy protection under the coverage of labor and labor-related laws

⁶⁹ Paragraph 5, reads:

In order to create an environment conducive to the growth and development of small and medium-sized enterprises, Members should:

(a) adopt and pursue appropriate fiscal, monetary and employment policies to promote an optimal economic environment (as regards, in particular, inflation, interest and exchange rates, taxation, employment and social stability);

(b) establish and apply appropriate legal provisions as regards, in particular, property rights, including intellectual property, location of establishments, enforcement of contracts, fair competition as well as adequate social and labour legislation;

(c) improve the attractiveness of entrepreneurship by avoiding policy and legal measures which disadvantage those who wish to become entrepreneurs.

⁷⁰ European Commission. Small Business Act of 2008.

- For example, some countries have exemption or partial exemption from the scope of application of labor laws, while others have legislation that has created parallel labor regimes in which there are lower standards for SMEs in respect of working hours, social security, paid vacations, etc.
- Low compliance due to various reasons. Examples identified are
 - economic precariousness;
 - the design of legislation;
 - a high tax wedge on labor;⁷¹
 - uneven or inadequate outreach of authorities to enforce labour and labor-related laws in SMEs;
 - traditional enforcement approaches with too much emphasis on sanctions as distinct from other non-punitive measures; and
 - too much emphasis on procedural issues, such as termination of employment without advancing protections for workers or a lack of information dissemination so SMEs fail to understand the applicable legislation.
- Insufficient representation and involvement of SMEs in designing or reviewing legislation for its appropriateness and relevance to their situation.

There is a need to balance flexibility with the protection of workers. It will vary in every country depending on economic and development circumstances.

The World Bank (2006) assessment study *Doing Business in 2006 – Creating Jobs* is acknowledged as having made an important contribution to the understanding of the perceived obstacles regarding the operation of SMEs in developing countries. However, there have been criticisms of this study, including from the ILO, regarding the methodology, limitations in the types of enterprises which were assessed and most importantly the scoring system, which assigned a higher ranking to countries with less regulation.⁷²

Some specific legislative features that have been positively identified as assisting appropriate encouragement of SMEs are

- reducing the time and cost of registering a new business;
- providing positive incentives for access to credit and loans, especially for women;
- one-stop shops for information and paper work (e.g., the Philippines);
- providing training, insurance, and credit opportunities in exchange for increased formalization (e.g., Shanghai municipal government);
- having regard to the different requirements of small enterprises and microenterprises;
- tax allowances for a short period after registration (e.g., Viet Nam);
- increased role for employer and workers' organizations to work with government to support appropriate legislative measures and review existing legislative measures that may be obstacles for advancement. This would include streamlining the number of laws which may impact upon MSMEs (e.g., Pakistan);
- awareness campaigns (e.g., the ILO's work with Indonesia and some African states);
- linking with the ILO in its technical assistance programs, such as Work Improvements in Small Enterprises (WISE) and Improving Work Environment and Business (I-WEB); and

⁷¹ This refers to a measure of the difference between the total labor cost to an employer and the corresponding disposable income of an employee. It is the sum of personal income tax, social security contributions, and payroll taxes, minus any cash benefits. See ILO (2006a).

⁷² The ILO (2006a, 9) observed that: "Many readers are likely to draw the conclusion that no regulation is the optimal level of regulation, although this interpretation is not supported by the World Bank itself, which recognizes that a higher ranking does not necessarily mean better regulation. More broad-based measures, better able to capture the need to balance flexibility with protection for both workers and employers, would help inform policy-making and assist governments, employers' organizations and trade unions in designing improved rules and institutions to govern the labour market."

- developing innovative strategies for enforcement other than sanctions which strategies include information, coordinated monitoring, warnings, tailored sanctions, and finally punitive sanctions.⁷³

A good legislative framework which encompasses a number of the above features is the combination of the Philippines' Magna Carta for Micro, Small, and Medium Enterprises and the Magna Carta Act for Women. These acts, if used together, provide a comprehensive legislative framework within which policy can be developed to achieve promotion for SMEs and to have regard to the special requirements for women (see Good Practices Examples 33 and 34).

Good Practices Example 33: The Philippines' Magna Carta for Micro, Small, and Medium Enterprises, 2008

The Philippines, Magna Carta for Micro, Small, and Medium Enterprises is guided by four principles in setting the pace for small and medium-sized enterprise development:

- minimal set of rules and simplification of procedures and requirements;
- participation of private sector in the implementation of MSME policies and programs;
- coordination of government efforts; and
- decentralisation through establishment of regional and provincial offices.

There are nine means whereby the policy objectives are to be achieved (Section 2) and six major provisions by which those policy objectives can be achieved, which include:

- development of a 6-year plan (MSMEDP) (Section 6);
- the Micro, Small, and Medium Enterprise Development (MSMED) Council to carry out the policy (Section 7);
- the Bureau of Micro, Small, and Medium Enterprise Development (BSMBD) to prepare position papers and plans for the (MSMED) in coordination with local government units (Section 8);
- creation of the Small Business Guarantee and Finance Corporation (the SB Corporation) to assist not only with finance, but also to establish branches and extending financial assistance after formulation of alternative collateral and alternative loan evaluation models (Section 11). The SB Corporation to comply with the rules and regulations of the Philippines' central bank (Bangko Sentral ng Pilipinas);
- 8% mandatory allocation for micro and small enterprises and at least 2% for medium enterprises (Section 15); and
- congressional oversight of the implementation by the Congressional Oversight Committee in Micro, Small, and Medium Enterprise Development (COC-MSMED) (Section 18).

The language of the act is gender-neutral and there are no special measures reflected in the act to ensure that women are represented at each level of operation. However, this outcome is not prevented under the act and the provisions of the Magna Carta of Women and its Implementing Rules and Regulations are able to be brought to bear.

Source: Republic of the Philippines. Republic Act 6977, as amended by Republic Act 8289 and further amended by Republic Act 9501 in 2008.

⁷³ See Fenwick et al. (2007). See also Chile's Labor Law Reform Act (2001) in which an enterprise of less than 10 workers that is guilty of a breach of labor law for the first time in a year can exchange the monetary fine against participation in a compulsory training course.

Good Practices Example 34: The Philippines' Magna Carta of Women, 2009

The Magna Carta of Women is an ambitious act, which became effective on 15 September 2009. Its Implementing Rules and Regulations became effective on 15 July 2010. Features of the act relevant to this portion of this review include the following:

- Ensuring women's equitable participation and representation in government, political parties, international bodies, civil service, and the private sector. This includes undertaking temporary special measures and affirmative action to accelerate and ensure women's equitable participation and representation in the third-level civil service, development councils, and planning bodies, as well as political parties and international bodies, including the private sector.
- Affording equal opportunities to women in relation to education, employment, livelihood, and social protection.
- Guaranteeing the rights of women, including informal sector workers. "Workers in the informal economy" refers to self-employed, unincorporated enterprises, including home workers, microentrepreneurs, and producers.

The mechanisms by which this is to be achieved are:

- **The Philippine Commission on Women** which will be the overall monitoring and oversight body to ensure the implementation of the law.
- **The Commission on Human Rights** shall act as the Gender and Development Ombud to ensure the promotion and protection of women's human rights.
- **The Commission on Audit** which will conduct an annual audit on the government offices' use of their gender and development budgets for the purpose of determining its judicious use and the efficiency, and effectiveness of interventions in addressing gender issues.

Local government units are also encouraged to develop and pass a gender and development code to address the issues and concerns of women in their respective localities based on consultation with their women constituents.

Source: Republic of the Philippines. Republic Act 9710 of 14 August 2009.

Cooperatives

Specific International Standards

The ILO's Promotion of Cooperatives Recommendation (R193) aims to promote cooperatives, in particular in relation to their role in job creation, mobilizing resources, and generating investment. Article 2 of this recommendation (ILO 2002) provides a definition of a "cooperative" as "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."

Article 3 indicates that:

The promotion and strengthening of the identity of cooperatives should be encouraged on the basis of:

- (a) cooperative values of self-help, self-responsibility, democracy, equality, equity and solidarity; as well as ethical values of honesty, openness, social responsibility and caring for others; and
- (b) cooperative principles as developed by the international cooperative movement and as referred to in the Annex hereto. These principles are: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; cooperation among cooperatives; and concern for community."

Article 8 calls for development of national policies, which would notably:

- (a) promote the ILO fundamental labour standards and the ILO Declaration on Fundamental Principles and Rights at Work, for all workers in cooperatives without distinction whatsoever;
- (b) ensure that cooperatives are not set up for, or used for, noncompliance with labour law or used to establish disguised employment relationships, and combat pseudo cooperatives violating workers' rights, by ensuring that labour legislation is applied in all enterprises; and
- (c) promote gender equality in cooperatives and in their work.

Discussion of Principles and Examples of Good Legislation

The approach of the ILO in relation to legislation has been to promulgate guidelines for legislation. This approach leaves space for country specifics and for the particularities of the national legal systems. Features of the ILO Guidelines for Cooperative Legislation include (Hagen 2005):

- The main objective of a cooperative law is to guarantee minimum government involvement, maximum deregulation, maximum democratic participation, and minimum government spending by translating the cooperative principles into a legally binding framework for the organization of self-determined self-help.
- No suggestions as to the form or arrangement of a cooperative law are given.
- The ILO rejected the idea of providing a model law as these "bear the risk of simply being transferred or copied without the legislator adapting their underlying legal concepts to the national particularities."
- The legislator should construct a cooperative law, which respects the local context as well as have regard to universally recognized cooperative values and principles.
- The role of government in cooperative affairs should usually be restricted to four functions: legislation, registration, dissolution/liquidation, and monitoring the application of the law by the cooperatives.

The role of government in cooperative affairs should usually be restricted to four functions: legislation, registration, dissolution/liquidation, and monitoring the application of the law

VI

Social Protection for Working Families

A minimum social security floor should include legal entitlement to essential health care, family/child benefits above the poverty line, basic unemployment benefits, and old age and invalidity benefits

Social security and social protection measures are of fundamental importance to women who work or seek access to work. A legislative framework to provide a minimum social security floor comprising the noncontributory benefits guaranteed by government is a good legislative practice goal. A minimum social security floor should include legal entitlement to essential health care, family/child benefits above the poverty line, basic unemployment benefits, and old age and invalidity benefits. Specific social protection laws are also required to provide for maternity leave, paternity/parental/family/carer leave, and child care facilities. Necessarily, these legal protections are linked to and underpin appropriate social and economic policies within a country. The manner of delivery of the protection will depend on the level of development in the country. The models which have been adopted in more developed countries are not necessarily appropriate models for developing countries. Experience has shown that community-based initiatives have been very fruitful in developing countries in providing some of these protections, notably child care facilities.

Introduction

The preface to the ILO's World Social Security Report 2010/11 expressed the qualities and importance of social security in the following terms:

Social security is a human right as well as a social and economic necessity. All successful societies and economies have employed development strategies where social security systems played an important role to alleviate poverty and provide economic security that helps people to cope with life's major risks or the need to quickly adapt to changing economic, political, demographic and societal circumstances... they stabilise income of individuals who are affected by unemployment or underemployment and hence help to avoid hardship and social instability.

(ILO 2010e, v)

The Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD) said:

Social protection directly reduces poverty and helps make growth more pro - poor. It stimulates the involvement of poor women and men in economic growth, protects the poorest and most vulnerable in the downturn and contributes to social cohesion and stability. It helps build human capital, manage risks, promote investment and entrepreneurship and improve participation in labour markets. Social protection programs can be affordable, including for the poorest countries, and represent good value for money.

(OECD 2009, 2)

International Standards

The international standards are expressed as being a human right to “social security.”⁷⁴

Initially the discussion in this part will focus on social security rather than the broader notion of social protection.

The main international instruments that recognize social security as a human right include

- UDHR, Articles 22 and 25;
- CEDAW, Article 5(e)(iv);
- ICESCR, Articles 9 and 10(2) which recognize “the right of working mothers to adequate social security benefits”; and
- UN Committee on Economic, Social and Cultural Rights (2007), which refers to the right in its General Comment No. 19.

Regional instruments include the European Social Charter and the European Code of Social Security 1964.

The ILO’s mandate and development of standards in social security date back to 1919. Since that time, the ILO has created a total of 31 conventions and 23 recommendations in the area of social security.

The most relevant up-to-date social security instruments (ILO 1952, 1988a, 1998c, 1944a, 1944b) are

- Social Security (Minimum Standards) Convention, 1952 (C102);
- Employment Promotion and Protection against Unemployment Convention, 1988 (C168) and Recommendation, 1988 (R176);
- Income Security Recommendation, 1944 (R067); and
- Medical Care Recommendation, 1944 (R69).

C102 is referred to as the flagship of all ILO social security conventions, as it is the only international instrument based on basic social security principles which establishes worldwide-agreed minimum standards for all nine branches of social security (ILO 1952). It identifies nine major social risks requiring payment of benefits that form the substance of social security.⁷⁵ C102 also provides the institutional thresholds to be met and variable ratification requirements and flexibility options.⁷⁶ There are 47 ratifications of the convention, the last being Poland in 2003.

The later C168 is a promotional convention and is accompanied by R176. Social security is expressed as part of a broader set of social policies directed at one priority goal, namely, full, productive and freely chosen employment (ILO 1988a, 1988b). The means by which this goal is to be attained is through special employment programs, active labor market measures, employment services, vocational training and guidance, and rehabilitation services. In short, it goes beyond

Social Security (Minimum Standards) Convention (C102) is referred to as the flagship of all ILO social security conventions, as it is the only international instrument based on basic social security principles which establishes worldwide-agreed minimum standards for all nine branches of social security

⁷⁴ Social security is one form of social protection. Social protection includes not only social security, but social insurance, social assistance and support as well as social services. Social protection includes protection in relation to specific social risks or life events, for example, motherhood, fatherhood, childhood, old age, disability, etc. An example is the UN Convention on Rights of Persons with Disabilities, 2006, which in Article 28 provides for recognition of the right of persons with disabilities to “social protection.”

⁷⁵ The risks concern medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivors for which benefits should be paid.

⁷⁶ Of the minimum requirement for ratification by a country is the acceptance of three out of the nine risks for which benefits are to be paid and that developing countries could temporarily restrain coverage for certain classes of employees in relation to certain benefits.

risk-based contingencies and embraces a wider concept of ensuring social protection for all persons seeking work. The convention contains no flexibility clauses, however, and it has few ratifications.⁷⁷

There is a distinct difference between the approach taken to social security in human rights instruments and that provided for by the ILO conventions. Human rights instruments view social security as an individual right, whereas the ILO regards social security as a social institution regulated by its own legislative framework, usually distinct from that of labor law. The ILO instruments focus on the obligation of the member states to secure social security benefits for persons who have the right to them. These different frameworks can be complementary and over more recent years have increasingly moved toward each other.

[Social security systems] are now regarded as important investments to support sustainable economic growth, provide a societal insurance against perpetuating poverty, and mitigate the effects of economic shocks and crises

This is illustrated by the adoption of R202 on the social protection floors in 2012 that reaffirms the universal right to social security (ILO 2012e). During the first decade of the new millennium, basic social security remained out of reach for most of the world, especially in low-income countries with four out of every five people worldwide having no access to comprehensive social security coverage (ILO 2010e). While many developing countries previously considered that social security systems were unaffordable, they are now regarded as important investments to support sustainable economic growth, provide a societal insurance against perpetuating poverty, and mitigate the effects of economic shocks and crises. Strategies to extend social security are two-dimensional with the horizontal dimension, or the social protection floor, guaranteeing access to essential health care and minimum income security for all, and the vertical dimension geared at progressively ensuring higher levels of protection guided by the higher-level standards.

In Europe, the member states of the Council of Europe (COE) incorporated the minimum standards that are embodied in C102, into the European Code of Social Security signed in 1964. The preamble to the code (COE 1964) indicates that it was desirable to establish standards at a higher level than the minimum standards indicated in C102. These higher standards were prepared by the COE with the collaboration of the ILO and embodied in the protocol. The Social Protection Committee (2011) of the European Union (EU) has included the social protection floors in its Work Programme for 2012.

R202 is also important for EU external assistance and development cooperation (ILO 2012b). At the request of developing countries, the International Labour Conference also adopted a resolution on assisting developing countries through technical cooperation (ILO 2012c, 108). Further, the ILO, through the work of the CEACR, monitors and supervises the application of the code and its protocol.

Thus, C102 has a very broad influence internationally and forms an important framework for social policy development.

Discussion of Principles and Examples of Good Legislation

This portion of the review will focus on the topic of legislation and, in particular, legislation relevant to women's social security in the context of work.

The CEACR recently undertook a general survey called the General Survey concerning Social Security Instruments in the Light of the 2008 Declaration on Social Justice for a Fair Globalisation (ILO 2011b). The General Survey is a valuable up-to-date review of social security generally; it also concentrates on the legislation required to support an appropriate social security framework.

⁷⁷ Only eight ratifications as at 31 August 2012.

It makes the following points:

- The ILO's current mandate and objective of social protection, is "to extend to social security for all, including measures to provide basic income to all in need of such protection..."
- International social security law has moved from being a rights-based approach to a more "market-orientated approach" and there is "an urgent need to deal with risks to social security by strengthening regulation and restoring adequate levels of protection."
- The major problem is that, unlike C102, C168 lacks flexibility clauses that make it even more difficult for developing countries to comply with the requirements.
- The present social security provisions do not extend to the informal, rural, and subsistence sectors, and close to 80% of the global population have no social security protection.
- The CEACR endorses the ILO strategy to promote a comprehensive social security platform and development containing horizontal and vertical dimensions. This development should have the following features:
 - It should be contained in "a new high-impact instrument sensitive to the distinctive structural realities of less-developed countries but designed to be accepted by all member states whatever the level of development."
 - The horizontal dimension requires adoption of a minimum global social security floor comprising a set of essential noncontributory benefits guaranteed by the states to all persons with legal certainty.
 - The vertical dimensions should consist of a "social security staircase" (ILO 2010f) operating above the social floor to gradually reach the level of C102 utilizing, for example, conditional and unconditional "cash transfers," "basic income," and "universal tax credit" as a means to provide such benefits.⁷⁸
 - It needs to move away from risk-based social security in separate branches to more integrated social protection.

Subsequent to the General Survey, the recently adopted R202 indicates that social protection floors should comprise the following basic social security guarantees: access to a nationally defined set of goods and services, constituting essential health care, including maternity care, that meets the criteria of availability, accessibility, acceptability, and quality; basic income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care, and any other necessary goods and services; basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity, and disability; and basic income security, at least at a nationally defined minimum level, for older persons.

Women have always suffered from deficiencies in social security coverage to a greater extent than men, due to their traditional responsibilities for unpaid household duties and family care in addition to their productive, income-earning activities. Moreover, women tend to live longer than men, thus they are generally entitled to fewer social security benefits than men, due to their concentration in lower level, low-paid jobs and the fact that they generally have contributed less to social security systems because they dropped out of the workforce for several years or were engaged in part-time, temporary, or other flexible work arrangements without social security benefits (Haspels and Majurin 2008, 58). The provision of adequate social protection floors will help alleviate, in particular, women's time and financial constraints so that they can gain access to decent work and incomes during working life and a basic pension in old age.

⁷⁸ This approach in a general sense fits with the opinion expressed by the United Nations System Chief Executives Board for Coordination in which the social protection floor was to contain two main elements:

(i) *services*: geographical and financial access to essential public services such as water and sanitation, health, and education; and

(ii) *transfers*: a basic set of essential social transfers, in cash and in kind, paid to the poor and vulnerable to provide a minimum level of income security and access to essential services, including health care.

Good Practices Example 35: The Constitution of Ecuador, 2008

In the Constitution of Ecuador, 2008:

- Social security is an individual right (Article 34).
- Health is conceived as an individual right guaranteed by the state and regulated by law. Medical care is provided through an integrated public health network that the Constitution defines into detail (Articles 32, 44, and 369).
- Old-age, disability, employment injuries, sickness, maternity, unemployment, and survivors' benefits are guaranteed through universal compulsory insurance. The same provision protects in similar terms persons performing unpaid work in households, activities for self-sustenance in rural areas, or any form of self-employment (Article 369).
- Rural social security is provided by the Rural Social Security Institute, which offers medical care, disability, old age, and death benefits (Article 373).
- Domestic workers are entitled to benefits paid out entirely from public funds (Article 369).
- Vulnerable groups: the constitution establishes that the elderly, children and adolescents, pregnant women, people with disabilities, persons deprived of freedom, and those who suffer catastrophic or complex illness will receive specialized and priority attention in the public and private sectors (Chapter III, Articles 35–55).

Source: Constitution of the Republic of Ecuador, 20 October 2008.

Good Practices Example 36: The Constitution of Ukraine, 1996

Article 24

Equality of the rights of women and men shall be ensured by providing women with opportunities equal to those of men in public, political and cultural activities, in obtaining education and in professional training, in work and remuneration for it; by taking special measures for the protection of work and health of women; by establishing pension privileges; by creating conditions that make it possible for women to combine work and motherhood; by adopting legal protection, material and moral support of motherhood and childhood, including the provision of paid leave and other privileges to pregnant women and mothers.

Source: Constitution of Ukraine, 28 June 1996.

The Constitution of Ecuador is one of the most advanced among Latin American countries in matters of social security

Two examples of good practice related to social security with particular reference to women are the 2008 Constitution of Ecuador and the 1996 Constitution of the Ukraine (see Good Practices Examples 35 and 36).

The CEACR said that the Constitution of Ecuador is one of the most advanced among Latin American countries in matters of social security. It makes explicit reference to all branches of social security. The right to social security in Ecuador is governed by principles that include meeting both individual and collective needs. Social security benefits are financed through contributions by employees and their employers, contributions of self-employed persons, through the voluntary contributions of Ecuadorians abroad, as well as through contributions of the state. Ecuador has a mixed social security system, but complete privatization is excluded by the Constitution (Article 367).

The next three sections deal with the broader notion of maternity protection and work–life balance. Specific measures of protection for women and their families which have a significant impact upon the ability of women to take up work or remain in work include maternity leave, paternity leave, parental leave, carer leave, and child care. Each of these will be discussed with particular reference to legislative measures used for protection and promotion of equality.

Maternity Care

International Standards

The ILO (1919c, 1952b, 1952c, 2000a, 2000d) has three conventions and two recommendations relevant to the provision of maternity leave. They are

- Maternity Protection Convention, 1919 (C3);
- Maternity Protection Convention (Revised), 1952 (C103) and Recommendation (R95); and
- Maternity Protection Convention, 2000 (C183) and Recommendation (R191).

The EU also has a directive on maternity protection.⁷⁹

The most relevant of the ILO conventions is C183. It contains a number of components;⁸⁰ the ones of primary significance are those that provide for the length of leave and the scope of the benefits.

In essence, C183 provides for

- guarantee of the woman's employment security and the right to return to the same or an equivalent job with the same pay after the maternity leave; and prohibition of discrimination because of her reproductive role while at work and while searching for work;
- not less than 14 weeks maternity leave (Article 4 (1));
- the maternity leave shall include a period of 6 weeks compulsory leave after childbirth, unless agreed otherwise at the national level involving tripartite bodies (Article 4(4));
- cash benefits to be at a level to ensure a woman can maintain herself and her child to a proper level of health and standard of living (Article 6 (2)); and
- cash benefits, where they are based on previous earnings, are to be no less than two-thirds or a comparable amount if other methods are used.

R191 complements C183 by advocating longer duration of leave and higher benefits. It recommends that the leave be increased to 18 weeks and that, if possible, the amount of cash benefits should be raised to the full amount of previous earnings. The recommendation is also more precise about certain aspects of maternity protection such as how to ensure health protection and adds detail about the types of leave and financing of benefits.

The EU Directive on Maternity Protection provides

- a minimum of 14 continuous weeks maternity leave;
- requirements on health and safety at the workplace to protect pregnant workers and workers who have recently given birth or are breast-feeding;
- that a woman cannot be dismissed during maternity leave; and
- that the rights linked to the employment contract are ensured.

Discussion of Principles and Examples of Good Legislation

The essential purposes of both C183 and the EU directive are essentially threefold:

- to ensure that a woman's work does not pose risks to the health of the woman and her child;
- to ensure that a woman's reproductive role does not compromise her economic and employment security; and

⁷⁹ European Agency for Safety and Health at Work Directive – Pregnant Workers. 92/85/EEC.

⁸⁰ The convention is divided into scope, health protection, maternity leave, leave in case of illness or complications, cash and medical benefits, employment protection and nondiscrimination, and breast-feeding mothers.

- to ensure that women's access to equal opportunity for employment and also nondiscriminatory conditions and treatment in the workplace are not impeded.

C183 also broadens the scope of coverage of maternity protection to employed women, no matter what occupation or type of work they are undertaking, including women employed in atypical forms of dependent work. The extension of the standard is of critical importance to women.

The 98th International Labour Conference in June 2009 acknowledged that strengthened maternity protection is key to gender equality at work and therefore called on the ILO to promote the ratification and application of C183 and 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" (ILO 2009, 12).

The ILO (2010b) then undertook a review of national legislation on maternity leave in 2010. The review is entitled *Maternity at Work: A Review of National Legislation*. As its title indicates, the review describes and discusses the different legislative practices regarding the implementation of maternity leave across the member states.

The review indicated that C183 "should normally be implemented through laws or regulations, although different means used in the national practice of the member states, such as collective agreements and arbitration awards, may also give it effect" (ILO 2010b, 2).

The review concluded that 30% of the member states fully met the requirements of C183 on all three aspects.⁸¹ It noted that the regions with the highest proportion of countries in conformity with these aspects were Central Asia and Europe, while conformity is particularly low in Asia and the Pacific as well as the Middle East. In relation to Asia and the Pacific, it was noted that very few countries met the standards.⁸² The review also contains detailed schedules which summarize the length of leave and the benefits paid.

As far as global trends are concerned, it was noted that the complexity of systems makes it difficult to determine whether benefits are generally increasing or decreasing. Globally, social security systems are used as the sole source of payment in half of the countries covered in the review, and pay at least some of the benefit in another 20% of countries. The number of countries in which employers are fully responsible for payment of maternity benefits has declined slightly during the last 15 years, whilst the usage of mixed systems is on the rise.

In relation to the payment of benefits, it was noted that there was an encouraging shift away from relying entirely on employer responsibility, albeit with some exceptions, and prominently in Asia. The review emphasized the need for viable ways to be found for financing maternity benefits without placing undue financial costs on the woman's employer. A matter of concern was still the number of countries which excluded different groups of workers from the protection; notably, domestic workers and casual or temporary workers. At the same time, what was noted was that a growing number of countries were extending protection to these workers.

In relation to discrimination against women on grounds of maternity, another recent ILO report titled *Equality at Work: The Continuing Challenge* emphasized that discrimination against women related to pregnancy and maternity continues to exist and is on the increase, as witnessed by several equality commissions worldwide. By way of example, in 2009, the United States Equal

⁸¹ That is, they provided for at least 14 weeks of leave at a rate of at least two-thirds of previous earnings, 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.

⁸² Only four countries provided at least 14 weeks of leave, most provided 12–13 weeks of leave. Exceptions were Bangladesh 16 weeks, Mongolia 120 days, Singapore 16 weeks, and Viet Nam 4 months.

Globally, social security systems are used as the sole source of payment in half of the countries covered in the review, and pay at least some of the benefit in another 20% of countries

Employment Opportunity Commission received 6,196 cases compared to 3,977 cases in 1997. It was noted that most of the cases were related to dismissal for pregnancy, dismissal while nursing, failure to grant time for nursing, or nonpayment of prenatal and postnatal benefits. Denial of promotion during pregnancy and refusal to allow a woman to return to the post she held before becoming pregnant have also emerged as issues in need of attention (ILO 2011f, 25).⁸³

Some examples of good innovative legislative practice on the provision of maternity leave for self-employed women has been enacted in Belgium, with the passing of amendments to the Labour Act of 1971 as amended by the Law of 29 December 1990 (see Good Practices Example 37).

In respect of legislation which prohibits discrimination on the basis of a women taking maternity leave, a recent example of legislation cited in the ILO report *Equality at Work: The Continuing Challenge*, refers to legislation in Mauritius (see Good Practices Example 38).

Good Practices Example 37: Belgium's Labour Act, 1971

In Belgium, the period of maternity leave for self-employed women has increased, is more flexible, and is transferable. A self-employed worker can either take 8 weeks or choose to restrict her leave to 6 or 7 weeks. Three weeks must be taken 1 week before and 2 weeks after the birth, but thereafter it is flexible as the mother can choose to take the remaining 5 weeks from up to 3 weeks before the due date of birth to 23 weeks after the birth. The leave must be taken in periods of 7 calendar days. Longer maternity leave is also available if the newborn child is taken into hospital. In such a case, the period of maternity leave is extended by the number of full weeks spent by the child in hospital over and above the first 7 days. It may not exceed 24 weeks.

Also in Belgium, maternity assistance is available by issuing 105 home help vouchers to self-employed women who have given birth. This enables the women to return to work in a self-employed capacity following a period of maternity leave. A self-employed woman has a choice of a home help provider, on condition that the selected provider has been recognized by the competent federal body (Federal Ministry of Employment and Labour) under the existing home help voucher scheme introduced in 2001. Home help vouchers are exchanged for services provided by a person who undertakes household chores in order to enable the recipients of such vouchers to pursue their occupations.

Source: Eurofound. 2009. Maternity Leave: Belgium.

Good Practices Example 38: Mauritius' Employment Rights Act, 2008

This act contains a special provision related to protection from discriminatory dismissal by reason of pregnancy, marital status, family responsibilities, or maternity leave.

Section 38 states:

- (1) An agreement shall not be terminated by an employer by reason of –
 - (a) a worker's race, colour, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status or family responsibilities...

Source: Mauritius. Act No. 33 of 19 September 2008.

⁸³ See also United States Equal Employment Opportunity Commission (EEOC).

Paternity/Parental/Family Leave

International Standards

Paternity leave refers to a short period of leave around the time of childbirth and is usually additional to maternity leave provided to a woman who gives birth.

The ILO does not have any convention or standard on paternity leave although reference is made to parental leave in R191, being the companion to C183, as well as R165 (ILO 1981d), being the recommendation which accompanies the Workers with Family Responsibilities Convention (C156) (ILO 1981b).

In both recommendations, it is suggested that a period of parental leave should be available to either parent after maternity leave, without relinquishing employment and safeguarding the rights resulting from employment. The duration of the leave as well as payment and conditions are not set by the recommendations and should be set at a national level. In R165, parental leave is regarded as part of an integrated approach to facilitate reconciliation of work and family responsibilities.

In 1996, the EU introduced Directive 96/34/EC on parental leave. This directive provides a framework for parental leave, and the leave is not restricted to leave around the time of childbirth but extends beyond that time. The framework sets out the minimum requirements and provisions for parental leave as distinct from maternity leave. It also contains minimum requirements for time off on grounds of force majeure, referring to urgent family reasons such as sickness or accident making the immediate presence of a worker indispensable.

The directive is limited to men and women with employment contracts or an employment relationship as defined by the law, collective agreements, or practices in force in each member state. It requires that the member states define the conditions of access and the rules for parental leave in either the law or by collective agreement.

The preamble to the directive articulates the social reasoning underpinning the purpose of that framework. It refers, among others, to the Community Charter of Fundamental Social Rights of Workers dealing with equal treatment and the need for measures to be developed to enable men and women to reconcile the occupational and family obligations. It recognizes that an effective policy of equal opportunities presupposes an integrated overall strategy allowing for better organization of working hours and greater flexibility, and for an easier return to working life. It offers both men and women an opportunity to reconcile their work responsibilities with family obligations. It recognizes the need to introduce new flexible ways of organizing work and time, better suited to the changing needs of society. It refers to the need to close the gender gap and promote women's participation in the labor force. It also recognizes the need to encourage an equal share of family responsibilities between men and women.

The member states are required to

- grant to men and women workers an individual right to parental leave on the grounds of the birth or adoption of a child to enable them to take care of that child for at least 3 months until a given age of 8 years (Clause 2.1);
- allow parental leave to be granted either on a full-time or part-time basis or in a piecemeal way or in the form of a time-credit system (Clause 3 (a));
- take measures to protect workers against dismissal on the grounds of an application for or the taking of parental leave (Clause 4); and
- provide that workers have the right to return to the same job or, if not possible, to an equivalent or similar job consistent with their employment contract or employment relationship (Clause 5).

Since the implementation of the directive in October 2010, the European Parliament recommended that men should be entitled to paid paternity leave on an equivalent basis to maternity leave, except for duration, and that it should also be applicable to unmarried couples.⁸⁴

Discussion and Examples of Good Legislative Practice

Good legislative practice increasingly recognizes that gender equity requires measures to be developed to enable both men and women to reconcile their work responsibilities with their family obligations. Such a practice may also help shift the burden of care that largely falls on women, so that it is shared with men. An effective policy of equal opportunity presupposes an integrated overall strategy allowing for better organization of working hours and greater flexibility better suited to the changing needs of society, and for an easier return to working life.⁸⁵

The duration of the leave as well as its payment and conditions are usually set at a national level and preferably should also be available to unmarried couples. Systems of parental leave differ significantly between countries including variation in eligibility, payment, duration, whether it is transferable, and the age of the child to be cared for. In some countries, long parental leave may be seen as a way of supporting parental care of young children and reducing the need for child care services, which can be relatively expensive. It is noted that parental leave is common in industrialized economies but rare in developing countries and less industrialized parts of the world (ILO 2010b).

Gender equity requires measures to be developed to enable both men and women to reconcile their work responsibilities with their family obligations. Such a practice may also help shift the burden of care that largely falls on women

One good practice example is Slovenia's Parental Protection and Family Benefit Act, adopted in 2001 (see Good Practices Example 39).

Good Practices Example 39: Slovenia's Parental Protection and Family Benefit Act, 2001

Pursuant Article 23 of the act, fathers are entitled to 15 days of paid paternity leave to be used until the child reaches 6 months of age, as well 75 additional days of leave that may be used until the child is 3 years old. During the 75 days of additional leave, the state makes social security contributions for the employee.

Source: Republic of Slovenia. Act of 21 November 2001.

A good practice example from an Asian country comes from the Republic of Korea (see Good Practices Example 40).

A particular example highlighted in the ILO's 2010 publication *Maternity at Work: A Review of National Legislation* is the Icelandic Act on Maternity/Paternity and Parental Leave, adopted in 2000 (see Good Practices Example 41).

Another interesting example is Mongolia where, under the Labor Law of Mongolia 1999, after expiry of maternity leave and annual leave, mothers and single fathers are entitled to leave with payment of benefits to take care of the child until the age of 3.

The Republic of Korea, under the Labor Standards Act last amended on 20 February 1998, also allows child care leave paid at a fixed monthly rate until the child is 1 year old.

⁸⁴ European Parliament: Amendment 21 Proposal for a directive - amending act Recital 13c (new).

⁸⁵ For Latin America, see ILO and UNDP (2009).

Good Practices Example 40: The Republic of Korea's Act on Equal Employment and Support for Work-Family Reconciliation Act of 1987, amended 2011

Article 1 states that the purpose of the act is to ensure equal opportunities and treatment in employment for men and women, protect maternity and promote female employment, and support the reconciliation of work and family life for workers. The act contains fulsome definitions of discrimination (direct and indirect) and sexual harassment and provides for affirmative action measures. Article 4 requires the state and local governments to support the efforts of workers and employers to reconcile work and family life. Article 5 requires workers and employers to create a workplace culture where men and women are equally respected and can display their equal abilities. This should be done by improving practices and institutions that undermine the realization of gender equality in employment. Article 6 requires the Minister of Employment and Labor to establish specified policies and a Basic Plan aimed at equal employment and reconciliation of work and family life. It includes research on actual conditions. There are detailed sections on employment, skills development and promotion, and affirmative measures. Chapter III-2 provides for child care leave of 1 year, if a worker requests leave to take care of a child under 6 years of age. Alternatively, a worker may request a working hour reduction over 1 year, and, if this is not granted, the employer should consult with the worker on other measures that the company could offer to the worker. The measures that the employer could offer include an adjustment to the worker's starting and finishing times, vocational training when the worker returns to work and the establishment of workplace child care centers in accordance with the Infant Care Act No. 10789, 2011 and prevention and settlement of disputes mechanisms by the minister.

Source: Republic of Korea. Act No. 3989 of 4 December 1987, amended 2011.

Good Practices Example 41: Iceland's Act on Maternity/Paternity and Parental Leave, 2000

In Iceland, fathers have an independent, nontransferable leave quota. The overall length of the combined maternity/paternity leave is 9 months, divided into thirds, with 3 months reserved for the mother, 3 months reserved for the father, and another 3 months that parents can divide between them as they please. The reimbursement rate is 80% of the normal salary. The quota was phased in between 2001 and 2003. The length of the paternity quota increase, the average number of leave days taken by men increased from 39 in 2001 to 283 in October 2003.

Source: Republic of Iceland. Act No. 95/2000.

In relation to the nontransferable aspect of paternity leave, it is noted in *Maternity at Work: A Review of National Legislation* (ILO 2010b) that a number of countries, including Croatia⁸⁶ and Poland,⁸⁷ allow fathers to take some portion of the maternity leave allowance if mothers do not take the full amount of leave allowed.

Instead of specific parental or paternity leave, several countries offer the general emergency leave or family leave that can be used by new fathers. Examples of some of the countries are illustrated in the ILO's (2010b, 45) review. A number of Asian countries, such as Cambodia, Myanmar, and Viet Nam, have provisions enabling all workers to have a number of days each year for family events:

⁸⁶ Croatia. Law of 9 July 2008 on Maternity and Parental Assistance (Text No. 2727).

⁸⁷ Poland. Labour Code, as amended in January 2009.

- In Cambodia, under the Labor Code for the Kingdom of Cambodia (1997), 10 days special leave can be taken for family events.
- In Myanmar, 6 days of paid casual leave can be used by fathers to assist spouses at the time of confinement.
- In Viet Nam, workers are allowed to take paid leave for family reasons.

Family Responsibilities and Child Care

International Standards

A number of international conventions call for the provision of a child care facility, in recognition that both working parents frequently need outside support to continue to work.

Article 11(2)(c) of CEDAW provides that:

2. 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:

(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...

In 1981, the ILO adopted C156 and its accompanying recommendation, R165. Article 5(b) of C156 provides that: "All measures compatible with national conditions and possibilities shall further be taken... to develop or promote community services, public or private, such as child care and family services and facilities."

R165 further develops the requirements of C156, which are to be implemented progressively:

- Article 3 indicates that the provisions of the recommendation may be applied by laws, or regulations, collective agreements, works rules, arbitration awards court decisions, or a combination of these methods.⁸⁸
- Article 9 calls for the state to specifically develop or promote child care services, public or private.
- Articles 24–26 give guidance as to the manner of determining the scope and character of child care that is needed.

In addition, the recommendation suggests that competent authorities cooperate with public and private organizations, as well as the tripartite bodies. Reference is made to the need for collection and publishing of statistics, systematic surveys, and the requirement for standards to be laid down and supervised by competent authorities and to assist with adequate training of child care staff.

The UN Convention on the Rights of the Child provides that 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.⁸⁹

⁸⁸ This approach allows flexibility as to the method used, but the common denominator is that the standards are binding to various degrees.

⁸⁹ Convention on the Rights of the Child, General Assembly resolution 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force 2 September 1990. Article 18.

Discussion and Examples of Good Legislation

These international instruments make it clear that the responsibility to ensure the development of the services for child care lies with the governments, but it does not necessarily mean that the governments must provide these services themselves.

A book titled *Workplace Solutions for Childcare* by Catherine Hein and Naomi Cassirer, published by the ILO in 2010, provides a broad overview of the key national issues and approaches to child care (ILO 2010c). Case studies from 10 countries were selected: four industrialized countries (France, Hungary, the United Kingdom, and the United States) and six developing countries (Brazil, Chile, India, Kenya, the Republic of South Africa, and Thailand). In relation to each country, a national overview was presented regarding the policies and facilities for child care with examples of specific workplace initiatives.

The authors noted that there was a wide variation in government approaches to child care. In some countries, child care was viewed as a public entitlement for all and a government responsibility. In others, government involvement was minimal leaving parents to pay for nonfamily care from private providers. It was also noted that child care and other work–family policies have more recently moved up on the policy agendas of many countries as a result of concern for economic development and women’s labor force participation. Child care is often a combination of government-paid or -subsidized child care facilities, initiatives by employers with on-site facilities, trade union-organized facilities, religious organizations, national and local government agencies, NGOs, and also personal arrangements by parent workers.

The authors conclude that access to child care is a major problem for many working parents and employers and that finding solutions constitutes a major challenge for governments, employers, and workers. Governments need to take the lead by integrating workers’ needs into child care policies and programs.

Examples of legislation passed in developing countries that require employers to provide childcare are from Brazil, Chile, and India (see Good Practices Examples 42, 43, and 44, respectively).

The CEACR in 1999 expressed concern that measures designed to promote harmonization of work and family responsibilities, such as child care services, should not be specific to women. The committee also noted that legislation on workplace provisions for child care that excluded fathers’ access perpetuates the idea that women alone are responsible for child care, and raises the possibility that employers will discriminate against women to avoid legal obligations linked to the numbers of female workers in their employ. These comments would apply to the legislation in Brazil, Chile, and India; save to the extent that the facilities in Brazil specifically relate to breast-feeding. The concern expressed by the CEACR is also reflected in the report on India set out in *Workplace Solutions for Child Care*. Reference is made to employers either refraining from employing women if it is mandatory for them to provide day care for the children or instead avoiding the obligation by failing to show the employment of women in the official records.⁹⁰

By contrast, the legislation in the Netherlands is not limited only to women workers and applies where there are two working parents. The Dutch Childcare Act 2005, later amended in 2007, requires the employer contribution to be one-third of the child care bill, both working parents paying one-third and the balance being paid by the government.

In Thailand, the 1997 Constitution states that the government must provide basic services, including care and development for young children and families (ILO 2010c, 353).

⁹⁰ National Planning Commission of India (2007, 64) referred to in ILO (2010c).

Good Practices Example 42: Brazil's Consolidation of Labour Laws, 2010

In Brazil, the legislation obliges establishments employing at least 30 women over the age of 16 to provide an appropriate place where they can leave their children during the breast-feeding period. The legislation enables the company to make agreements for provision by public or private crèches; or operate a crèche-reimbursement system, granting payment of expenses on a crèche chosen freely by the mother/employee. The duration for the availability of the facility should be at least for the first six months of the child's life.

Source: Brazil. Decree Law No. 5452 (1093), as last amended by Act No. 12347 of December 2010.

Good Practices Example 43: Chile's Labour Code, August 1995

In Chile, the Labour Code since 1917 has required employers with more than 50 women workers aged at least 18 years, to provide child care facilities. Amendments in 1925 reduced the requirement to more than 20 women workers and that employers to provide for children under the age of 2 by creating their own nursery, sharing a nursery with the other employers in their location, or paying for an approved nursery. In 1995, the Labour Code was further amended to include employers in industrial and service sectors, (such as shopping malls) (Article 188). Also, free public nursery places are available for children aged 3 months to 2 years living in the poor areas of the country and they have increased from 14,400 in 2005 to 64,000 in 2008.

Source: Chile. Labour Code (Codified law approved by Decree-Law No. 1) (Law No. 20545 of 17 October 2011), as cited in ILO. 2010. *Workplace Solutions for Childcare*. Geneva. pp. 177–178.

Good Practices Example 44: Constitution of India, 1950

In India, the Constitution provides that “the State shall endeavour to provide early childhood care and education to all children until they complete the age of six years” (Article 45). Also, various sectoral labour acts stipulate that a crèche must be provided once the number of women workers exceeds 30 in the case of factories and 54 in the case of plantations, *beedi*, and cigar workers.

Source: Republic of India. Constitution of India of 1950.

In Japan, the Childcare and Family Care Leave Law enables workers employed by an employer on a fixed-term contract to apply for child care leave, subject to certain conditions.

Transposing standards from developed countries may be unrealistic for many developing countries. Facilities may not meet such high-quality standards, but the provision of basic childcare may nevertheless improve the situation for children at risk. Low-cost community-based initiatives can have a positive impact on child development indicators. Establishing and strictly enforcing minimum standards rather than ideal standards, coupled with government financial support, is likely the best approach in developing countries.

In Bolivia, there has been a large-scale early childhood development and nutrition program that provides day care, nutrition, and educational services to children who live in poor, predominantly urban areas. Under the program, children from 6 months to 6 years are cared for in groups of 15 in homes in their own neighborhood. The community selects local women to become home day care mothers. These informal, home-based day care centers, with two or three caregivers, provide integrated child development services (play, nutrition, growth screening, and health

Establishing and strictly enforcing minimum standards rather than ideal standards, coupled with government financial support, is likely the best approach in developing countries

referrals). The women receive child development training prior to becoming educators, but they are not highly trained. The program also provides job opportunities for local women.⁹¹

There is also an interesting example of Mobile Crèches, which is an NGO operating in India for workers on construction sites. The example is highlighted in Workplace Solutions for Child Care. Features of this are:

- Mobile Crèches was founded in 1969.
- The construction industry employs about 30 million workers of which over 30% women.
- Initially, the centers were intended for infants, but it was realized that older children on the construction sites also suffer from lack of access to care and education so that the centers now include children up to age 12.
- Mobile Crèches has reached out to some 650,000 children, trained 5,500 child care workers, and runs 550 day care centers.

⁹¹ This program has been reported on very favorably by the World Bank Early Childhood Development program evaluations in the developing countries.

Protecting Collective Freedom and Social Dialogue

Freedom of association, collective bargaining, and social dialogue are the common means by which countries are endeavoring to improve employment as well as economic and social conditions worldwide. Trade unions are the vehicle through which collective bargaining and social dialogue occurs on behalf of workers with either the employer/ employers' organizations⁹² and with government. Women need to be part of the solution. This means that their voices need to be heard at all levels. They need to be an effective part of strong union organizations in which they are not discriminated against and in which their needs are reflected in collective bargaining.

In addition, women need women's organizations to serve their interests in which they can be collectively empowered to improve their own working conditions. They also need to be heard on social and economic policies more generally, particularly in areas of social security and social protection. These outcomes require appropriate legislation, social dialogue frameworks, as well as economic and social policies.

There is also a need for better data collection on social dialogue indicators to assist with the assessment of effectiveness.

Trade unions are the vehicle through which collective bargaining and social dialogue occurs on behalf of workers with either the employer/employers' organizations and with government. Women need to be part of the solution

Freedom of Association and Collective Bargaining

Introduction

International human rights law in general, and ILO standards in particular, recognize freedom of association as a basic human right. The ILO regards freedom of association for workers and employers as a fundamental tool for protecting many other rights enshrined in international labor standards.

The importance of freedom of association and collective bargaining was reaffirmed by the ILO's Declaration on Fundamental Principles and Rights at Work of 1998 and more recently by the ILO's Declaration on Social Justice for a Fair Globalisation of 2008. In the 2008 declaration, freedom of association and effective recognition of the right to collective bargaining were described as important preconditions for the attainment of decent work. They are also recognized as part of the Millennium Development Goals, the international community's blueprint for development.

⁹² Employers also have rights to self-organization.

An associated activity to freedom of association and collective bargaining is social dialogue. From an ILO perspective, social dialogue is often referred to as “tripartite dialogue” among employers’ organizations, workers’ organizations, and governments. The standards of the ILO (1976a, 1976b) with regard to tripartite consultation is contained in Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and Recommendation 152 (R152).

The EU in its various directives refers to consultations with “social partners,” which includes employers’ organizations, workers’ organizations, and national governments, as well as other bodies relevant to the particular topic. “Social partners” is a term generally used in Europe to refer to representatives of management and labor (employers’ organizations and trade unions).⁹³

In this section, the term “social dialogue” will be used to mean more than the tripartite consultations referred to by the ILO, but also to negotiations, consultations, or exchanges of information between representatives of governments and employers on issues of common interest relating to economic and social policy (ILO 2005b).

It would appear that many countries have seen a decline in union membership as a share of the workforce and a decline in the share of workers covered by contracts. In numerous cases, the decline exceeded 20%

The most effective social dialogue requires the existence of strong and organized trade unions and employer associations that are independent and able to operate freely and productively. These bodies can join with government instrumentalities and other important players in the labor market to discuss and help find solutions for a range of economic and social policy issues concerning employment promotion and decent work. While a more traditional role of trade unions and employer associations has tended to focus on bipartisan discussion, the importance of taking a broader perspective cannot be underestimated in the current economic environment.

Although there are problems with statistical analysis and interpretation (ILO 2005b), overall it would appear that many countries have seen a decline in union membership as a share of the workforce and a decline in the share of workers covered by contracts. In numerous cases, the decline exceeded 20% (ILO 2000c; Floro and Meurs 2009). In developing countries, the shift of economic activity to subcontracting and informal firms has accelerated a decrease in union coverage.

There has been a certain trend by trade unions to try and organize previously unorganized sectors, including the service and informal sector where women have predominated. However, this has not always meant significant increases in women’s participation, as union leadership is traditionally male-dominated and focused on the interests of male, full-time workers.

International Standards

There are numerous international sources of the right to freedom of association and its recognition as a universal principle. The most widely accepted is Article 23 (4) of the UDHR that sets out: “Everyone has the right to form and to join trade unions for the protection of his interests.”

Similarly, the ICCPR sets out in Article 22: “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

The ICESCR states in Article 8:

1. The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on

⁹³ See Eurofound (undated, European Social Partners).

the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

- (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;
- (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others; and
- (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

The right to engage in collective bargaining is also recognized in some other important international texts, including the Inter-American Charter of Social Guarantees (1948), the European Social Charter (1961), and the European Community Charter of Fundamental Social Rights of Workers (1989).⁹⁴

The most detailed standards are contained in ILO instruments (1948a, 1949c), particularly the Freedom of Association and Protection of the Right to Organise Convention, 1948 (C87) and the Right to Organise and Collective Bargaining Convention, 1949 (C98). There are also several other relevant ILO instruments.⁹⁵

Importantly, the ILO's 1998 Declaration on Fundamental Principles and Rights at Work provides that all ILO member states, are obliged, due to their membership in the organization, to respect, promote, and realize, in good faith and in accordance with the ILO Constitution, the principles concerning the fundamental rights including the effective recognition of the right to collective bargaining (ILO 1998a, para. 2(a)). This obligation applies irrespective of whether a member state has ratified the conventions in question. Further, freedom of association has such special importance that the ILO has established special machinery to ensure that these principles are complied with in practice. In particular, this consists of the Committee on Freedom of Association, which examines complaints of violations of freedom of association filed by workers' and employers' organizations, without the need for the prior consent of the government concerned and irrespective of whether the country has ratified either C87 or C98.

Although freedom of association, collective bargaining, and social dialogue are inter-related, it is still useful to discuss them separately.

Freedom of Association

Specific International Standards

C87 obliges governments to give effect to the fundamental principles of freedom of association by

- providing for a legal right for workers and employers to establish and join organizations of their own choosing without previous authorization;

⁹⁴ See Inter-American Charter of Social Guarantees, 1948 in International Conferences of American (1956); Council of Europe (1961); and Eurofound (1989).

⁹⁵ See C11, C135, R143, C141, R149, C151, R159, C154, and R163 (ILO 1921, 1971a, 1971b, 1975a, 1975c, 1978a, 1978b, 1981a, and 1981c).

- refraining from interfering with the exercise of freedom of association;
- ensuring that the law of the land does not impair the exercise of freedom of association;
- taking all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize;
- ensuring that workers have adequate protection against acts of anti-union discrimination; and
- ensuring that workers' and employers' organizations have adequate protection against interference by each other in their establishment, functioning, or administration.

The "freedom" referred to concerns the freedom from impermissible interference with the exercise of the right to associate, the right to establish and join organizations in full freedom, and the right for those organizations to organize their activities freely and to join together with other organizations in federations and confederations, at both the national and international level. It is sometimes not fully appreciated that the freedom of association is not limited to workers' organizations, although that is where its impact is greatest, but it also applies to employers' organizations. The right to freedom of association is not absolute: certain limitations and restrictions may be compatible with the principles of freedom of association, although they must be strictly defined and limited, as indicated by the ILO's supervisory bodies.

Discussion of Principles and Examples of Good Legislation

Adoption of legislation is the primary means through which states give effect to these principles.

Governments have a critical role to play in ensuring respect for freedom of association by providing the right climate for trade unions and employers' associations to operate freely without fear of retribution. Enforcing basic laws on freedom of association and collective bargaining are vital to guarantee the independence of trade unions and employers' organizations. Legislation may also play a role in extending protection and organizing rights to those working in the informal economy. A strong and efficient labor inspectorate is also crucial for ensuring that trade union members and officials are protected from discrimination in the workplace.

As freedom of association is a fundamental human right, it is often expressed in the constitution of a country. An example is the Constitution of Finland (see Good Practices Example 45).

This constitutional example leaves the detailed provisions to be set out in other national legislation.

The right to freely establish or join an organization includes the right not to join or to terminate membership of an organization. An example of is expressed in Argentina's Trade Unions Law 1988 (see Good Practices Example 46).

Good Practices Example 45: Constitution of Finland, 1999

Section 10

Everyone shall have the right to freedom of association with others. The right to freedom of association shall include the right to found an association, to belong or not to belong to an association and to participate in the activities of an association. The right to form, join and participate in the activities of trade unions and the right to organise for the protection of other interests shall likewise be guaranteed.

Source: Finland. Constitution of Finland of 1999. <http://www.finlex.fi/en/laki/kaannokset/1999/en19990731>

Good Practices Example 46: Argentina's Trade Unions Law, 1988

Section 4 - Workers have the following union rights:

- (a) to freely establish, and without requiring previous authorization, trade unions;
- (b) to join any already established, not to join, or to quit them;
- (c) to gather and carry out trade union activities;
- (d) to petition before the authorities and employers;
- (e) to participate in the internal life of trade unions, to elect their representatives, to be elected and to propose candidates.

Source: Argentina. Law No. 23551 of 1988, as amended by the Industrial and Labour Relations (Amendment) Act No. 30 of 1997.

A common problem encountered in the exercise of freedom of association is the need for organizations to have their independence protected and to ensure that there is no interference by governments, political parties, or employers in the legitimate exercise of their collective right to freedom of association.

Examples of legislation which protects the right to independence of freedom of association are from the Russian Federation and Azerbaijan (see Good Practices Examples 47 and 48).

Good Practices Example 47: The Russian Federation's Federal Law on the Trade Unions, Their Rights and Guarantees for Their Activity, 1996

Article 5

- (1) Trade unions shall be independent in their activity from the organs of executive power, the organs of local self-government, employers and their amalgamations (unions, associations), political parties and other public entities, and shall not be accountable to them or subject to their control.
- (2) Interference by organs of state power, organs of local self-government and their officials in the activity of trade unions that may entail a restriction of trade union rights or hinder the legitimate exercise of their statutory activity shall be prohibited.

Source: Russian Federation. Federal Law No. 10-FZ of 12 January 1996.

Good Practices Example 48: Azerbaijan's Act on Trade Unions, 1994

Article 5 – Independence of trade unions

Trade unions shall carry out their activity independently of state bodies, institutions, political parties and public associations and shall not be accountable to them. Any interference likely to impair the exercise of trade unions' rights shall be prohibited except where otherwise provided by this Act.

Source: Republic of Azerbaijan. Act No. 792 of 24 February 1994.

Another example, which expresses the right of workers' organizations to independence from employers and in particular to deal with the problem of employers encouraging and promoting "tame unions" is from Canada's Labour Code (see Good Practices Example 49).

The ILO has also suggested wording for legislation regarding the independence of workers' organizations from employers or their agents:⁹⁶

Section 9 - Protection of trade unions against interference.

No employer or employers' organization, and no person acting on behalf of an employer or employers' organization, shall promote the establishment of an employees' organization under the domination of an employer or employers' organization, or shall support an employees' organization by financial or other means with the object of placing such organization under the control of an employer or employers' organization.

[Cambodia's] Labor Code prohibits employers from making employment decisions taking into account union affiliation or participation in union activities

Protection against discrimination is also an important ingredient in ensuring freedom of association. This takes two forms: protection of workers against discrimination in employment on the basis of trade union membership; and participation in union activities, particularly if they occupy an office or position of importance in a union. A frequent outcome is dismissal or termination of employment or other prejudice to the terms or conditions of employment of members of trade unions. For example, Cambodia's Constitution provides that all nationals of either sex have the right to form and be a member of trade unions (Article 36.5), and the Labor Code prohibits employers from making employment decisions taking into account union affiliation or participation in union activities (Article 279).

A simply expressed good example of legislation containing detailed provisions on this topic comes from Malawi (see Good Practices Example 50).

A second form of protection against discrimination is ensuring that the organizations themselves do not discriminate against members or potential members. Special attention needs to be paid to the rights of those who have often found themselves marginalized by membership organizations, including women, ethnic and religious minorities, migrants, indigenous groups, and those in the informal economy, particularly in rural areas. Workers' and employers' organizations need to work to maintain their legitimacy, credibility, and accountability by keeping decision making democratic, fair, and transparent and ensuring that policies and actions respond to the needs of their members. Organizations need to strive to ensure that their membership is as broad and representative as possible. This is not just a question of expanding membership and services,

Good Practices Example 49: Canada's Labour Code, 1985

Section 94

(1) No employer or person acting on behalf of an employer shall:

- (a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union; or
- (b) contribute financial or other support to a trade union.

Source: Canada. Law Code Revised Statutes of Canada (RSC 1985, c. L-2).

⁹⁶ ILO draft provision for a member.

Good Practices Example 50: Malawi's Labour Relations Act, 1996

Section 6 – Protection of employees

(1) No person shall, in respect of any employee or any person seeking employment:

- (a) require that he or she not be or not become a member of a trade union or require him or her to relinquish such membership;
- (b) dismiss or prejudice such person because of trade union membership or participation in the formation of the lawful activities of a trade Union;
- (c) dismiss or prejudice such person because of his or her exercise or anticipated exercise of any right recognized by this Act or any other Act relating to employment, or for participating in any proceedings pursuant to those Acts;
- (d) prevent or attempt to prevent such person from exercising any right recognized by this Act or any other Act relating to employment, or from participating in any proceedings under those Act;
- (e) threaten such person with any disadvantage for exercising any right recognized by or for participating in any proceedings under this Act or any other Act relating to employment;
- (f) promise such person any benefit or advantage for not exercising any right recognized by or not participating in any proceedings under this Act or any other Act relating to employment; and
- (g) dismiss or prejudice such person for refusing to do work normally done by an employee who is lawfully on strike or who is locked out, unless such work constitutes an essential service.

(2) Where it is shown that an employee was dismissed or otherwise prejudiced and it is alleged that such dismissal or prejudice was contrary to subsection (1), the burden is on the employer to prove that the act was not committed in breach of the subsection.

Source: Republic of Malawi. Act No. 16 of 5 July 1996.

but it concerns including these groups in decision making positions within organizations so that their interests are represented in policy positions.

As mentioned, women occupy only a small percentage of the membership in workers' and employers' organizations and an even lower percentage of women hold official positions within these organizations. This is of concern, because it means that they do not have a real opportunity to have their voices heard on employment needs. At the very least, nondiscrimination clauses should be set out in the constitution or the bylaws of organizations. Employers' and workers' organizations need to reach out to women and benefit from their skills, initiative, and leadership. This means promoting equality and diversity within employers' and workers' organizations by advancing women's access to leadership within these organizations as well as reaching out and providing services to women in the informal sector as business owners and workers.

There are many legislative examples of government requirements for registering organizations in various countries. Some are very detailed. There is a line to be drawn between overly restrictive requirements for the registration of organizations, which are long, complicated, or excessively reliant on the exercise of discretion such that the requirements impair the guarantee, or they have little or no formalities particularly in relation to financial governance to ensure normal functioning of organisations.

There is potential for good legislative practice of a government to include a requirement for a nondiscrimination clause to be included in the constitutions or bylaws of an organization before that organization can be registered. At the same time, the requirements should not be such that

Women occupy only a small percentage of the membership in workers' and employers' organizations and an even lower percentage of women hold official positions within these organizations. This is of concern, because it means that they do not have a real opportunity to have their voices heard on employment needs

it offends Article 2 of C87 which states that the state should guarantee the right of freedom of association “without previous authorisation.”

A good legislative example of the recognition that in some cultural environments married women may experience discrimination when joining unions is contained in Côte d’Ivoire’s Labour Code, 1995. (Good Practices Example 51).

Bearing in mind the particular disparity between men and women in union membership and the importance of their absence, this may be a situation calling for special measures to encourage women’s participation. This could be achieved through a combination of legislative measures and government policies.

The problems faced by SEWA, a powerful women’s organization registered in India in 1972 to improve the circumstances of women in home-based work, highlight the need for governments to adopt a nonrestrictive and flexible approach to enhance the particular circumstances of women. One commentator says of SEWA:

The first conceptual block we encountered was when we tried to register SEWA as a trade union under the Trade Union Act of India. We did not fit into their definition of ‘worker’ or ‘trade union.’ We were an organisation of chindi workers, cart pullers, rag pickers, embroiderers, midwives, forest produce gatherers; but we were not ‘workers.’ Moreover, we did not have a fixed employer to agitate or fight against and so the government resisted against our registration as a trade union. Labour laws could not be applied to us. According to them, we were not workers; we did not work. The day we registered SEWA, we questioned the definition of work.

(Bhatt 2004)

Bearing in mind the particular disparity between men and women in union membership and the importance of their absence, this may be a situation calling for special measures to encourage women’s participation

A good discussion of the need for and importance of women creating and joining “new unions” for themselves is set out by the United National Development Fund for Women (UNIFEM):

For women, the advantage of organising in ‘new’ unions is that they can set up innovative structures and programmes that are less patriarchal and more open to changes than

Good Practices Example 51: Côte d’Ivoire’s Labour Code, 1995

Section 51.1

Workers and employers, members of the liberal professions and self-employed workers who do not employ other workers may freely establish occupational trade unions of their own choosing in the sectors of activity and geographical areas that they determine. They shall have the right to join them in full freedom, as shall persons who have ceased to exercise their function or occupation on condition that they have exercised it for at least one year.

Section 51.6

Married women exercising an occupation or a trade may, without the authorization of their husband, join occupational trade unions and participate in their administration or direction under the conditions set out in the previous section.

Source: Republic of Côte d’Ivoire. Act No. 95-15 of 12 January 1995, as amended by Act No. 97-400 of 11 July 1997.

traditional nations. For example, women's unions are generally more creative in finding solutions to issues such as child care and meeting times.

(UNIFEM 2005, 77 and 80)

This report also details the number of cooperatives, trusts, and societies and self-help groups which have been set up at the village level. Other well-established organizations of women, apart from SEWA and WIEGO, include HomeNet, Pambansang Kalipunan ng mga Manggagawang Impormal sa Pilipinas Inc. (PATAMABA or the National Network of Informal Workers in the Philippines), and Persatuan Sahabat Wanita Selangor (PSWS or the Women's Companion Association of Selangor) in Malaysia. These are all forms of women workers organizing other women workers, to which governments can provide valuable assistance and promotion.

In the Philippines, the Magna Carta of Women, in combination with the Philippine Commission on Women, provides innovative approaches to address this problem. The Magna Carta is a unique good practice example of legislation. It is an overall legislative framework that articulates the specific rights, needs, and support required by women in their general and working life.

Collective Bargaining

Specific International Standards

As discussed above, the right to collective bargaining is recognized and protected in C98 and the Collective Bargaining Convention, 1981 (C154).

C98 requires ratifying states to take measures to encourage and promote collective bargaining.⁹⁷

Discussion of Principles and Examples of Good Legislation

The primary objective of national legislation and policy should be to promote and encourage free and voluntary collective bargaining that allows the parties the greatest possible autonomy. The legal framework and administrative structure should be aimed at facilitating the conclusion of collective agreements.

Collective bargaining is a process of workers' organizations and employers' organizations (or individual employers) to negotiate on areas related to wages and terms of employment. For workers, collective bargaining enables them to put forward measures for decent pay and working conditions. It can also be a means to gain a share of the benefits of economic progress. For employers, collective bargaining is a means to maintain social peace and prosperity.⁹⁸

One of the primary means by which member states seek to comply with these obligations is through the enactment of labor legislation, often supported by other means, such as collective agreements, arbitration awards, administrative rules, and regulations, decrees, and ministerial orders. They also frequently establish administrative bodies to monitor observance of the

[The Magna Carta] is an overall legislative framework that articulates the specific rights, needs, and support required by women in their general and working life

⁹⁷ C98 provides in Article 4 that: "Measures appropriate to national conditions (...), where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements." C154 provides that "measures adapted to national conditions shall be taken to promote collective bargaining" (Article 5, paragraph 1). R163 indicates at paragraph 4 that: "Measures adapted to national conditions should be taken, if necessary, so that collective bargaining is possible at any level whatsoever, including that of the establishment, the undertaking, the branch of activity, the industry, or the regional or national levels."

⁹⁸ It is not intended in the review to cover all aspects of the convention but instead simply highlight some of which are relevant to this project.

respective legal obligations and to provide conciliation and mediation services to assist the parties (ILO 2011d).

The degree to which it is appropriate to use legislation to promote and develop collective bargaining, and the level of detail to be included in legislation, depends on national conditions and particularly on the presence of a national tradition of collective bargaining. For example, a government may consider it appropriate to enact detailed procedures and mechanisms governing collective bargaining. In other cases, it may simply be necessary to refer in a statutory provision to the right of employers, their organizations, and trade unions to engage in collective bargaining. Tailoring the level of regulation to suit national conditions is critical. The lack of a clear legislative framework can undermine collective bargaining in some countries, while overregulation can have a similar result in others (ILO 2011d).

Where national circumstances so require, it may also involve the need to make provision for a certain number of ancillary legal obligations so that the right to collective bargaining can be effectively exercised in practice, including a duty under certain conditions to recognize a party for collective bargaining purposes and to negotiate with that party in good faith.

National legislation sometimes explicitly defines the parties entitled to bargain collectively and the level at which bargaining may take place, but not in such a way that it hampers the rights guaranteed by C98. For example, this may be trade unions negotiating with individual employers, several employers negotiating jointly, or even organizations of employers.

Collective bargaining occurs at several levels. Bargaining at the enterprise level involves one employer and the relevant union or unions to which workers belong. Industry- or sector-level bargaining is collective bargaining involving a number of employers or organizations of employers and trade unions in a particular industry or sector (e.g., automobile, seafaring, footwear, etc.). There can also be collective bargaining at the regional level with multiple employers across a number of complementary sectors. Finally, there can also be collective bargaining at the national level. C98 requires that bargaining can take place at every level and it applies to all workers with limited exceptions.⁹⁹

**A study ...
concluded that
“[...] trade unions
face the risk of
marginalisation due
to their fragmented
structure”**

A number of examples of legislative frameworks to promote collective bargaining are set out in chapter 3 of the ILO’s Labour Legislation Guidelines.¹⁰⁰

An example of a provision guaranteeing the right to collective bargaining is in El Salvador’s Labour Code (see Good Practices Example 52).

A good legislative example that sets out some minimum formalities to aid the collective bargaining process regarding representational status and the collective agreement is the Industrial Relations Act, 1993 from the Seychelles (see Good Practices Example 53).

An area of collective bargaining that requires legislation in order for it to be enforced is the express prohibition against acts of interference in collective bargaining. Article 3 of C98 requires that there be appropriate procedures and effective and dissuasive sanctions for such breaches.

One of the features of collective bargaining in parts of Asia which impairs the effectiveness of collective bargaining is the fragmentation of trade unions. A study undertaken in Cambodia, Indonesia, the Philippines, and Thailand has concluded that while the move in those countries “towards more democratic governance has encouraged trade union growth, trade unions face

⁹⁹ Exceptions are armed forces, the police, and public servants “engaged in the administration of the state.”

¹⁰⁰ See ILO Industrial and Employment Relations Department Labour Legislation Guidelines at <http://www.ilo.org/public/english/dialogue/ifpdial/ilg/> (accessed 12 November 2011).

Good Practices Example 52: El Salvador's Labour Code, 1972

Section 33 – Right to bargain collectively

- (1) Every trade union the rules of which authorise it to negotiate on behalf of its members, or group of trade unions acting jointly for the purposes of collective bargaining, that is sufficiently representative of the employees in a bargaining unit, shall be entitled to bargain collectively with the employer or employers' organisation concerned on wages, terms and conditions of employment, relations between the parties and other matters of mutual interest.

Source: Republic of El Salvador. Labour Code, 1972, amended by Decree 859, 1994.

Good Practices Example 53: Seychelles' Industrial Relations Act, 1993

Section 39 – Agreement for representational status

- (1) An employer and a registered trade union of employees may and shall, where the trade union has ten or more of its members in the employment of the employer, enter into an agreement whereby the employer recognizes the representational status of the trade union in relation to the employer's employees who are members of the trade union.
- (2) An agreement under subsection (1) shall be in writing and shall provide:
- (a) that the employer recognizes the trade union as the sole representative of, and exclusive bargaining agent for, the employees who are members of the trade union for the purpose of collective bargaining between the employer and the employees;
 - (b) for procedures, methods and remedies relating to dispute settlement between the employer and the employees; and
 - (c) for procedures for reviewing, amending or terminating the agreement.

Source: Republic of Seychelles. Act 7 of 1993.

the risk of marginalisation due to their fragmented structure" (Yoon 2009, 5). This fragmentation also has the effect of weakening the trade unions bargaining power. In relation to three of the countries,¹⁰¹ the study concluded:

In all three countries, trade unions have very limited capacity to influence policy decision making at the national level, as bitter rivalry among competing union federations at the national level further undermines their already weak policy influence. At the same time, the fragmentation of trade unions at the workplace level also gives employers opportunity to refuse negotiation with trade unions on grounds of lack of representativeness of the trade unions for the purpose of collective bargaining.

(Yoon 2009, 6)

This fragmentation means that there are often many trade unions that employees are eligible to join, and there may not therefore be a majority trade union. In these circumstances, there usually needs to be legislative provisions that enable the voice of the members of such unions to be heard.

¹⁰¹ Indonesia, Cambodia, and the Philippines.

Good Practices Example 54: Singapore's Council of Toyota Trade Unions

The Council of Toyota Trade Unions in Singapore has been restructured into the “Federation of Toyota Trade Unions,” and the unions of smaller suppliers are encouraged to be affiliated to expand its network activities with the supply chain with a view to coordinating their bargaining strategies so that they can gradually narrow wages and other gaps. This is innovative because it expands the notion of corporate community and enterprise unionism beyond an individual enterprise so as to include the entire supply chain, with a dominant firm at the center. It is yet to be seen whether the declared aims can be achieved.

Source: Y. Yoon. 2009. A Comparative Study on Industrial Relations and Collective Bargaining in East Asian Countries. Working Paper No. 8. Geneva: ILO. p. 7.

However, positive examples also exist. An interesting illustration of collective bargaining through a network of enterprises within a supply chain is the case of Toyota in Singapore (see Good Practices Example 54).

This illustration could help inspire other examples where workers, cooperatives, and multiple employers or enterprises that may be connected at various levels of a supply chain for a product could initiate links for collective bargaining. This could be very helpful in agri-processing, which could commence from the growing and harvesting of the raw product through to the finished product.

Social Dialogue

As previously referred to, the standards of the ILO with regard to social dialogue is contained in Tripartite Consultation (International Labour Standards) Convention of 1976 (C144) and Recommendation 152 (R152) (ILO 1976a, 1976b).

The term “social dialogue” embraces more than the consultations between workers and employers in relation to conditions of work. It extends to negotiations, consultations, or exchanges of information between representatives of workers, employers, and governments on issues of broader common interest relating to economic and social policy (ILO 2005b). Social dialogue is particularly promoted by the ILO as a means of achieving decent working conditions and providing flexibility to provide inclusive economic growth.

An example of the benefits of effective tripartite consultation in the context of crisis recovery is the tripartite consultation in Singapore between the Ministry of Manpower, the National Trade Unions Congress and the National Employers Federation, which aims to formulate balanced proposals that address the concerns of both employers and workers (ILO 2011d, 53; see also Good Practices Example 55).

Currently, women's participation in social dialogue institutions and mechanisms has remained low, even if the past decades have witnessed a steady increase in women entering the workforce, whether as employers or workers. This is true worldwide and especially pronounced in Asia. When participating in social dialogue and within their own organizations, women have been more active in bringing gender equality issues to the forefront, and an increased involvement of women in social dialogue has resulted in greater attention to gender issues. There is a need, therefore, to increase the participation and representation of women within government units, trade unions, and employers' organizations, as well as in tripartite dialogue mechanisms. In line with the ILO, it can be argued that gender equality and social dialogue are mutually beneficial for social inclusion and sustainable development. With a view to achieving gender equality

Currently, women's participation in social dialogue institutions and mechanisms has remained low, even if the past decades have witnessed a steady increase in women entering the workforce, whether as employers or workers

Good Practices Example 55: The Tripartite Consultation in Singapore between the Ministry of Manpower, the National Trade Unions Congress, and the National Employers Federation

The process, as implemented, was as follows:

- Tripartite Guidelines on Managing Excess Manpower were developed and published to provide guidance to employers on managing excess workforce capacity so that retrenchment would only be used as a last resort. The guidelines set out a number of options, including
 - the introduction of a shorter working week,
 - temporary layoffs,
 - redeployment,
 - further training, and
 - wage reductions or nonwage cost-cutting measures.
- Unions actively promoted the benefits of these measures to their constituents.
- Employers undertook cost-cutting measures to save jobs. As a result, thousands of workers were on a shorter working week or temporary layoff, instead of being retrenched.
- A Skills Programme for Upgrading and Resilience (SPUR), a 2-year skills development and training subsidy program, was introduced.
- SPUR was run by the trade unions and employers' organisations and was designed to encourage and support companies to send their workers for training as a means of managing excess labor and preparing for the economic recovery.
- The National Wages Council guidelines were revised by the tripartite partners to include recommendations on wage freezes or reductions in consultation with unions.
- The guidelines highlighted the importance of helping more vulnerable workers, including older workers, women, and those on low wages and temporary contracts.
- The government responded to a request by the National Wages Council and reduced business costs by reducing corporate tax and providing other tax relief as well as providing a resilience package to assist the economy.
- Payments were made by the government under the Jobs Credit Scheme to help employers with their wage bills by giving a 12% cash grant on the first S\$2,500 of each employee's monthly wage for a period of 1 year.
- Tripartite Upturn Strategy Teams were established to raise business awareness of the Managing Excess Manpower (MEM) guidelines and advise on their implementation, and a Tripartite Taskforce was formed to gather feedback and updates on labor-related issues.

Source: International Labour Organization. 2011. *Freedom of Association and Development*. Geneva. p. 53.

outcomes in labor markets, it is good practice to ensure that women are represented and male/female gender expertise is sought in social dialogue on economic, social, and employment policies (Briskin and Muller 2011).

Achieving outcomes requires evidence. There is a need to have data on social dialogue collected on a more universal and improved basis in countries, so that social dialogue indicators can be more accurately assessed over time (ILO 2005b). It is vital, as part of that data collection, to obtain details on the extent to which women and women's organizations were involved in these tripartite discussions.

References

Articles/Books/Reports

- Asian Development Bank (ADB). 2000a. *The Role of Central Banks in Microfinance in Asia and the Pacific*. Manila.
- . 2000b. Incorporation of Social Dimension into ADB Operations. *Operations Manual Bank Policies* (B). OM Section C3/BP. Manila.
- . 2005. *Progress Report on the Asian Development Bank's Reform Agenda*. Manila.
- . 2007. *Annual Report 2006*. Manila.
- . 2011a. *Women and Labour Markets in Asia: Rebalancing For Gender Equality*. Bangkok: ADB and ILO.
- . 2011b. *Enacting the Gender Equality Law in Mongolia*. Manila.
- . 2011c. Part 1: Special Chapter: Toward Higher Quality Employment in Asia. In *Key Indicators for Asia and the Pacific*. Manila.
- Belau, D. 2003. *New Threats to Employment in the Travel and Tourism Industry*. ILO Report 14 May. Geneva: ILO.
- Bhatt, E. 2004. Foreword. In M. Chen, R. Alter, R. Jhabvala, R. Kanbur, N. Mirani, and K. Osner (eds). *Reality and Analysis: Personal and Technical Reflections on the Working Lives of Six Women*. *Working Paper* 2004-06. Ithaca, NY: Department of Applied Economics and Management, Cornell University. Available at www.wiego.org (accessed 15 Aug 2010).
- Boeri, T. 2009. Setting the Minimum Wage. *IZA Discussion Paper* No. 4335. Bonn: Institute for the Study of Labor.
- Briskin, L. and A. Muller. 2011. Promoting Gender Equality through Social Dialogue: Global Trends and Persistent Obstacles. *Working Paper* No. 34. Geneva: ILO.
- China.org.cn. Law of the People's Republic of China on the Protection of Rights and Interests of Women. Available at <http://www.china.org.cn/english/government/207405.htm> (accessed 3 October 2013).
- Commission of the European Communities. 2008. *"Think Small First": A "Small Business Act" for Europe*. Brussels.
- Committee on Economic, Social and Cultural Rights. 2007. General Comments 19: The Right to Social Security. Geneva: Office of the United Nations High Commissioner for Refugees.
- Convention to Eliminate All Forms of Discrimination against Women (CEDAW). 1992. Committee General Recommendation 19: Violence against Women. 11th Session. UN Doc. A/47/38 at 1 (1993), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev.6 at 243 (2003). Available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm#recom1> (accessed 30 August 2011).
- . 2004. General Recommendation No. 25: Article 4, Paragraph 1, of the Convention (Temporary Special Measures). 30th Session of CEDAW Committee.
- Council of Europe. 1961. *European Social Charter*. 18 October. Turin.
- . 1964. *European Code of Social Security*. European Treaty Series 48. 16 April. Strasbourg.
- Dasgupta, S. and R. M. Sudarshan. 2011. Issues in Labour Market Inequality and Women's Participation in India's National Rural Employment Guarantee. *Working Paper* No. 98. Policy Integration Department. Geneva: ILO.

- Deakin, S. and M. Freedland. 2006. Updating International Labor Standards in the Area of Social Security: A Framework for Analysis. *Comparative Labor Law and Policy Journal* 27(2): 151–166. Illinois: University of Illinois.
- DiNardo, J., N. Fortin, and T. Lemieux. 1996. Labor Market Institutions and the Distribution of Wages, 1973–1992: A Semiparametric Approach. *Econometrica* 64(5): 1001–1044. Econometric Society.
- Equal Opportunities Commission. Code of Practice on Employment under the Sex Discrimination Ordinance. Available at [http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs%20on%20Employment\(SDO\)&fld=content](http://www.eoc.org.hk/EOC/GraphicsFolder/showcontent.aspx?content=CoPs%20on%20Employment(SDO)&fld=content)
- European Commission. 2007. *Gender Mainstreaming of Employment Policies: A Comparative Review of 30 European Countries*. Group of Experts on Gender, Social Inclusion and Employment. Directorate General for Employment, Social Affairs and Equal Opportunities. Luxembourg.
- European Foundation for the Improvement of Living and Working Conditions. (Eurofound). 1989. Community Charter of the Fundamental Social Rights of Workers. 9 December. Strasbourg.
- . 2007. *Part-Time Work in Europe*. Dublin.
- . 2009. Maternity Leave: Belgium. <http://www.eurofound.europa.eu/emire/BELGIUM/MATERNITYLEAVE-BE.htm>
- . 2010. Addressing the Gender Pay Gap: Government and Social Partner Actions.
- . Undated. European Social Partners. <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeansocialpartners.htm>
- Feng, G. and C. Kay. 2012. *The New Rules on Protection for Female Employees in the People's Republic of China*. New York. The International Employment Lawyer Quarterly Newsletter 20 June. International Employment Law Committee American Bar Association Section of International Law. Available at <http://intemploy.blogspot.com/2012/06/china-new-rules-on-protection-for.html>
- Fenwick, C., J. Howe, S. Marshall, and I. Landau. 2007. Labour and Labour-Related Laws in Micro and Small Enterprises: Innovative Regulatory Approaches. SEED Working Paper No. 81. Small Enterprise Program. Job Creation and Enterprise Development Department Geneva: ILO.
- Floro, M. S., and M. Meurs, 2009. Global Trends in Women's Access to "Decent Work." *Dialogue on Globalization Occasional Papers* 43. May. Geneva: Friedrich Ebert Stiftung and ILO.
- Fudge, J. and R. Owens (ed). 2006. *Precarious Work, Women, and the New Economy. The Challenge to Legal Norms*. Onati International Series in Law and Society. Oxford, UK and Portland, Oregon: Hart Publishing.
- Government of the United Kingdom, Low Pay Commission. 2009. *The National Minimum Wage: Low Pay Commission Report 2009*. London.
- Group of Experts on Gender, Social Inclusion and Employment. 2007. *Gender Mainstreaming of Employment Policies: A Comparative Review of 30 European Countries*. European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities. Luxembourg.
- Hagen, H. 2005. *Guidelines for Cooperative Legislation, Second Revised Edition*. Geneva: ILO.
- Haspels, N., Z. Kasim, C. Thomas, and D. McCann. 2001. *Action against Sexual Harassment at Work in Asia and the Pacific*. Bangkok: ILO.
- Haspels, N. and E. Majurin. 2008. *Work, Income and Gender Equality in East Asia*. Bangkok: ILO.
- Healy, J. 2009. *The Wages Safety Net of the Australian Industrial Relations Commission, 1993–2005*. PhD Thesis, National Institute of Labour Studies, Flinders University. Unpublished.
- Hensman, R. 2011. *Workers, Unions and Global Capitalism: Lessons from India*. New York, NY: Columbia University Press.
- International Conferences of American States. 1956. Second Supplement, 1945–1954. Washington, DC: Pan American Union.

- International Labour Organization (ILO). 1919a. Convention 1: Hours of Work (Industry) Convention. 1st Session. 28 November. Washington, DC.
- . 1919b. Convention 2: Unemployment Convention. 29 October. Washington, DC.
- . 1919c. Convention 3: Maternity Protection Convention. 1st Session. 29 November. Washington, DC.
- . 1921. Convention 11: Right of Association (Agriculture) Convention. 3rd Session. 25 October. Geneva.
- . 1928. Convention 26: Minimum Wage-Fixing Machinery Convention. 11th Session. 16 June. Geneva.
- . 1930. Convention 30: Hours of Work (Commerce and Offices) Convention. 14th Session. 28 June. Geneva.
- . 1944a. Recommendation 067: Income Security Recommendation. 26th Session. 12 May. Philadelphia.
- . 1944b. Recommendation 069: Medical Care Recommendation. 26th Session. 20 April. Philadelphia.
- . 1948a. Convention 87: Freedom of Association and Protection of the Right to Organise Convention. 9 July. 31st Session. San Francisco.
- . 1948b. Convention 88: Employment Service Convention. 31st Session. 17 June. San Francisco.
- . 1949a. Convention 94: Labour Clauses (Public Contracts) Convention. 32nd Session. 29 June. Geneva.
- . 1949b. Convention 96: Convention Concerning Fee-Charging Employment Agencies (revised). 32nd Session. 18 July. Geneva.
- . 1949c. Convention 98: Right to Organise and Collective Bargaining Convention. 32nd Session. 8 June. Geneva.
- . 1949d. Recommendation 084: Labour Clauses (Public Contracts) Recommendation. 32nd Session. 29 June. Geneva.
- . 1951a. Convention 99: Minimum Wage Fixing Machinery (Agriculture) Convention. 34th Session. 28 June. Geneva.
- . 1951b. Convention 100: Equal Remuneration Convention. 34th Session. 29 June. Geneva.
- . 1952a. Convention 102: Social Security (Minimum Standards) Convention. 35th Session. 28 Jun. Geneva.
- . 1952b. Convention 103: Maternity Protection Convention (Revised). 35th Session. 28 Jun 1952. Geneva.
- . 1952c. Recommendation 95: Maternity Protection Recommendation. 35th Session. 28 June 1952. Geneva.
- . 1951c. Recommendation 90: Equal Remuneration Convention. 34th Session. 29 June. Geneva.
- . 1958a. Convention 111: Discrimination (Employment and Occupation) Convention. 42nd Conference Session. 25 June. Geneva.
- . 1958b. Recommendation 111. Discrimination (Employment and Occupation) Recommendation. 42nd Session. 25 June. Geneva.
- . 1971a. Convention 135: Workers' Representatives Convention. 56th Session. 23 June. Geneva.
- . 1971b. Recommendation 143: Workers' Representatives Recommendation. 56th Session. 23 June. Geneva.
- . 1972. Convention 131: Minimum Wage Fixing Convention. 54th Session. 22 June. Geneva.
- . 1975a. Convention 141: Rural Workers' Organisations Convention. 60th Session. 23 June. Geneva.

- . 1975b. Convention 142: Human Resources Development Convention. 60th Session. 23 June. Geneva.
- . 1975c. Recommendation 149: Rural Workers' Organisations Recommendation. 60th Session. 23 June. Geneva.
- . 1975d. Recommendation 150: Human Resources Development Recommendations. 60th Session. 23 June. Geneva.
- . 1976a. Convention 144: Tripartite Consultation (International Labour Standards) Convention. 61st Session. 21 June. Geneva.
- . 1976b. Recommendation 152: Tripartite Consultation (Activities of the International Labour Organization) Recommendation. 61st Session. 21 June. Geneva.
- . 1978a. Convention 151: Labour Relations (Public Service) Convention. 64th Session. Geneva.
- . 1978b. Recommendation 159: Labour Relations (Public Service) Recommendation. 64th Session. 27 June. Geneva.
- . 1981a. Convention 154: Collective Bargaining Convention. 67th Session. 3 June. Geneva.
- . 1981b. Convention 156: Workers with Family Responsibilities Convention. 67th Session. 23 June. Geneva.
- . 1981c. Recommendation 163: Collective Bargaining Recommendation. 67th Session. 19 June. Geneva.
- . 1981d. Recommendation 165: Workers with Family Responsibilities. 67th Session. 23 June. Geneva.
- . 1986. General Survey of the Reports on the Equal Remuneration Convention (No. 100) and Recommendation (No. 90) 1951, *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*. International Labour Conference 72nd Session.
- . 1988a. Convention 168: Employment Promotion and Protection against Unemployment Convention. 75th Session. 21 June. Geneva.
- . 1988b. Recommendation 176: Employment Promotion and Protection against Unemployment Recommendation. 75th Session. 21 June. Geneva.
- . 1990. *International Standard Classification of Occupations (ISCO-88)*. Geneva.
- . 1991. Resolution Concerning ILO Action for Women Workers. ILC 78th Session. Geneva.
- . 1994a. Convention 175: Part-Time Work Convention. 81st Session. 24 June. Geneva.
- . 1994b. Recommendation 182: Part-Time Work Recommendation. 81st Session. 24 June. Geneva.
- . 1995. Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment. 82nd Session. Geneva.
- . 1996a. Convention 177: Home Work Convention. 83rd Session. 20 June. Geneva.
- . 1996b. Equality in Employment and Occupation. Special Survey on Equality in Employment and Occupation in Respect of Convention No. 111. *Report III (Part 4b)*. 83rd Session. Geneva.
- . 1997a. Convention 181: Private Employment Agencies Convention. 85th Session. 3 June. Geneva.
- . 1997b. Recommendation 188: Private Employment Agencies Recommendation. 85th Session. 3 June. Geneva.
- . 1998a. Declaration on Fundamental Principles and Rights at Work. 86th Session. 18 June. Geneva. Available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>
- . 1998b. Recommendation 189: Job Creation in Small and Medium-Sized Enterprises Recommendation. 86th Session. 17 June. Geneva.

- . 1999. Collective Bargaining: A Fundamental Principle, a Right, a Convention. *Labour Education 1999/1-2* (Nos. 114-115). Available at <http://actrav.ilo.org/english/library/socdiag/v01000.htm>
- . 2000a. Convention 183: Maternity Protection Convention. 88th Session. 15 June. Geneva.
- . 2000b. General Survey Concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and the Tripartite Consultation (Activities of the International Labour Organization) Recommendation, 1976 (No. 152), *Report III (1B)*. 88th Session. Geneva.
- . 2000c. Organization, Bargaining and Dialogue for Development in a Globalizing World. *Report to the Governing Body of the Working Party for the Social Dimensions of Globalization*. 279th Session. Geneva.
- . 2000d. Recommendation 191: Maternity Protection Recommendation. 88th Session. 15 June. Geneva.
- . 2002. Recommendation 193: Promotion of Cooperatives Recommendation. 90th Session. 20 June. Geneva.
- . 2003. Guidelines Concerning a Statistical Definition of Informal Employment. Geneva. Available at http://www.ilo.org/global/statistics-and-databases/standards-and-guidelines/guidelines-adopted-by-international-conferences-of-labour-statisticians/WCMS_087622/lang-en/index.htm
- . 2005a. "Hours of Work from Fixed to Flexible?": General Survey of the Reports Concerning the Hours of Work (Industry) Convention, 1919 (No. 1) and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), *Report III (Part 1B)*. 93rd Session.
- . 2005b. Social Dialogue Indicators; Trade Union Membership and Collective Bargaining Coverage: Statistical Concepts, Methods and Findings. Working Paper No. 59. Geneva.
- . 2006a. Business Environment, Labour Law, and Micro-and Small Enterprises. *Report to the Governing Body of the Committee for Employment and Social Policy*. 297th Session. Geneva.
- . 2006b. The Employment Relationship. *Report V(1)*. International Labour Conference, 95th Session. Geneva.
- . 2006c. Recommendation 198: Employment Relationship Recommendation. 95th Session. 15 June 2006. Geneva.
- . 2007a. *General Observation by the CEACR Report III (Part 1A) ILC Conference 96th Session 2007*. Geneva.
- . 2007b. *Guide to Private Employment Agencies – Regulation, Monitoring and Enforcement*. Geneva.
- . 2008a. *Global Wage Report 2008/09 – Minimum Wages and Collective Bargaining: Towards Policy Coherence*. Geneva.
- . 2008b. *Promoting Equity – Gender-Neutral Job Evaluation for Equal Pay: A Step-by-Step Guide*. Geneva.
- . 2008c. Labour Clauses in Public Contracts: Integrating the Social Dimension into Procurement Policies and Practices. General Survey Concerning the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) and Recommendation (No. 84). *Report III (Part 1B)*. 97th Session.
- . 2009. *Recovering From the Crisis: A Global Jobs Pact*. 98th Session. Geneva.
- . 2010a. *Global Wage Report 2010/11: Wage Policies in Times of Crisis*. Geneva.
- . 2010b. *Maternity at Work: A Review of National Legislation. Findings from the ILO Database of Conditions of Work and Employment Laws*. Geneva.
- . 2010c. *Workplace Solutions for Childcare*. Geneva.
- . 2010d. *Preventing and Managing Sexual Harassment and Equality at Work*. Available at

- http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/WCMS_146011/lang--en/index.htm (accessed 22 October 2013).
- . 2010e. *World Social Security Report 2010/11. Providing Coverage in Times of Crisis and Beyond*. Geneva.
- . 2010f. *Extending Social Security to All: A Guide through Challenges and Options*. Geneva.
- . 2011a. *Guidelines on Sexual Harassment Prevention at the Workplace, Issued by the Circular Note of the Minister of Manpower and Transmigration No. SE.03/MEN/IV/2011. Government of Indonesia, Ministry of Manpower and Transmigration & ILO*. Indonesia. Available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/publication/wcms_171329.pdf (accessed 12 September 2013).
- . 2011b. Social Security and the Rule of Law: General Survey Concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization. Report III (Part 1B): *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*. 100th Session.
- . 2011c. *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution). Information and Reports on the Application of Conventions and Recommendations*. 100th Session.
- . 2011d. *Freedom of Association and Development*. Geneva.
- . 2011e. *Strategy for Gender Mainstreaming in the Employment Sector 2010–2015. Aligned with ILO Action Plan for Gender Equality 2010–2015, Phase I: Programme and Budget 2010–2011*. Geneva.
- . 2011f. 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) of the Director-General to the 100th Session*. Available at <http://www.ilo.org/declaration/lang--en/index.htm> (accessed 30 October 2011).
- . 2011g. *Industrial and Employment Relations Department (DIALOGUE). Labour Legislation Guidelines*. Available at <http://www.ilo.org/public/english/dialogue/ifpdial/llg/> (accessed 12 November 2011).
- . 2011h. *PR No.15A – Text of the Convention Concerning Decent Work for Domestic Workers. Record of proceedings*. 16 June. Geneva. Available at http://www.ilo.org/ilc/ILCSessions/100thSession/reports/provisional-records/WCMS_157836 (accessed 24 October 2011).
- . 2012a. Giving Globalization a Human Face: 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) of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*. 101st Session. Geneva: ILO.
- . 2012b. *New ILO Recommendation on Social Protection Floors*. Geneva. http://www.ilo.org/brussels/WCMS_183640/lang--en/index.htm (accessed 13 Sep 2013).
- . 2012c. Elaboration of an Autonomous Recommendation on the Social Protection Floor. *Report of the Committee on the Social Protection Floor*. ILC 101st Session. May–June. Geneva.
- . 2012d. *Equality and Non-Discrimination at Work in Cambodia: Manual*. Bangkok. Available at <http://labordoc.ilo.org/record/454704>
- . 2012e. *Recommendation 202: Social Protection Floors Recommendation*. 101st Session. 14 June. Geneva.
- . 2013. *Equal Pay: An Introductory Guide*. Geneva. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_216695.pdf
- . Undated. *Industrial and Employment Relations Department (DIALOGUE)*. <http://www.ilo.org/ifpdial/lang--en/index.htm>.
- International Labour Organization and United Nations Development Programme. 2009. *Work and Family: Towards New Forms of Reconciliation with Social Co-Responsibility*. Santiago: ILO.

- Jhabvala, R. and S. Sinha. 2006. Social Protection for Women Workers in the Informal Economy. *Comparative Labor Law & Policy Journal* 27(2), Winter.
- Layton, R., Smith, M., and Stewart, A. 2013. *Equal Remuneration Under the Fair Work Act 2009*. Fair Work Commission. Available at <http://www.fwc.gov.au/index.cfm?pagename=adminpayequityresearch> (accessed 24 October 2013).
- Low Pay Commission. 2009. National Minimum Wage. Low Pay Commission Report 2009. Cited in ILO. 2011. *Equality at Work: The Continuing Challenge*, Report 1(B): Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. 100th Session. Geneva.
- McCarthy, J. M. 1997. Landmark Decision on Sexual Harassment for Malaysian Women. *New England International and Comparative Law Annual*.
- Meknassi, N. 2006. Extending Social Security in the Developing Countries. *Comparative Labour Law and Policy Journal* 25(2), Winter.
- Murray, J. 1999 Social Justice for Women? The ILO's Convention on Part-Time Work. University of Melbourne Centre for Employment and Labour Relation Laws (CELRL) Working Paper No. 15. Melbourne: University of Melbourne.
- Organisation for Economic Co-operation and Development (OECD). 2002: *Small and Medium Enterprise Outlook*. Paris.
- . 2009. *Making Economic Growth More Pro-Poor*. Paris.
- Pamaos, A. F. 2011. Dole Issues New Rules on Contracting. 22 November. AttyAtWork. Available at <http://attyatwork.com/tag/departement-order-no-18-a/> (accessed 14 September 2013).
- Panda, P., J. Gupta, I. Bulankulame, N. Bhatla, and S. Chakraborty. 2010. *Property Ownership & Inheritance Rights of Women for Social Protection – The South Asia Experience: Synthesis Report of Three Studies*. International Center for Research on Women (ICRW).
- Philippine Commission on Women, Expanding the Anti-Sexual Harassment Law, *Policy Brief No. 10*. Available at <http://pcw.gov.ph/wp/sexual-harassment> (accessed 3 October 2013).
- Portegijs, W., A. Boelens, and S. Keuzenkamp. 2002. *Emancipatiemonitor 2002*. The Hague: Sociaal en Cultureel Planbureau & Centraal Bureau voor de Statistiek.
- Robinson, V. 2002. Migrant Workers in the UK. *Labour Market Trends*, September.
- Romeyn, J., S. Archer, and E. Leung. 2011. Review of Equal Remuneration Principles. *Research Report 5/2011*. Fair Work Australia.
- Sharma, S. 2009. Entry Regulation, Labor Laws and Informality. Working Paper, Enterprise Analysis Group. The World Bank.
- Sjoblom, D. and J. Farrington. 2008. The Indian National Rural Employment Guarantee Act: Will It Reduce Poverty and Boost the Economy? *Overseas Development Institute Project Briefing No. 7*. London: ODI.
- Social Protection Committee. 2011. *SPC Work Programme for 2012*. Ref: SPC/2011.12/8. Brussels: EU.
- Steinzor, N. 2003. Women's Property and Inheritance Rights: Improving Lives in Changing Times. Final Synthesis and Conference Proceedings Paper. Women in Development Technical Assistance Project. Washington, DC: WID Tech.
- Sudarshan, R.M. and S. Sinha. 2011. Making Home-Based Work Visible A Review of Evidence from South Asia. WIEGO *Urban Policies Research Report* No. 10. January. WIEGO.
- United National Development Fund for Women (UNIFEM). 2005. *Progress of the World's Women: Women, Work and Poverty*. New York, NY: UNIFEM
- United States Equal Employment Opportunity Commission (EEOC). Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY1997–FY2011. Available at www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm
- Vandenburg, P. 2008. *Is Asia Adopting Flexicurity? A Survey of Employment Policies in Six Countries*. Geneva: ILO.

- World Bank. 2006. *Doing Business in 2006 – Creating Jobs*. Washington, DC: World Bank.
- Yamada, S. 2013. Equal Employment Opportunity Act, Having Passed the Quarter- Century Milestone. *Japan Labour Review* 10(2), Spring. Available at http://www.jil.go.jp/english/JLR/documents/2013/JLR38_yamada.pdf.
- Yoon, Y. 2009. A Comparative Study on Industrial Relations and Collective Bargaining in East Asian Countries. *Working Paper* No. 8. Geneva: ILO.

Legislation

Argentina

Trade Unions Law No. 23551 of 1998, amended in 1997

Australia

Sex Discrimination Act, No. 4 of 1984

Austria

Federal Law on Public Procurement, BGB1, No. 17/2006, adopted in 2006

Azerbaijan

Act on Trade Unions. Act No. 792 of 24 February 1994

Belgium

Labour Act of 1971 as amended by the Law of 29 December 1990.

Brazil

Consolidation of Labour Laws

Cambodia

Labor Law of 13 March 1997

Canada

Employment Equity Act, Bill C-62, 1985

Labour Code, RSC 1985, c-L-2, 1988

Chad

Labour Code, Act No. 38/PR/96 of 11 December 1996

Chile

Labour Code of August 1995

Labour Law Reform Act 2001

People's Republic of China

Law of the People's Republic of China on the Protection of Rights and Interests of Women, 3 April 1992

Costa Rica

Law for the Promotion of Equality for Women, No. 7942 of 1 March 1990

Côte d'Ivoire

Labour Code Act No. 95-15 of 12 January 1995 as amended by Act No. 97-400 of 11 July 1997

Croatia

Anti-Discrimination Act 9 July 2008 (Official Gazette 85/08)

Gender Equality Act 15 July 2008 (Official Gazette 82/08)

Law of 9 July 2008 on Maternity and Parental Assistance (Text No. 2727)

Labour Act 2010

Ecuador

Constitution of Ecuador 20 October 2008

El Salvador

Labour Code, 1972 (amended by Decree 859 (1994))

European Union

European Council Directive 92/85/EEC

European Council Directive 93/104/EC of 23 November 1993

European Council Directive, 2000/78/EC

Small Business Act 2008 European Commission

Finland

Public Procurement Act, 348/2007 adopted in March 2007

The Constitution of Finland 2010

Guatemala

Labour Code of 1967, amended on 2 December 1992

Guyana

Prevention of Discrimination Act No. 26 of 1997

Hong Kong, China

Sex Discrimination Ordinance. Chapter 480 of 1995 Add Code of Practice on Employment, 1995

Hungary

Labour Code, Act No. 22 of 4 May 1992

Iceland

Icelandic Act on Maternity/Paternity and Parental Leave, No. 95/2000, adopted in 2000

India

Minimum Wages Act No. 11 of 15 March 1948

Hindu Succession Act 1956

Contract Labour (Abolition and Regulation) Act No. 37 of 5 September 1970

Beedi and Cigar (Conditions of Employment) Act 1996

Mahatma Gandhi National Rural Employment Act 2006

Hindu Succession (Amendment) Act, 2005

The Indian Unorganised Workers Social Security Act 2008

Microfinance Bill 2011

Ireland

Employment Equality Act, 1998

Italy

Providing for Affirmative Action to Achieve Equal Treatment of Men and Women in Employment Act, Act No. 125 of 10 April 1991

Japan

Childcare and Family Care Leave Law. Law No. 160 of 2004

The Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, Act No. 113 of 1972, last amended by Act No. 82 of 2006

Republic of Korea

Labour Standards Act last amended on 20 February 1998

Act on the Promotion of the Economic Activities of Career-Break Women, etc. Act No. 9101 of 5 June 2008, amended 2010

Act on Equal Employment and Support for Work-Family Reconciliation, Act No. 3989 of 4 December 1987, amended in 2011

Minimum Wage Act No. 3927 of 31 December 1986, amended 2012

Act on the Protection of Fixed-Term and Part-Time Employees Act No. 8074 of 21 December 2006, as amended by Act No. 11273 of 2012

Lesotho

Labour Code Order, 1992

Malawi

Labour Relations Act No 16 of 5 July 1996

Malaysia

Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace, 1999

Employment (Amendment) Act, Act A1419 of 2012

Mauritius

Employment Rights Act, Act No. 33 of 19 September 2008

Moldova

Labour Code of the Republic of Moldova, N154-XV of 28 March 2003

Mongolia

Labor Law of Mongolia 1999

Law of Mongolia on the Enforcement of the Law on Promotion of Gender Equality, 2011

Namibia

Affirmative Action (Employment) Act No. 29 of 1998

Constitution of 1990

Netherlands

Equal Treatment (Working Hours) Act 1996, Wet verbod op onderscheid naar arbeidsduur, WOA

Childcare Act 2005, later amended in 2007

Pakistan

The Protection Against Harassment of Women at the Workplace Act 2010, No. F. 9 (5)/2009

Philippines

Women in Development and Nation Building Act 1 (Republic Act 7192), 12 February 1992

Migrant Workers and Overseas Filipinos Act (Republic Act 8042) of 1995

Anti-Sexual Harassment Act, RA 7877 of 8 February 1995

Agriculture and Fisheries Modernization Act (Republic Act 8435) of 28 July 1997

Comprehensive Agrarian Reform Act (CARP) (Republic Act 6657) of 10 June 1998

Rules and Regulations Governing the Recruitment and Employment of Land-Based Overseas Workers, Philippine Overseas Employment Administration (POEA), 2000

Government Procurement and Reform Act (Republic Act 9184) of 10 January 2003

Implementing Rules and Regulations of Republic Act (Republic Act 9184) of 18 September 2003

Magna Carta for Micro, Small, and Medium Enterprises (Republic Act 6977 as amended by Republic Act 8289 and further amended by RA 9501) in 2008

An Act Providing for the Magna Carta of Women (Republic Act 9710) of 14 August 2009.

Protection against Harassment of Women at the Workplace Act, 2010, No. F. 9 (5)/2009-Legis.

Poland

Labour Code as amended in January 2009

Russian Federation

Labour Code of 9 December 1971 (as amended) (The new Labour Code of 30 December 2001 has been in force since 1 February 2002)

Federal Act on Trade Unions, Their Rights and Guarantees of Their Activity of 12 January 1996 (No. 10-FZ)

Republic of Rwanda

Rwandan Law N° 22/99 to supplement book I of the Civil Code and to Institute part Five Regarding Matrimonial Regimes, Liberties and Successions. O.G. N°22 of 15/11/1999

Seychelles

Industrial Relations Act No. 7 of 1993

Slovenia

Parental Protection and Family Benefit Act, adopted 21 November 2001

South Africa

Constitution of the Republic of South Africa. Act No. 108 of 1996

Employment Equity Act No. 55 of 1998

Skills Development Act, No. 97 of 20 Oct. 1998 (amended by the Skills Development Act, 2003)

Spain

Workers' Statute, Act No. 11 of 19 May 1994, consolidating various amendments to the 1980 text

Thailand

Constitution, 1997

Labour Code Act BE 2541 of 1998

United Kingdom

Employment Act 1989 (amended by the Employment Rights Act 1996)

Sex Discrimination Act of 1975

Ukraine

Constitution of Ukraine, 28 June 1996

Viet Nam

Labour Code of 23 June 1994

Labor Code, 2012

Treaties and Conventions**Human Rights Conventions****International Covenant on Civil and Political Rights, 1966**

Philippines: Signed – 19 December 1966; Ratified – 23 October 1986

Cambodia: Signed – 17 October 1980; Accession – 26 May 1992

Kazakhstan: Signed – 2 December 2003; Ratified – 24 January 2006

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

Philippines: Signed – 19 December 1966; yet to ratify

Cambodia: Signed – 27 September 2004; yet to ratify

Kazakhstan: Signed – 25 September 2007; yet to ratify

International Covenant on Economic Social and Cultural Rights, 1966

Philippines: Signed – 19 December 1966; Ratified – 7 June 1974

Cambodia: Signed – 17 October 1980; Accession – 26 May 1992

Kazakhstan: Signed – 2 December 2003; Ratified – 24 January 2006

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008

Philippines: Yet to sign; yet to ratify

Cambodia: Yet to sign; yet to ratify

Kazakhstan: Signed – 23 September 2010; yet to ratify

Convention on the Elimination of Discrimination Against Women, 1979

Philippines: Signed – 15 July 1980; Ratified – 5 August 1981

Cambodia: Signed – 17 October 1980; Accession – 15 October 1992

Kazakhstan: Accession – 26 August 1998

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 1999

Philippines: Signed – 21 March 2000; Ratified – 12 November 2003

Cambodia: Signed – 11 November 2001; Accession – 13 October 2010

Kazakhstan: Signed – 6 September 2000; Ratified – 24 August 2001

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

Philippines: Signed – 15 November 1993; Ratified – 2 July 1995

Cambodia: Signed – 27 September 2004; yet to ratify

Kazakhstan: Yet to sign; yet to ratify

ILO Fundamental Conventions

Freedom of Association and Protection of the Right to Organise Convention, 1948

Philippines: Ratified – 29 December 1953

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 13 December 2000

Right to Organise and Collective Bargaining Convention, 1949

Philippines: Ratified – 29 December 1953

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 18 May 2001

Forced Labour Convention, 1930

Philippines: Ratified – 15 July 2005

Cambodia: Ratified – 24 February 1969

Kazakhstan: Ratified – 18 May 2001

Abolition of Forced Labour Convention, 1957

Philippines: Ratified – 17 November 1960

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 18 May 2001

Equal Remuneration Convention, 1951

Philippines: Ratified – 29 December 1953

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 18 May 2001

Discrimination (Employment and Occupation) Convention, 1958

Philippines: Ratified – 17 November 1960

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 6 December 1999

Minimum Age Convention, 1973

Philippines: Ratified – 4 June 1998

Cambodia: Ratified – 23 August 1999

Kazakhstan: Ratified – 18 May 2001

Worst Forms of Child Labour Convention, 1999

Philippines: Ratified – 28 November 2000

Cambodia: Ratified – 14 March 2006

Kazakhstan: Ratified – 26 February 2003

ILO Priority Conventions

Labour Inspection Convention, 1947 (No. 81)

Philippines: Not yet ratified

Cambodia: Not yet ratified

Kazakhstan: Ratified – 6 July 2001

Employment Policy Convention, 1964 (No. 122)

Philippines: Ratified – 13 January 1976;

Cambodia: Ratified – 29 September 1971;

Kazakhstan: Ratified – 6 December 1999;

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Philippines: Not yet ratified

Cambodia: Not yet ratified

Kazakhstan: Ratified – 6 July 2001

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Philippines: Ratified – 10 June 1991

Cambodia: Not yet ratified

Kazakhstan: Ratified – 13 December 2000

Other

National Guidelines in the Philippines – Harassment in the Workplace, ILO, available at <http://www.ilo.org/public/english/employment/gems/eeo/guide/philip/haras.htm>

National Commission on the Role of Filipino Women, available at http://www.ncrfw.gov.ph/inside_pages/downloads/ra/ra7877.pdf

Eurofound European Social Partners, available at <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/europeansocialpartners.htm>

Good Global Legal Practices to Promote Gender Equality in the Labor Market

Increasing job opportunities and decent work for women are essential for advancing economic and social development in countries, because many women continue to experience gender inequalities at work. An analysis of strategies to counter gender discrimination and promote equality between men and women shows how a combination of good practices in law and in social and economic policy can improve equitable employment opportunities, remuneration, and treatment for women and men at work. This report provides some examples of good global legal practices to reverse unequal labor market outcomes for women and realize their economic potential to the full. It is part of a series consisting of:

- Good Global Economic and Social Practices to Promote Gender Equality in the Labor Market
- Good Global Legal Practices to Promote Gender Equality in the Labor Market
- Gender Equality and the Labor Market: Cambodia, Kazakhstan, and the Philippines
- Gender Equality in the Labor Market in Cambodia
- Gender Equality in the Labor Market in the Philippines.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.7 billion people live on less than \$2 a day, with 828 million on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

About The International Labour Organization

The International Labour Organization (ILO) is the United Nations agency specialized in work and workplace issues, and related rights and labor standards. Founded in 1919, the ILO brings governments, employers and workers together to achieve decent work for all men and women in conditions of freedom, equality, security and human dignity. The main aims of the ILO are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The ILO has 185 member countries. The ILO Regional Office for Asia and the Pacific supports work in 34 countries in the region towards equitable and sustainable social and economic progress.

ILO Regional Office for Asia and the Pacific
United Nations Building, 11th Floor
Rajdamnern Nok Avenue
Bangkok 10200, Thailand
Tel.: +662 288 1234
Fax: +662 288 3062
Email: BANGKOK@ilo.org
www.ilo.org/asia

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org

