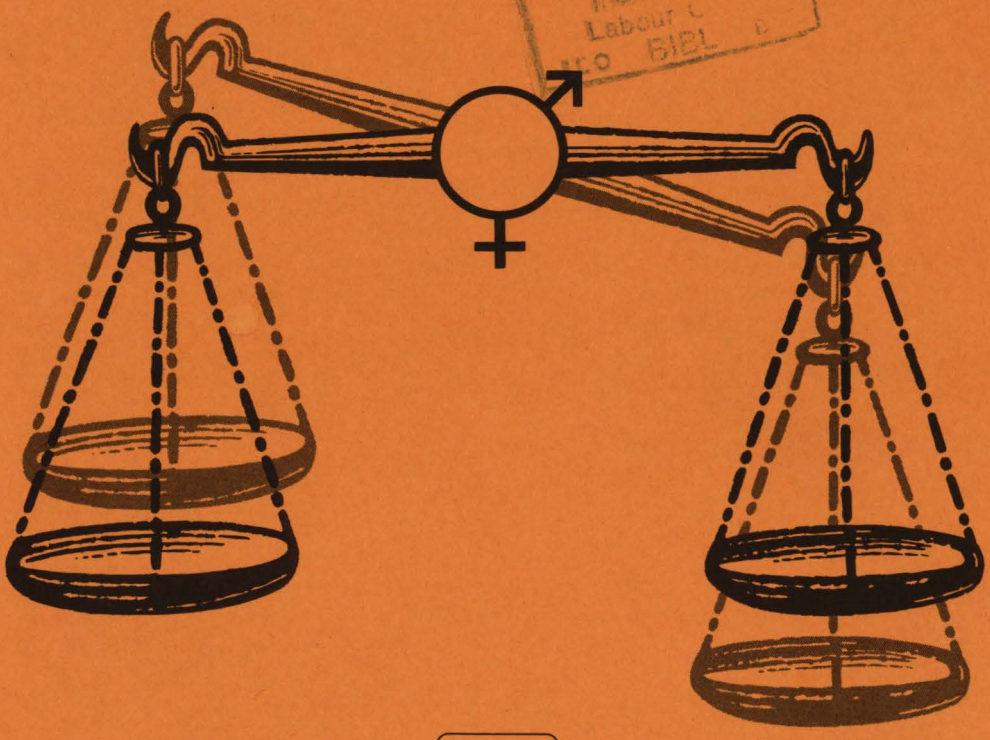
International Labour Conference 72nd Session 1986

EQUAL REMUNERATION

General Survey by the Committee of Experts on the Application of Conventions and Recommendations



International Labour Office Geneva

International Labour Conference
72nd Session 1986

Report III
(Part 4B)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

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 Office Geneva

ISBN 92-2-105172-2
ISSN 0074-6681

First published 1986

Printed in Switzerland JOU

GENERAL SURVEY: EQUAL REMUNERATION

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II. Information available

CHAPTER I
INTRODUCTION

Background to the survey

1. In accordance with article 19 of the Constitution of the ILO, the Governing Body at its 224th Session (November 1983) requested governments to report in 1985 on the position of their law and practice respecting equal pay for men and women workers, as laid down in the Equal Pay Convention (No. 100) and Recommendation (No. 90), adopted in 1951. The reports thus supplied by the governments, together with those submitted in accordance with articles 22 and 35 of the ILO Constitution by States which have ratified the Convention, have provided an opportunity for the Committee of Experts on the Application of Conventions and Recommendations, in accordance with its usual practice, to make a general survey of the situation as regards the implementation of the instruments, both in ratifying States and in countries which have not ratified the Convention. This survey is the third one carried out by the Committee since the relevant instruments were adopted; the first was made in 1956[1] and the second in 1975.[2] In addition, in 1969 the Governing Body requested governments to report on the ratification prospects and the difficulties encountered in respect of 17 of the most important ILO Conventions, including Convention No. 100[3] on the occasion of International Women's Year, which ushered in the United Nations Decade for Women.

2. The year 1985 marked the end of the United Nations Decade for Women. The general discussion held on that occasion at the

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[1] ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IV), International Labour Conference, 39th Session, Geneva, 1956 (hereafter "RCE (year)"), Appendix IV, pp. 148-156.

[2] RCE 1975 (Part 4B): General Survey of the Reports relating to the Equal Remuneration Convention (No. 100) and Recommendation (No. 90) 1951, hereafter "general survey 1975".

[3] RCE 1969, Part Three, pp. 205-208.

71st Session of the International Labour Conference on equal opportunities and equal treatment for men and women in employment,[1] showed a continuing and, sometimes, widening wage gap between men and women workers. A fresh examination of the state of application of the principle of equal pay for work of equal value appears therefore timely.

3. Observance of the principle of equal remuneration has been an objective of the ILO since its foundation. The original text of the Constitution already recognised in its article 41,[2] among the general principles "of special and urgent importance", the principle that men and women should receive "equal remuneration for work of equal value". The principle is again enshrined in the preamble to the present Constitution. A number of Conventions and Recommendations adopted by the International Labour Conference prior to the 1951 instruments,[3] as well as in later years,[4] contain specific reference to the principle.

4. During the preparation of the Convention and Recommendation it was indicated[5] that efforts to bring about conditions that favour the application of the principle of equal remuneration are themselves closely connected with measures of social policy which are being taken with a wider objective than the achievement of equal treatment of men and women as regards remuneration. Consideration of the multiple and complex links between the principle of equal remuneration

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[1] International Labour Conference, 71st Session, 1985, Report VII: Equal Opportunities and Equal Treatment for Men and Women in Employment; and Report of the Committee on Equality in Employment (Provisional Record, pp. 36/1 to 36/19 and discussion pp. 40/1 to 40/9).

[2] Article 427 of the Treaty of Versailles.

[3] The Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30); the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71); the Social Policy in the Dependent Territories (Supplementary Provisions) Recommendation, 1945 (No. 74) and the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82).

[4] E.g., the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), provides that the aim of social policy shall be to abolish all discrimination among workers on grounds, inter alia, of sex in respect of wage rates, which shall be fixed according to the principle of "equal pay for work of equal value".

[5] ILC, 33rd Session, Geneva, 1950, Report V(1), p. 99.

and the position and status of men and women more generally in employment and society[1] has led the Conference to propose in Recommendation No. 90 adopted in 1951 a series of measures to be taken to facilitate the application of the principle of equal remuneration.[2] Several of these proposals have subsequently been made the subject of further international labour Conventions and Recommendations of either wider scope or greater detail. Thus, Paragraph 6(a) and (d) of Recommendation No. 90 aims at "ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance ..., for vocational training and for placement" and "promoting equality of men and women workers as regards access to occupations and posts" without prejudice to protective provisions; this has become a main theme of both the 1958 Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111).[3] Similarly, the principle in Paragraph 6(c) of Recommendation No. 90 calling for "welfare and social services which meet the needs of women workers, particularly those with family responsibilities" has been developed in a broader context in the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981.

5. Other international instruments also pay tribute to the principle of equal remuneration. The Universal Declaration of Human Rights, 1948 proclaims that "everyone, without any discrimination, has the right to equal pay for equal work" (Article 23, paragraph 2). The International Covenant on Economic, Social and Cultural Rights, 1966 calls for "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" (Article 7(a)(i)). The Convention on the Elimination of All Forms of Discrimination against Women, 1979, provides

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[1] See also paragraphs 100 and 101 below.

[2] See paragraphs 180 to 198.

[3] Equal remuneration without distinction on the basis of sex is also covered by the 1958 instruments, as the Committee observed in its 1963 general survey of the instruments concerned. The Committee pointed out that the obligations stemming from Conventions Nos. 100 and 111 are not identical. The elimination of discrimination based on sex in respect of remuneration is, under the terms of Convention No. 111, one of a number of elements in a general policy designed to promote equality of opportunity in respect of employment and occupation, which allows in some respects for a greater degree of flexibility than Convention No. 100. The Committee drew attention to the fact that when it is not considered possible to ratify Convention No. 100, this does not necessarily imply an impossibility to give effect to Convention No. 111 in this sphere. See RCE 1963, Part Three, para. 34, p. 187. Convention No. 111 has been ratified to date by 107 countries.

for "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 equality of work" (Article 11(1)(d)).

6. At the regional level, too, various instruments have been adopted for the promotion and application of the principle of equal remuneration. While Article 119 of the Treaty Establishing the European Economic Community, 1957 merely provided for the application of the principle that men and women should receive equal pay for equal work, the European Social Charter, 1961 recognises "the right of men and women workers to equal pay for work of equal value" (Article 4, paragraph 3). The European Community has adopted the same principle in a series of directives passed by its Council, in particular the Equal Pay Directive of 1975 and the Equal Treatment Directive of 1976.[1] On the basis of a mandate to examine the problems concerning the employment of women written into its Constitution (Article 3(3)(b)), the Arab Labour Organisation has also dealt with the question of equal remuneration for women in two Arab labour Conventions which refer to equal wages for similar work.[2] The African Charter on Human and People's Rights, 1981 (Article 15) guarantees every individual "equal pay for equal work". The American Declaration of the Rights and Duties of Man refers in general terms to equality of rights without distinction as to sex (among other grounds) and to the right to fair remuneration (Articles II and XIV).

Ratifications - prospects and difficulties

7. At present a total of 107 countries have ratified ILO Convention No. 100. Since the last survey was conducted in 1975, 24 new ratifications have been registered, maintaining the Convention among those most widely ratified by countries from all regions of the world. The Convention is also applicable without modification to nine non-metropolitan territories. Ratifications and declarations of application are listed in Appendix II.

8. From the reports supplied by countries which have not ratified the Convention, it appears that further countries may be ready to ratify. The Government of Kuwait indicates that the Convention will soon be examined with a view to studying the possibility of its ratification in the near future. In Uruguay, a tripartite working group has been established to consider the ratification of Conventions

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[1] Council Directives 75/117/EEC and 76/207/EEC.

[2] Convention on female workers, 1976 (No. 5), Article 3, and Convention on the determination and protection of wages, 1983 (No. 15), Article 13.

Nos. 100, 111 and 156. In Bahrain, ratification of the Convention is yet to be formally considered on a tripartite basis with the representative organisations of employers and workers. A number of other governments do not specify their intention to ratify but indicate that there are no difficulties in applying the Convention or no obstacles to its ratification.[1] Some governments indicate that the principle of the Convention is applied but consider ratification not opportune at present.[2] The Government of China indicates, for instance, that the principle has been recognised entirely and applied effectively, but since special regulations in the field are not yet available, it is not the time for the ratification of the Convention. In this connection, the Committee draws attention to the explanations provided in paragraphs 24 to 30 below regarding the promotional aspect of the Convention. In some countries,[3] it is not deemed possible yet to implement the principle of equal remuneration in all sectors, but detailed information is supplied on measures taken for its progressive application.

Available information and arrangement of the survey

9. Through the reports on the Convention submitted by ratifying and non-ratifying countries, and the reports on the Recommendation, information has been made available concerning 128 States and six territories. A table of reports received is given in Appendix II. The Committee has also been able to examine comments made by a number of workers' and employers' organisations on their governments' reports.[4] Finally, following its usual practice the Committee has sought to supplement the information available with research into legislation, official documents and other appropriate sources.

10. The present survey of the implementation of the principle of equal remuneration covers a great variety of situations. Thus, the references to national law and practice have been chosen to illustrate

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[1] Belize, Botswana, Burma, Democratic Yemen, El Salvador, Malaysia, Qatar.

[2] Burundi, China, Pakistan, Papua-New Guinea.

[3] Mauritius, Sri Lanka.

[4] Comments were received from the following countries: Argentina, Austria, Brazil, Finland, India, Japan, New Zealand, Norway, Portugal, Switzerland, United Kingdom.

most clearly the main problems and approaches to them, rather than to present an exhaustive list of all the situations which have given rise or might give rise to comment under the equal remuneration instruments. In the following chapters, the names of the countries which have ratified the Convention are underlined.

11. In examining the reports supplied by governments, the Committee has found itself in a position similar to that described in its 1984 general observation on the Convention. Again, the Committee has been materially assisted in its work by the detailed information furnished by a number of governments as well as workers' and employers' organisations, which have analysed the many forms that wage discrimination based on sex may take and the wide variety of measures taken or envisaged to implement the principle of equal remuneration. By contrast, the reports of other countries have tended to be so brief or so general that the Committee has had considerable difficulty in drawing conclusions about the situation in the countries concerned. The Committee hopes that its findings based on a number of the rather full reports that have been supplied may suggest ways in which other governments also could review and report their progress in implementing the principle of the Convention.

12. In the subsequent chapters, the scope and main requirements of the Equal Remuneration Convention and Recommendation will be recalled (Chapter II) before examining the degree to which the principle of equal remuneration for work of equal value has been made binding under national law (Chapter III), the machinery which may be available to promote, enforce or facilitate the implementation of the principle (Chapter IV), and the progress and problems noted in various countries with regard to effective compliance (Chapter V). A final chapter will draw the general conclusions of the survey.

CHAPTER II

SCOPE AND REQUIREMENTS OF THE EQUAL REMUNERATION CONVENTION AND RECOMMENDATION

13. Convention No. 100 and Recommendation No. 90 list a number of measures to be taken to promote, ensure, encourage or facilitate "the application of the principle of equal remuneration for men and women workers for work of equal value". In the present chapter, the Committee recalls the scope of this principle, starting from the definitions of the terms involved before examining the roles of governments and employers' and workers' organisations in the application of the principle.

Section 1. Definitions

(a) Remuneration

14. According to Article 1, paragraph (a) of the Convention, "remuneration includes the ordinary, basic or minimum wage or salary and any additional emoluments 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". This definition, which is couched in the broadest possible terms, seeks to ensure that equality is not limited to the basic or ordinary wage, nor in any other way restricted according to semantic distinctions.

15. Additional emoluments. The term "any additional emoluments whatsoever" brings within the ambit of the Convention, elements as numerous as they are diverse. During the preparation of the Convention, consideration had been given to enumerating more specifically the elements which, in addition to the ordinary, basic or minimum wage or salary, should be considered an integral part of remuneration for the purposes of the Convention and which should accordingly be paid without discrimination based on sex. In the event, however, the competent Conference committee preferred to accept the all-embracing

phrase "any additional emoluments whatsoever" over such formulations as "any increment, supplement, margin, bonus, allowance or other addition" and "all the benefits and advantages".[1] Thus, remuneration under the Convention includes, inter alia, wage differentials or increments based on seniority[2] or marital status,[3] cost-of-living allowances,[4] housing or residential allowances,[5,6] and family allowances,[6,7] paid by the employer, and benefits in kind such as the allotment and laundering of working clothes.[8]

16. Indirect elements of remuneration. The addition of the words "directly or indirectly" in the definition of remuneration in the Convention was designed to include certain emoluments which are not payable directly by the employer to the worker concerned - for example, holiday allowances paid out of a common fund managed by employers or workers.[9] In considering the coverage of the definition in Article 1, paragraph (a), it is not necessary, therefore, to determine whether particular considerations received by workers are made directly by employers or whether they are granted indirectly.

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[1] International Labour Conference, 33rd Session, 1950, Record of Proceedings (hereafter "RP"), Appendix VIII: Equal Remuneration, p. 508.

[2] ILC, 34th Session, 1951, Report VII(2), p. 43.

[3] RCE 1980, p. 142-143 (Indonesia) and p. 143 (Ireland) (observation of satisfaction); RCE 1981, p. 150 (Netherlands) (observation of satisfaction); RCE 1984, p. 194 et seq. (Greece) (observation of satisfaction).

[4] Direct request Denmark 1963.

[5] RCE 1981, p. 150 (France) and RCE 1984, p. 190 (Belgium) (observations of satisfaction).

[6] Progress towards equal treatment in the granting of these allowances often follows the elimination of the explicit or implicit presumption that "heads of household" or primary breadwinners are men - see below, paras. 86, 87, 211, 212 and 240.

[7] RCE 1985, p. 250 (Luxembourg) (observation of satisfaction).

[8] RCE 1984, p.198 (Norway).

[9] ILC, 34th Session, 1951, RP, Appendix X: Equal Remuneration, para. 9, pp. 614-615.

The Convention covers all components of remuneration - direct and indirect - which arise out of the employment relationship. This points to the importance to be attached to the phrase "arising out of the worker's employment" in delimiting the scope of the Convention.

17. "Arising out of the worker's employment" - the case of social security. The importance of the link between a worker's employment and payments to be considered under the Convention becomes particularly evident in the case of social security contributions and benefits. During the preparation of the 1951 instruments, the competent Conference Committee noted that allowances paid under social security schemes financed by the undertaking or industry concerned were part of the system of remuneration in the undertaking and were one of the elements making up wages in respect of which there should be no discrimination based on sex.[1] On the other hand, allowances made under a public system of social security were not to be considered as part of remuneration[2] and an amendment to add all social security benefits to the items included in remuneration was withdrawn after having been opposed on the ground that in certain countries social security benefits did not form part of remuneration.[3] It thus appears that a distinction was made between social security schemes financed by the employer or industry concerned - which were meant to be covered by the Convention - and benefits under "purely" public social security schemes which were considered outside its scope.[4]

(b) Workers

18. The Convention refers to "all workers" and "men and women workers". During the preparation of the Convention, a proposal to insert a provision to specify that the Convention should apply to "all wage earners and salaried employers, irrespective of the branch of economic activity in which they are employed" and enumerating a number of such branches was rejected after being opposed on the ground that the text already covered all workers and that any enumeration would

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[1] ILC, 34th Session, 1951, Report VII(2), p. 43.

[2] ILC, 34th Session, 1951, Report VII(1), p. 15.

[3] ILC, 34th Session, 1951, RP, Appendix X: Equal Remuneration, para. 8, p. 614.

[4] In paragraph 71 of its general report of 1985, the Committee noted the measures taken in several countries to apply the principle of equal treatment for men and women in matters of social security and considered it would be opportune to study the question of adopting international standards on this subject.

involve a risk of omissions.[1] As the Committee concluded in paragraph 170 of its 1975 general survey on equal remuneration, "the rule must be that the equal pay principle shall apply everywhere".

(c) Work of equal value

19. Under the Equal Remuneration Convention and Recommendation of 1951, following the words of the Preamble to the ILO Constitution, equal remuneration for men and women workers is to be established "for work of equal value". Thus, unlike a number of other instruments on equal treatment, the ILO standards go beyond a reference to "the same" or "similar" work, in choosing the "value" of the work as the point of comparison.

20. Criteria. According to Article 1 (b) of the Convention, the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration established without discrimination based on sex. While clearly excluding any consideration related to the sex of the worker, this definition provides no positive indication as to how the "value" of work is to be determined. In preparation of the 1951 instruments, the Office report examined three categories of possible criteria: relative performance of men and women on comparable work, cost of production or overall value to the employer, and finally, "job content".[2] This last approach had "proved most satisfactory for all concerned,"[3] and the text of proposed conclusions prepared by the Office defined the phrase "equal remuneration for men and women workers for work of equal value" as meaning that "remuneration rates shall be established on the basis of job content, no discrimination being made on the basis of the sex of the worker".[4]

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[1] ILC, 34th Session, 1951, RP, Appendix X: Equal Remuneration, para. 12, p. 615. It may be recalled that in its interpretation of the 1919 Convention concerning the Night Work of Women the Permanent Court of International Justice held the term "workers" to cover both manual and non-manual workers - see ILO, Official Bulletin, Vol. XVII, No. 5, 1932, p. 187.

[2] ILC, 33rd Session, 1950, Report V(1), pp. 21 to 40.

[3] ibid., p. 40.

[4] ILC, 33rd Session, 1950, RP, Appendix VIII: Equal Remuneration, Point 3, p. 508.

Following a discussion in the competent Conference Committee,[1] the reference to "job content" was eliminated from the definition of work of equal value in Article 1 (b) of the Convention and transferred to a separate provision on the objective appraisal of jobs on the basis of the work to be performed, which became Article 3 of the Convention.

21. Job evaluation. Article 3, paragraph 3 of the Convention complements the purely negative definition in Article 1 (b) ("without discrimination") by specifying that "differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration ... for work of equal value". The Convention does not provide an unconditional obligation to take measures for the objective appraisal of jobs on the basis of the work to be performed, and even less imposes the choice of a particular job evaluation method;[2] but it follows from Article 3, paragraph 3 that some form of objective appraisal of jobs on the basis of the work to be performed is the only method set forth in the Convention for differentiating wages in conformity with the principle of equality. As the Committee concluded in paragraph 168 of its 1975 general survey, adoption of the idea of work of equal value necessarily implies some comparison between jobs; when the value of different jobs has to be compared, there should exist appropriate machinery and procedures to ensure an evaluation free from discrimination based on sex.

(d) Discrimination based on sex

22. Reach of comparison. The Convention does not require the abolition of differences in the general wage level between various regions, sectors or even enterprises where such differences apply equally to men and women. However, as the Committee pointed out in its 1975 general survey,[3] the principle of equal remuneration for men and women workers for work of equal value extends beyond cases where work is performed in the same establishment, and beyond jobs performed by both sexes. Discrimination may first of all arise out of the existence of occupational categories and jobs reserved for women.[4] More generally,

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[1] ibid., p. 509 et seq.

[2] Article 3, paras. 1 and 2. See also paras. 138 to 152 below.

[3] Para. 38.

[4] 1975 general survey, para. 126.

and in spite of the difficulties associated with a broader comparison of jobs, the fact that women workers are more heavily concentrated in certain jobs and in certain sectors of activity has to be taken into account so as to avoid or redress a biased evaluation of qualities traditionally considered as "peculiar to women". In applying the principle of the Convention "by means appropriate to the methods in operation for determining rates of remuneration" (Article 2, paragraph 1), the reach of the comparison between jobs performed by men and women should be as wide as allowed by the level at which wage policies, systems and structures are co-ordinated, taking into account also the degree to which wages fixed independently in different enterprises may be based on common factors unrelated to sex.

23. Explicit or implicit discrimination. In referring to "rates of remuneration established without discrimination based on sex", the Convention covers not only open discrimination against either sex, but also cases where apparently objective criteria such as performance or job difficulty are explicitly or implicitly defined or applied with reference to the workers' sex. It connotes the elimination of all sex-based prejudice in the wage-fixing process. Thus, the Committee has emphasised in paragraph 38 of its 1975 general survey that the criterion of output, while legitimate in itself, becomes unacceptable if only women are required to show proof of their output or if different wage groups are established on the basis of the average output of each sex. Likewise, the various provisions of a protective character, such as the prohibition of certain forms of work for women, that may be laid down by laws or collective agreements cannot be invoked to justify differential wage scales.[1] Finally, it is not sufficient to replace separate wage scales for "male" and "female" jobs by similar scales worded in neutral language but preserving both the inherited job profiles and existing wage differentials; in such cases there remains a presumption of discrimination based on sex, and job classification methods need to be replaced by new ones based on criteria having no connection with the former distinctions based on sex.[2]

Section 2. The role of governments in the application of the principle of equal remuneration

24. Article 2, paragraph 1 of the Convention provides that each member State shall, by means appropriate to the methods in operation for determining rates or remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of

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[1] RCE 1980, p. 138 (Argentina).

[2] RCE 1969, p. 110 (Italy).

the principle of equal remuneration for men and women workers for work of equal value. Thus, a ratifying government's obligation to ensure implementation of the principle of equal remuneration is limited to those areas where such action is consistent with the methods in operation for determining rates of remuneration, i.e. where the government is in a position to exert direct or indirect influence on the level of wages.[1,2] In areas where the right to collective bargaining excludes the Government from the wage-fixing process, the government is to promote the application of the principle.[2] Consequently, Paragraph 3(1) of the Recommendation suggests that "where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value"; but there is no general obligation under the Convention to enact legislation to enforce the principle of equal remuneration. According to Article 2, paragraph 2 of the Convention, the principle may be applied by means of national laws or regulations, legally established or recognised machinery for wage determination, collective agreements or a combination of these methods. Under Article 4, each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of the Convention.

(a) Scope of the State's obligation to ensure the application of the principle of equal remuneration

25. A State having ratified the Convention is obliged to ensure the application of the principle of equal remuneration wherever such action is consistent with the methods in operation for determining rates of remuneration, that is, principally, in the following cases: where the State is the employer or otherwise controls business; where the State is in a position to intervene in the wage-fixing process, i.e., principally, where the rates of remuneration are subject to public control or statutory regulation, and where there is legislation bearing on equal treatment in the field of remuneration.

26. State employment or control over business. A State's obligation to ensure the application of the principle of equal remuneration for work of equal value to its own employees follows from Article 2, paragraph 1 of the Convention and is reflected in Paragraph 1(a) of the Recomendation, which refers to "all employees of central government departments or agencies", and in Paragraph 2(b),

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[1] RCE 1956, Part IV, p. 149.

[2] ILC, 39th Session, 1956, RP, Appendix VI: Report of the Committee on the Application of Conventions and Recomendations, p. 648.

which refers to "industries and undertakings operated under public ownership". Two other forms of public control over business which put the authorities in a position to influence the employer to ensure the application of equal remuneration under the Convention are also mentioned in the Recommendation: industries and undertakings operated under public control (Paragraph 2(b)) and, where appropriate, work executed under the terms of public contracts (Paragraph 2(c)).

27. State intervention in the fixing of wages. To the extent to which the State intervenes in the field of wage-fixing, the government is barred from referring to the principle of free collective bargaining and thus becomes responsible under Article 2, paragraph 1 of the Convention for ensuring the application of equal remuneration. One example is mentioned in Paragraph 2(a) of the Recommendation: "the establishment of minimum or other wage rates in industries and services where such wage rates are determined under public authority". Similarly, where the binding force of collective agreements establishing wage rates is extended by state authority to workers or enterprises which were not represented by the parties to the agreement, the State becomes responsible for ensuring the observance of the principle of equal remuneration.[1]

28. Legislation bearing on equal treatment. While there is no general obligation to enact legislation under the Convention, which may also be applied by other means according to Article 2, paragraph 2, it follows from Article 2, paragraph 1 that any existing legislative provision which violates the principle of equal remuneration must be amended so as to comply with the Convention. Furthermore, legislative action by the State for the protection of equality may extend the government's competence to intervene in the field of wages and, hence, widen the scope for ensuring application of the principle under Article 2, paragraph 1 of the Convention. Many ratifying States have in fact enacted statutory instruments on equal rights or equal treatment applicable to remuneration in areas where wages are fixed without the participation of the authorities. Where binding provisions of the national Constitution or legislation already impose general observance of the principle of equal remuneration for work of equal value, the State is in a legal position to enforce the principle and thus responsible for ensuring its application under Article 2, paragraph 1 of the Convention.[2]

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[1] RCE 1965, pp. 111-112 (Belgium).

[2] RCE 1963, p. 114 (Italy).

(b) Scope of the State's obligation to promote the application of the principle of equal remuneration

29. Wherever the State is not in a position to ensure the application of the principle of equal remuneration,[1] it must promote its application under Article 2, paragraph 1. The great flexibility allowed by the Convention in adapting the means of application of the principle of equal remuneration to the wage-fixing methods in operation in the country has its obvious counterpart in the principle that governments must act in good faith and must not try to elude their obligations on the pretext that they are prevented from interfering in the wage-fixing process. The obligation to promote the application of the principle, under Article 2, paragraph 1, as well as the obligation to co-operate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of the Convention (Article 4) call for positive action. The Convention and Recommendation both refer to a variety of means by which the application to all workers of the principle of equal pay for work of equal value is to be furthered, where appropriate. These will be considered in Chapter IV below.

30. While the Convention is flexible regarding the choice of measures to be taken for its implementation, it allows no compromise regarding the objective to be pursued. Thus, various proposed "saving clauses" to take account of the financial and economic conditions of countries were rejected by the competent Conference Committee when preparing the Convention;[2] likewise, it has been noted that the number of women employed in a given sector of the economy cannot justify an exception from the principle of equal remuneration for work of equal value.[3]

Section 3. The role of employers' and workers' organisations

31. Reference has already been made[4] to the obligation of ratifying States, under Article 4 of the Convention, to co-operate with the employers' and workers' organisations concerned for the purpose of

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[1] See paras. 25 to 28 above.

[2] ILC, 33rd Session, 1950, RP, Appendix VIII: Equal Remuneration, point 4, pp. 510-511; ILC, 34th Session, 1951, Report VII(2), p. 46 and RP, Appendix X: Equal Remuneration, para. 14, p. 615.

[3] RCE 1969, p. 110 (Italy).

[4] See paras. 24 and 29 above.

giving effect to the provisions of the Convention. The Recommendation provides in Paragraph 3(2) for employers and workers to be fully informed as to legal requirements for the application of the principle of equal remuneration, and in Paragraphs 1, 2 and 4 for the consultation with industrial organisations with a view to the adoption of a number of measures designed to bring about the application of the principle in all occupations. Under Paragraph 5, the establishment where appropriate of methods for objective appraisal of the work to be performed is to be made or encouraged in agreement with the employers' and workers' organisations concerned, and according to Article 3, paragraph 2 of the Convention, the methods to be followed in this appraisal may be decided upon by the parties to collective agreements where wage rates are determined by such agreements. The respect displayed in the Convention for the right to collective bargaining involves, for the employers' and workers' organisations concerned, a corresponding share in the responsibility for the effective application of the principle of equal remuneration.

CHAPTER III

CONSTITUTIONAL AND LEGAL PROVISIONS GIVING GENERAL EFFECT TO THE PRINCIPLE

Section 1. Constitutional provisions

32. The information supplied by a number of countries refers to provisions of the national constitution or fundamental law as the basis of national policy to implement the principle of equal remuneration for men and women workers. There are, however, certain differences from one country to another in the terms used and in the extent to which they correspond to the Convention. Moreover, considerable variation is to be found in the extent to which constitutional provisions may be invoked to enforce directly the principles they proclaim and as to whether the guarantees they set are binding on public authorities only or have a direct bearing also on the relationships between individuals.

33. The constitutions of some countries contain provisions stating that all citizens[1] or all persons[2] are equal in general terms which may be interpreted to include equality for women and men. Many constitutions are more specific and prohibit discrimination, inter alia, on the basis of sex or require equal rights for women and

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[1] For example, Belgium (article 6 of the Constitution of 1831, as amended); Finland (article 5 of the Constitution of 1919; Tunisia (article 6 of the Constitution of 1959).

[2] Argentina (article 16 of the Constitution of 1853, as amended; see also article 14, referred to below); Costa Rica (article 33 of the Constitution of 1949, as amended by law 4123 in 1968; see also article 37, referred to below); Thailand (article 23 of the Constitution of 1978); Uruguay (article 8 of the Constitution of 1967).

men generally.[1] A significant number of constitutions expressly prohibit discrimination against women in employment often in terms which call for equality in respect of their economic and social rights.[2] In some cases, the economic and social fields in which women are to be ensured equal rights and opportunities are spelled out in greater detail, listing among other matters remuneration, while "pay in accordance with the quantity and quality of work" is mentioned as a general principle in connection with the right to work.[3]

34. The principle of equal remuneration is stated explicitly in the constitutions of many countries; the formulation "equal pay for equal work" is most often encountered, sometimes without reference

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[1] For example, Algeria article 39 of the Constitution of 1976; Antigua and Barbuda, section 14 of the Constitution of 1981; Austria, article 7(1) of the Constitution of 1955; Bangladesh, articles 28 and 29 of the Constitution of 1972; Bulgaria, articles 35 and 36 of the Constitution of 1971; Canada, section 15 of the Constitution Act, 1982; Federal Republic of Germany, article 3 of the Basic Law of 1949; Mozambique, article 29 of the Constitution of 1975; Nepal, article 10 of the Constitution of 1962; Pakistan, article 25 of the Constitution of 1973; Peru, article 2 of the Constitution of 1979; Rwanda, article 16 of the Constitution of 1978; Sao Tomé and Principe, article 15(2) of the Constitution of 1982; Sri Lanka, section 27(6) of the Constitution of 1978; Sweden, sections 2 and 16 of the Constitution of 1975; Turkey, article 10 of the Constitution of 1982; Zaïre, article 12 of the Constitution of 1978.

[2] For example, Afghanistan, Article 28 of the Basic Principles of 1979; Burma, articles 22 and 154 of the Constitution of 1974; Cape Verde, sections 22 and 23 of the Constitution of 1981; Czechoslovakia, article 20(1) and (3) and 27 of the Constitution of 1960 (LS 1960 - Cz. 2); Ecuador, article 19(4) of the Constitution of 1979; Equatorial Guinea, article 20 of the Constitution of 1982; Guinea-Bissau, article 16 of the Constitution of1973; Hungary, article 62 of the Constitution of 1949, as amended in 1972; Japan, article 14 of the Constitution of 1946; Mongolia, article 84 of the Constitution of 1960; Papua New Guinea, section 2 of the National Constitution; Romania, article 17 of the Constitution of 1969, (LS 1969 - Rum. 1); Yugoslavia, articles 154 and 160 (3) of the Constitution of 1974 (L.S. 1974 - Yug. 1).

[3] Byelorussian SSR, articles 33 and 38(1) of the Constitution of 1978; USSR, articles 35 and 40(1) of the Constitution of 1977 (LS 1977 - USSR 2). Similar provisions are contained in the constitutions of other countries with planned economies.

to the sex of the worker[1] but in the majority of cases specifying for men and women,[2] or complemented by a separate prohibition of discrimination based on sex.[3] While the terms "equal pay for equal work" do not necessarily appear to guarantee a field of comparison as wide as if they referred to "work of equal value", they may be applied in that sense. Both constitutional provisions on equal rights in general for men and women and on equal pay for equal work have in fact been interpreted by the courts[4] or developed in legislation in the sense of the principle of "equal pay for work of equal value". This has even occurred where a constitutional guarantee of equal remuneration is limited to "the same work".[5]

35. In various constitutions, the principle of equal remuneration for equal work has been specifically linked to volume, nature

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[1] For example, Argentina, article 14(2) of the Constitution of 1853, as amended; Costa Rica, article 57 of the Constitution of 1949; Nicaragua, article 30 of the Statute of Rights and Guaranties of Nicaraguans.

[2] E.g., China, article 48 of the Constitution of 1982 (**LS 1983** - China 1); Congo, article 17 of the Constitution of 1979; Guyana, article 22(1) of the Constitution of 1980; India, article 39(d) of the Constitution of 1949; Italy, article 37 of the Constitution of 1947 **LS** - 1947 - It. 5); Malta, section 15 of the Constitution of 1964, as amended; Mexico, article 123 A.VII and B.V of the Political Constitution of 1917, as amended; Nigeria, section 17(3) of the Constitution of 1979; Panama, article 62 of the Constitution of 1972, as amended; Poland, article 78(2) of the Constitution of 1952, as amended up to 1976; Portugal, article 60 No. 1(a) of the Constitution of 1982; Suriname, article 12(1) of the Statute on Basic Rights and Duties of the Suriname People of 1982.

[3] Cuba, articles 41 to 43 of the Constitution of 1976; Venezuela, articles 61 and 87 of the Constitution of 1961.

[4] See below, para. 39.

[5] In Malta, article 15 of the Constitution of 1978 provides that the State shall aim to ensuring that women workers enjoy equal rights and the same wages for the same work as males; section 5 of the Minimum Weekly National Standard Order 1976 specifies that "in no case shall the wage payable to a female employee be less than that payable to a male employee in respect of equal work or work of equal value".

and quality of the work,[1] or to equality of efficiency,[2] seniority,[3] working time and the post[4] and more generally to equal conditions[5] or identical conditions and the same employer or establishment.[6] Elsewhere, the principle of the Convention, "equal remuneration for work of equal value"[7] or a prohibition of differences in wages and criteria of engagement based on sex[8] are written into the national constitution.

36. The legal and practical bearing of constitutional guarantees of equal treatment or equal remuneration varies considerably. According to the letter and intent of the provision itself and the constitutional and legal system of the country, the guarantee of equality may set the framework for legislative action or may also be directly invoked in the courts; it may be aimed at the public authorities as part of the executive branch or as employers, and it may also govern private employment.

37. Among the constitutions guaranteeing in general terms the equality of citizens of either sex, a certain number specify that all citizens shall have equal access to, or equal opportunity in respect

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[1] Portugal, article 60, No. 1(a) of the Constitution of 1982.

[2] Costa Rica, article 57 of the Constitution of 1949; Guatemala, article 102(c) of the Constitution of 1985 (see also articles 4 and 102(k)); Honduras, article 128(3) of the Constitution of 1982; Nicaragua, article 30 of the Statute of Rights and Guarantees of Nicaraguans.

[3] Guatemala and Honduras, loc. cit.

[4] Honduras, loc. cit.

[5] Guatemala, loc. cit.; Panama, article 62 of the Constitution of 1972, as amended.

[6] El Salvador, article 38(1) of the Constitution of 1983; Peru, article 43(2) of the Constitution of 1979 (LS 1984 - Peru 1).

[7] e.g., Greece, article 22(1)(b) of the Constitution of 1975; Switzerland, article 4(2) of the Constitution, as amended in 1981.

[8] Brazil, article 165 III of the Constitution of 1967, as amended up to 1982; Spain, article 35(1) of the Constitution of 1978.

of, public employment and office.[1] Elsewhere, it is stated that every citizen shall have access, on equal terms, to every job and every function in society.[2] In general, those constitutional provisions referring to equal remuneration[3] or equal rights in the economic and social sphere[4] are drafted in terms applying both to public and private employment. However, in certain cases such provisions are not self-executing but call on the State[5] or the legislature[6] to ensure equal pay for equal work; occasionally, it is explicitly stated that a constitutional provision calling for laws to ensure equal remuneration (throughout the economy) shall not be enforceable by any court, while the same constitution guarantees equality of opportunity for all citizens in employment under the State, and non-discrimination by the State on grounds of sex, under separate provisions which are to override any contrary laws and thus be fully enforceable.[7]

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[1] e.g. Algeria, article 44 of the Constitution of 1976; Bangladesh, article 29 of the Constitution of 1972; Morocco, article 12 of the Constitution of 1962; Nepal, article 10(2) and (3) of the Constitution of 1962; Zaïre, article 12 of the Constitution of 1978.

[2] Yugoslavia, article 160(3) of the Constitution of 1974 (LS 1974 - Yug. 1); see also Brazil, articles 97 and 165 III of the Constitution.

[3] See para. 34 above.

[4] See para. 33 above.

[5] e.g., Malta, section 15 of the Constitution of 1964 as amended ("The State shall aim at ensuring ..."); Sri Lanka, section 27(6) of the Constitution of 1978; Sudan, article 56 of the Constitution of 1973.

[6] e.g., Argentina, article 14(2) of the Constitution of 1853, as amended; India, articles 37 and 39(d) of the Constitution of 1949; Mexico, article 123 A VII (for private employment) and B V (for government employment) of the Political Constitution, as amended; Venezuela, article 87 of the Constitution of 1961.

[7] India, articles 13, 15, 16, 37 and 39(d) of the Constitution of 1949. In fact, an "Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto" (LS 1976 - Ind. 1) the scope of which extends to the private sector, was adopted in 1976 and provides for special authorities with the powers of a civil court to be appointed for hearing and deciding claims and complaints.

38. Often, the constitutional guarantees of equal remuneration or equal treatment in employment in general appear to be directly applicable, but the fact that in most cases the constitutional principles have been restated and developed in ordinary legislation no doubt accounts for the fact that few governments have supplied information on court action based directly on the constitution. Nevertheless, in certain countries, court decisions based directly on constitutional provisions considered self-executing have played an important role in applying the Convention and in developing more detailed principles which were mostly later included in legislation.

39. In its 1975 general survey (paragraphs 26 to 28), the Committee mentioned the cases of the Federal Republic of Germany and Italy, where constitutional provisions guaranteeing men and women more generally equal rights[1] or equal pay for equal work[2] were drawn upon by the courts to establish the principle of equal remuneration for work of equal value in the sense of the Convention as a mandatory right which binds the State and the social partners and may be relied upon by anyone before the courts in regard to any wage-fixing statute or collective or private agreement. In both countries, the jurisprudence developed by the courts responsible for applying the constitutional provisions has now been consolidated in legislation concerning equal pay and equal treatment for men and women in employment (see paragraph 49 below). In Greece, the Council of State recently ruled, on the basis of the principle of equal remuneration as laid down in article 22(1) of the Constitution, that an award granting a marriage allowance to men and women under the same conditions, but excepting women whose husbands worked for the same company or the State was null and void.[3] In Switzerland, where the Constitution remains the basis for applying the principle of the Convention, a general provision of the Constitution concerning equality before the law was supplemented in 1981 by a provision under which "men and women shall be entitled to equal wages for work of equal value". Although the provision is considered self-executing and has

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[1] Federal Republic of Germany, article 3 of the Basic Law of 1949.

[2] Italy, article 37 of the Constitution of 1947.

[3] Judgement 520/1983, quoted from: Commission of the European Communities, Report of the Commission to the Council on the Application of the Principle of Equal Pay for Men and Women in Greece, COM(84) 667 final, Brussels, 4 December 1984.

been drawn upon in court practice[1], a parliamentary initiative has been introduced with a view to ensuring legislative application of the principle.

Section 2. Legislative provisions

A. General developments

40. The trend to make provision by legal enactment for the general application of the principle of equal remuneration - already notable in 1975[2] - has continued over the past decade, leaving out but a minority of countries. Some countries rely, for the time being, on constitutional provisions to guide government policy and programmes and wage-fixing bodies.[3] One ratifying State[4] and a few others not bound by the Convention[5] have indicated in their reports that there was at present no legal enactment for the general application of the principle of equal remuneration, which was, however, government policy. Some governments have referred to general labour legislation which, although its provisions apply implicitly[6] or explicitly[7] to men and women without distinction, does not positively call for observance of the principles of equal treatment or equal remuneration.

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[1] In a decision of 11 November 1983 (ref. No. P 1402/83rd) the Federal Court held that the principle of equal remuneration must be observed in both private and public law, taking precedence over discriminatory salary systems established in or under laws and regulations.

[2] 1975 general survey, para. 29 et seq.

[3] Ratifying States: Nigeria, Switzerland. Non-ratifying States: China, Suriname, Uruguay.

[4] Barbados.

[5] Bahamas, Belize, Cyprus, Liberia (the draft new Labour Law shall give effect to the Convention), Malaysia, Pakistan (however, Rule 15 of the West Pakistan Minimum Wages Rules, 1962 provides that in fixing minimum rates of wages the principle of equal remuneration for men and women workers for work of equal value shall be applied), Singapore (however, there are administrative provisions for the application of the principle in the public sector). Non-metropolitan territory: United Kingdom (Hong Kong).

[6] Ratifying States: Chile, Jordan, Malawi, Morocco, Saudi Arabia, Sierra Leone, Yemen, Zambia. Non-ratifying States: Botswana, Kenya, Lesotho, Qatar.

[7] Lebanon.

41. The Convention requires the principle of equal remuneration to be complied with by national authorities in their field of competence, including legislation, but does not impose the principle to be restated as such in national legislation. This however is contemplated in paragraph 3(1) of the Recommendation, according to which "provision should be made by legal enactment" for the general application of the principle "where appropriate in the light of the methods in operation for the determination of rates of remuneration". Wherever rates of remuneration are determined otherwise than through the law itself, it appears that the mere neutrality of the law does not afford protection against discrimination in remuneration, and accordingly, the great majority of countries have now written the principle of equal remuneration into legislation. There is, however, a certain variety of approaches regarding the concepts and definitions used, the scope of the law and last but not least, the means provided for its implementation.

42. In a number of countries, the definitions used to ensure equality have not only come closer to those of the Convention over the last decade but have also become more practical leading up to more objective criteria for evaluating jobs and defining more concretely what is discrimination as well as remuneration. Furthermore, while the majority of countries have now written the principle of equal pay into their labour codes, a growing group of States have enacted special legislation, being often of wider application, and establishing special machinery for translating the principle into practice. Many difficulties often encountered in realising equal remuneration for work of equal value (e.g.; with regard to the evaluation of practically segregated jobs, or the attribution of benefits such as family or housing allowances) are intimately linked to the general status of women and men in employment and society; it is therefore not surprising that most of these States have rapidly broadened the scope of their relevant legislation to deal not only with pay, but comprehensively with all aspects of equality of opportunity and treatment for men and women related to employment.

43. A comparison between the following survey of legal developments and the review in Chapter V, reflecting the governments' indications on progress and problems noted in the practical implementation of the principle of equal pay, will confirm a paradoxical observation made by the Committee over the years in supervising the application of the Convention: quite often, a relative scarcity of national standards for the general application of the principle corresponds to a situation where for years its implementation in practice is not considered to call for further action; once such action gets under way, however, and the further legal tools for implementing the principle are developed, the more the existence of problems in practice may be brought to the surface, thus initiating

true progress. The participation of employers' and workers' organisations, as well as public authorities, plays a crucial role in this development.

B. Concepts of equality

44. In its 1975 general survey[1] the Committee set out various definitions used in national legislation to compare the work of men and women, ranging from the "same work" or "equal work" to "work of equal value". While the number of laws adopting the equivalence concept of the Convention has increased considerably over the past decade, some texts limit the scope of comparison to the "same" work, others extend it to "same or similar" work, and many definitions in national legislation still refer to "equal work" (or have been so translated). Due to the ambiguity of the term "equal" which may be interpreted narrowly as "same", or as "like in quality, nature or status" or as "identical in value", great importance attaches to the specific criteria often referred to in this connection by the law in order to compare either job requirements or the work actually performed. For the sake of convenience, the basic definitions at present in force are set out below according to the formula used, such as "same work", "similar work", "equal work" or "work of equal value", while any additional criteria are wherever possible dealt with subsequently (see paragraphs 51 et seq.). Finally, since the Convention defines "equal remuneration for men and women workers for work of equal value" as "rates of remuneration established without discrimination based on sex" (Article 1(b)), separate consideration will be given to national provisions which broach the issue, not within the limits of comparing concrete jobs, but from the viewpoint of eliminating sex-based discrimination from remuneration or employment in general, sometimes developing in greater detail the concept of discrimination.

I. Comparing jobs

(a) The basic formulas: from equal remuneration for "the same work" to equal remuneration for "work of equal value"

45. Same work. A few labour codes limit the principle of equal remuneration to the same work: for "the same work"[2] a woman worker is to be granted the same wage as a man in Kuwait. In Papua

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[1] Paragraphs 33 to 51.

[2] Section 27 of the Labour Law for the Private Sector, No. 38 of 1964.

New Guinea[1] an employer who fails to pay a female employee the same wages as a male employee "employed at the same level in the same work" is guilty of an offence. In Egypt[2] and the Syrian Arab Republic[3], female workers shall be subject to all the stipulations governing the employment of male workers without discrimination in the same job; in the Libyan Arab Jamahiriya, an employer shall not discriminate in wages between men and women if the conditions of work and nature of the work are the same[4]. While a reference to "same work" appears narrower than the principle of the Convention, it may in practice be interpreted as if it extended to work of equal value[5]. Such is the practice of employers' and workers' organisations in Denmark, where section 1 of the Act of 1976 respecting equal wages for men and women[6] guarantees men and women employed at the same workplace equal wages for the same work. This provision is none the less to be formally amended in accordance with actual practice so as to make it clear that equal remuneration must be paid both for the same work and for work which is given the same value.

46. Substantially identical work. In Ghana[7] and Israel,[8] an employer shall pay to a female worker a wage equal to the wage paid to a male worker for "the same or substantially the same", or for "identical or substantially identical work". In Ghana, work shall be deemed to be identical or substantially identical "if the job, duties or services the employees are called upon to perform are identical or substantially identical".[9] The Committee has asked the Government to supply information on the practical application of this provision.[10]

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[1] Section 97(b) of the Employment Act, No. 54 of 1978.

[2] Section 151 of the Labour Code of 1981 (LS 1981 - Egypt 2).

[3] Section 130 of the Labour Code of 1959 (LS 1959 - UAR 1).

[4] Section 31 of the Labour Code (LS 1970- Libya 1). Similarly, section 1 of Act No. 15 of 1981 concerning the wage system of national workers refers to equal remuneration for equal work and responsibilities.

[5] See also the last footnote to para. 34 above.

[6] LS 1976 - Den 1.

[7] Section 67 of the Labour Regulations, 1969.

[8] Section 1 of the Male and Female Workers (Equal Pay) Law, 5724-1964, as amended in 1973.

[9] Section 68 of the Labour Regulations, 1969.

[10] Direct Request 1984, point 2.

47. Similar work. In Ethiopia,[1] the same initial wage shall be paid for similar jobs in an undertaking. In a number of other countries, reference to same or similar nature of work is complemented by further criteria which are examined in paragraphs 51 to 62 below, and which may cut across the categories of same, similar or equal in value. Thus, in Ireland, the scope of "like work" ranges from "same work" to work equal in value "in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions".[2]

48. Equal work. The reference to equal remuneration "for equal work in the same service and in the same undertaking", under the Rural Labour Code[3] still in force in Cape Verde and Sao Tomé and Principe, has been noted by the Committee to fall short of the principle of the Convention.[4] In the Islamic Republic of Iran,[5] Spain[6] and the United Arab Emirates,[7] men and women shall be paid equal remuneration "for equal work". In reply to requests for further information concerning the actual scope of this provision, the Governments of the Islamic Republic of Iran[8] and Spain[9] have indicated that it refers to the concept of work of equal value. In the case of Spain, this followed from the intention of the provision which was not limited to guaranteeing equality between identical work but was to avoid all discrimination in remuneration based on sex, as well as from the provisions of the national Constitution[10] and the Convention which was part of the national legal order. Furthermore,

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[1] Section 43 of the Labour Proclamation (LS 1975 - Eth. 1).

[2] Section 3 of the Anti-Discrimination (Pay) Act 1974 (LS 1974 - Ire. 1).

[3] (LS 1962 - Por. 1), section 69(1).

[4] Direct requests, Cape Verde, 1984; Sao Tomé and Principe, 1985.

[5] Section 23 of the Labour Act of 1959 (LS 1959 - Iran 1).

[6] Section 28 of the Worker's Charter of 1980 (LS 1980 - Sp. 1).

[7] Section 32 of Law No. 8 of 1980 on Employment Relationships (LS 1980 - UAE 1).

[8] Article 22 report for the period ending 30 June 1976.

[9] Article 22 report for the period 1977-78 (referring to s. 10(2) of the Employment Relationships Act, 1976 (LS 1976 - Sp. 1) which also guaranteed equal remuneration for equal work and which was superseded by the 1980 Worker's Charter) and subsequent article 22 reports.

[10] See above, paragraph 35 in fine.

the Government referred in this connection to the complementary role of objective job evaluation systems; information on the methods of job evaluation has also been supplied by the Islamic Republic of Iran. In many other countries, legal provisions referring to "equal work" further define their scope through criteria which are set out in paragraphs 52 to 62 below.

49. Work of equal value. Since 1975, the number of legal enactments calling specifically for observance of the principle of equal remuneration for work of equal value has increased considerably. Such provisions exist now in general labour legislation or special laws on equal treatment, inter alia, in the following countries: Argentina,[1] Brazil,[2] Canada,[3] Equatorial Guinea,[4] France,[5] Federal Republic of Germany,[6] Greece,[7] Haiti,[8] Iceland,[9] Indonesia,[10]

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[1] Section 172 of the consolidated text of the rules governing contracts of employment of 1976 (LS 1976 - Arg. 1).

[2] Section 5 of the Consolidation of Labour Laws of 1943 as amended (LS 1985 - Bra. 1; in the English translation of section 5, the reference to equal value is missing). Section 461 contains, however, a more restrictive formula, limiting equal pay for work of equal value to identical duties performed for the same employer in the same locality.

[3] Section 11 of the Canadian Human Rights Act of 1977; the Manitoba Pay Equity Act of 1985 (which is to apply to the civil service, Crown corporations and major funded external agencies) and the Quebec Charter of Human Rights and Freedoms of 1975 also require equal pay for work of equal value, while other provinces and territories refer to work which is the same, similar or substantially the same or similar.

[4] Section 53(2) of the Labour Code of 1984.

[5] Section 1 of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3), as amended by section 5 of Act No. 83-635, inserted in the Labour Code as section L.140-2 (LS 1983 - Fr. 2).

[6] Section 3 of the Labour Law (European Communities Harmonisation) Act (LS 1980 - Ger. F.R. 3), inserted in the Civil Code as section 612(3)

[7] Section 4 of Act No. 1414 respecting the application of the principle of equality of the sexes in employment relationships (LS 1984 - Gr. 1).

[8] Section 317 of the Labour Code brought up to date in 1984.

[9] Article 4 of the Law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985) which, however, refers to "equally valuable and comparable work".

[10] Article 3 of Government Regulation No. 8 of 1981.

Ireland,[1] Italy,[2] Luxembourg,[3] Malta,[4] Netherlands,[5] Norway,[6] Philippines,[7] Portugal,[8] Somalia,[9] Sweden,[10] United Kingdom.[11] In Denmark and Finland, draft equal treatment legislation is to embody

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[1] Section 2, read together with section 3(c) of the Anti-Discrimination (Pay) Act 1974 (LS 1974 - Ire. 1).

[2] Section 2 of Act No. 903, respecting equality of treatment as between men and women in questions of employment (LS 1977 - It. 1).

[3] Section 1 of the Grand-Ducal Regulations of 1974 concerning equality of remuneration between men and women.

[4] Section 5 of the Minimum Weekly Wage National Standard Order, 1976, which according to the Government's report covers all wage structures including those set up by collective agreement.

[5] Section 2 of the Equal Wages for Women and Men Act of 1975 (LS 1975 - Neth. 1).

[6] Section 5 of the Act respecting equality between the sexes of 1978 (LS 1978 - Nor. 1). Section 5 provides for the principle to apply to "women and men engaged in the same activity". Sections 3 and 4 more generally prohibit discrimination between women and men.

[7] Article 135 of the Labour Code (Presidential Decree No. 442 of 1974) as amended.

[8] Section 9(1) of Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3).

[9] Section 70(3) of the Labour Code of 1972 (LS 1972 - Som. 1), which refers to "work which is equal as regards value, efficiency, type of work or duration".

[10] Sections 2 and 4(1) of the Act respecting equality between women and men at work, of 1979 (LS 1979 - Swe. 2).

[11] Section 1 of the Equal Pay Act 1970 (LS 1970 - UK. 1), as amended by the Sex Discrimination Act 1975 (LS 1975 - UK. 1) and the Equal Pay (Amendment) Regulations 1983, No. 1794.

the principle of equal pay for work of equal value. While many of the equal treatment laws apply to both the private and public sectors, the principle of the Convention has also been written into the public service legislation of a number of States.

50. In many of these laws, the concept of equal value is further elucidated through definitions referring to objective job evaluation or incorporating elements of it. These will be considered below, following a more general examination of criteria referred to in national legislation, in addition to the basic formulas already reviewed, for the payment of equal remuneration.

(b) Further criteria

(i) Hours of work and seniority

51. Among the additional elements mentioned in a number of laws as criteria for comparing remuneration are factors such as hours of work or seniority, which relate to the time spent at or in the job or within the service or enterprise; such criteria, which are equally applicable to men and women and do not call for an element of judgement or appraisal, may be considered as neutral for the purposes of wage discrimination based on sex.[1]

(ii) From performance appraisal to job evaluation

52. Criteria calling for a value judgement may refer to the nature of the job or to the individual input by the person who performs it. Some terms may be used in either context: e.g., reference may be made to the skill or effort required by the job (in comparison to a different job), or to the skill and effort with which the work is being done (as compared with the skill and effort invested by another worker). The term "work" itself may refer either to a job or task to be performed or to the worker's individual input or

[1] However, where part-time workers are paid different hourly wages or benefits than full-time workers and the distinction between full-time and part-time workers corresponds in practice to a large extent to a distinction according to sex, the question of indirect discrimination arises, which has to be examined in the light of the particular circumstances and the reasons invoked for the differential treatment. See paragraph 129 below.

output. Where the criteria of appraisal provided are limited to an assessment of the individual performance, they permit to rationalise the differentiation of wages for the same job, but offer no basis for the comparative evaluation of different jobs.

53. Workers' skill and output. Some of the labour laws providing for equal remuneration for "the same work" require that not only the nature of the work,[1] or the circumstances of employment,[2] but also the workers' skill[3] or qualifications and aptitudes,[4] or the quality of the work,[5] and the workers' output,[6] or the volume of the work[7] are the same. Similarly, the wording of section 91 of the French Overseas Labour Code provided for payment of the same wage to all workers, irrespective of their origin, sex, age and status, "in equal conditions as regards work, skill and output". This provision has been included in the labour codes adopted in a fair number of French-speaking African countries.[8]

54. While performance appraisal criteria such as skill and output and their equivalents are not discriminatory in themselves as a basis for wage differentiation, they must be applied bona fide. The

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[1] e.g., Thailand, section 26 of the Labour Protection Announcement of 1972 (LS 1972 - Thai. 2).

[2] Bahrain, section 44 of the Labour Law for the private sector of 1976 (LS 1976 - Bah. 1).

[3] Algeria, section 7(2) of the Workers' Conditions of Employment Act, 1978 (LS 1978 - Alg. 1) and section 8 of the Individual Employment Relationships Act, 1982 (LS 1982 - Alg. 2).

[4] Bahrain, loc. cit.

[5] Thailand, loc. cit.

[6] Algeria, loc. cit.; see, however, also the additional criteria based on inherent job requirements under sections 106 et seq. of the Workers' Conditions of Employment Act, which significantly widen the scope of the equal pay principle as referred to in section 104 of that Act - cf. para. 62.

[7] Thailand, loc. cit.

[8] Benin, section 79 of the Code (LS 1967 - Dah. 1); Burkina Faso, section 90 of the Labour Code of 1962; Burundi, section 65 of the Labour Code of 1966; Cameroon, section 67(2) of the Code (LS 1974 - Cam. 1), referring to "the same type of work, qualifications and

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Committee has drawn attention in its 1975 general survey[1] to historical experience that insistence on "equal conditions as regards work, skill and output" can be taken as a pretext for paying women lower wages than men. Moreover, the Committee pointed out[2] that a criterion such as output, while legitimate in itself, becomes unacceptable if it results in only women workers being required to show proof of their output or in different wage groups being established on the basis of the average output of each sex within a given context.

55. Efficiency. Under the Labour Act of Turkey,[3] no distinction shall be made in an undertaking on grounds of sex between the wages paid to male and female workers performing jobs of the same nature and working with equal efficiency. Similarly, a number of Central and South American labour codes[4] provide for equal pay for "equal work"

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output"; Central African Republic, section 96 of the Labour Code of 1961; Chad, section 141 of the Code (LS 1966 - Chad. 1); Comoros, section 97 of the Labour Code of 1984; Djibouti, section 19 of Decree No. 64/24/SPCG of 29.3.1966; Gabon, section 84 of the Code (LS 1978 - Gab. 1); Guinea, section 123 of the Code (LS 1960 - Gui. 1); Ivory Coast, section 80 of the Code (LS 1964 - IC. 1); Madagascar, section 61 of the Code (LS 1975 - Mad. 1); Mali, section 85 of the Code (LS 1962 - Mali 1); Niger, section 90 of the Labour Code of 1962; Rwanda, section 82 of the Code (LS 1967 - Rwa. 1); Senegal, section 104 of the Code (LS 1962 - Sen. 2); Togo, section 88 of the Labour Code of 1974; Zaire, section 72 of the Code (LS 1967 - Congo (Kin.) 1).

[1] Para. 36.

[2] Para. 38 of the 1975 general survey.

[3] Section 26(4) of the Labour Act, as amended up to 29 July 1983 (LS 1983 - Tur. 3).

[4] Colombia, section 143 of the Labour Code of 1950 (LS - 1950 - Col. 3), as amended (former section 144); Costa Rica, section 167(2) of the Labour Code of 1943 (LS 1943 - CR. 1); Guatemala, sections 14 and 89(2) of the consolidated Labour Code of 1961 (LS 1961 - Gua. 1); Honduras, section 367 of the Labour Code of 1959 (LS 1959 - Hon. 1); Mexico, section 5, XI and 86 of the Federal Labour Act of 1969 (LS 1969 - Mex. 1); Panama, section 10 of the Labour Code of 1971 (LS 1971 - Pan. 1); Paraguay, section 230 of the Labour Code of 1961 (LS 1961 - Par. 1); Venezuela, section 73 of the Labour Act of 1983

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performed with "equal efficiency" in the same category[1] or type[2] of work, or in equal posts,[3] positions[4] or jobs,[5] or equivalent posts.[6] The criterion of efficiency combines the performance appraisal criteria of skill and output, considered in the preceding paragraphs.

56. Among the countries whose labour codes guarantee equal remuneration for "work of equal value",[7] Argentina permits differences in treatment corresponding to factors "such as greater efficiency, diligence or application on the worker's part".[8] In Brazil, section 5 of the Consolidation of Labour Laws, providing generally for the payment of equal remuneration for work of equal value without distinction based on sex, coexists with section 461 of the same text which provides that "where the duties performed are identical", equal wages shall be paid, irrespective of sex, for all work of equal value performed for the same employer in the same locality. The latter

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(LS 1983 - Ven. 1). In El Salvador, section 123 of the Labour Code of 1972 more generally refers to equal work performed in the same enterprise or establishment "in equal conditions". Reference to the same enterprise or establishment or to the same employer, also included in the cases of Guatemala, Mexico and Panama and elsewhere made in jurisprudence (see for Colombia, J.O. Torres, Codigo Sustantivo del Trabajo, Bogotá, 1984, p. 261), will be considered below in para. 71 et seq. A number of the provisions quoted also refer to hours of work (Honduras, Mexico, Panama, Paraguay, Venezuela) and seniority (Guatemala, Honduras, Panama), considered in para. 51 above. Distinctions based on sex are specifically excluded except in Panama, where they are, however, excluded by article 62 of the Constitution.

[1] Mexico, section 5, XI of the Federal Labour Act.

[2] Paraguay, loc. cit.

[3] Colombia, loc. cit. and Mexico, section 86 of the Labour Code.

[4] Panama, loc. cit.

[5] Honduras and Panama, loc. cit.

[6] Costa Rica, Guatemala, Venezuela, loc. cit.

[7] In Central and South America, Argentina and Brazil have been joined by Haiti since the 1975 general survey.

[8] Section 81 of the Consolidated text of the rules governing contracts of employment (LS 1976 - Arg. 1).

provision defines work of equal value as that performed with equal productivity, and the same technical perfection, by persons whose seniority difference is not above two years.[1] With the exception of the reference to "identical functions", all of these various criteria relate to individual performance or seniority. Where the principle of equal pay for work of equal value is to extend to different functions,[2] its implementation cannot be limited to performance appraisal but rests upon the application of other criteria as well.

57. Quantity and quality of work. Several countries in which most wage earners are employed by public authorities or organisations make specific provision in their labour codes for the payment of equal wages for the same work,[3] or for equal work[4] irrespective of sex, or make it illegal to pay reduced rates on account of sex,[5] or more generally guarantee women the same status as men in matters of employment.[6] The same labour codes or their implementing decrees

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[1] (LS 1985 - Bra. 1). Allowance is also made for an alternative system of payment by rank, in which case promotions are to be made alternately by seniority and by merit.

[2] See paras. 19 and 22 above.

[3] German Democratic Republic, section 2(3) of the Labour Code of 1977 (LS 1977 - Ger. D.R. 1).

[4] Angola, section 102(3) of General Labour Act of 1981 (LS 1981 - Ang. 1); Cuba, sections 3(ch) and 99 of the Labour Code of 1985; Mongolia, section 78(2) of the Labour Code of 1973 (LS 1985 - Mong. 1); Romania, sections 14, 82(2) and 151 of the Labour Code of 1972 (LS 1972 - Rom. 1).

[5] Byelorussian SSR, section 77 of the Labour Code of 1971; Ukrainian SSR, section 94 of the Labour Code of 1971; USSR, article 36 of the Fundamental principles of 1970 governing the labour legislation (LS 1970 - USSR 1), section 77 of the Labour Code of the RSFSR of 1971 (LS 1971 - USSR 1) and corresponding provisions in labour codes of other Union Republics.

[6] Czechoslovakia, Basic Principle VII of the Labour Code of 1975 (LS 1975 - Cz. 2); Hungary, section 18(3) of the Labour Code of 1967, as amended (LS 1967 - Hun. 2A and 1979 - Hun. 1); similar provisions are also contained in the labour codes of the countries mentioned in the preceding three footnotes, while other countries, including Bulgaria and Poland (and Yugoslavia, where most work is governed by the Associated Labour Act of 25 November 1976) rely in this respect on constitutional provisions, mentioned in para. 33 et seq. above.

provide for standardised remuneration systems and wage rates as well as grading scales and occupational descriptions and categories or job classification criteria to be established by national government authorities with the participation of national trade union organisations or those of the branches concerned; often, these bodies are also to issue output or labour-input standards or other rules governing the appraisal of workers' performances and aptitudes. A number of the same labour codes indicate in some detail the criteria to be used in evaluating, describing and grading the various jobs in existence as well as criteria for the appraisal of workers' aptitudes and performances. Two criteria to be found in practically all[1] of the labour codes concerned, often linked to[2] the principle of equal remuneration or mentioned in the same context,[3] are quantity and quality of the work.

58. The criteria of quantity and quality of work appear objective, in that they relate to an object rather than a person. However, only work of the same kind can be measured comparatively by the standards of quantity and quality, which are in fact corollaries of the performance criteria of output and skill, already considered above.[4]

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[1] The exception is the General Labour Act of Angola (LS - 1981 - Ang. 1).

[2] Byelorussian SSR, section 77 of the Labour Code; German Democratic Republic, section 2(3) of the Labour Code (LS 1977 - Ger. D.R. 1); Romania, section 82(2) of the Labour Code (LS 1972 - Rom. 1); Ukrainian SSR, section 94 of the Labour Code: USSR, Article 36 of the Fundamental principles governing the labour legislation (LS 1970 - USSR 1), section 77 of the Labour Code of the RSFSR (LS 1971 - USSR 1), and corresponding provisions in labour codes of other Union Republics.

[3] Cuba, section 3(d) of the Labour Code; Mongolia, section 78(1) of the Labour Code (LS 1985 - Mong. 1).

[4] See para. 53 et seq. In its article 19 report, the Government of Poland draws the same conclusions from section 13 of the Labour Code, which refers to remuneration in accordance with the nature, quantity and quality of the work: "Thus, the earnings level of men and women is equal at the same post, with the same skills and labour productivity.

Other criteria occasionally mentioned in connection with the principle of equal pay for equal work are merit and ability,[1] concerned with the evaluation of workers rather than work. Another is the social importance of the work[2] which, unless identified with the ranking of the job in the existing wage hierarchy, appears a rather open-ended criterion. In so far as more general constitutional and legal provisions guaranteeing women equal access to all jobs (subject to protective provisions) have not eliminated the existence in practice of categories of jobs predominantly held by women, an unbiased evaluation of such jobs in terms of their social importance presupposes full recognition of women's equal status not only at the workplace but also in society, as called for by the same general constitutional and legal principles.

59. In the light of the criteria of quantity and quality, the scope of provisions calling specifically for equal pay for equal work appears limited to a comparison of the performance of substantially identical jobs.[3] A number of the labour codes considered in paragraph 57 also contain other, rather detailed, criteria for the comparative evaluation of different jobs within the national remuneration system, which are, however, neither drawn up[4] nor

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[1] Cuba, section 3(ch) of the Labour Code of 1985.

[2] Romania, section 82(2) of the Labour Code (LS 1972 - Rom. 1). The same criterion or the "social utility" of the work also appear in some of the other codes referred to among the general job evaluation criteria.

[3] In Angola, where the General Labour Act (LS 1981 - Ang. 1) does not refer to quantity and quality of work, section 102(3) explicitly limits the right to equal wages for equal work to "all workers whose contracts provide for identical conditions".

[4] By contrast, in Algeria, section 104 of the Workers' Conditions of Employment Act, 1978 (LS 1978 - Alg. 1) provides that for the purposes, inter alia, of applying the principles "to each according to his work" and "equal work, equal pay", the various jobs shall be classified on the basis of a coherent system of criteria and assessment procedures, in accordance with a single nation-wide method of classification to be laid down by decree. (While section 106 excludes all criteria of evaluation other than those based on inherent job requirements, there is, however, no specific reference to discrimination based on sex - see para. 62 below.)

referred to[1] for the purposes of the principle of equal remuneration. As the Committee pointed out in paragraph 78 of its 1975 general survey in connection with classification systems drawn up not for the purpose of applying the principle of equal pay but to establish the grading system which is indispensable in any public administration, such systems, although obviously "depersonalised", are not immune against the emergence of discrimination. However, in the countries considered, as in many others too, even those standards and criteria of the general wage system which are not interlinked with the principle of equal pay for equal work have to be applied and developed in the light of the general principle of non-discrimination on the grounds of sex, written into the constitutions and most of the labour codes. Even in the absence of more specific equal treatment legislation, job evaluation standards have for example been improved in Hungary in 1984 through the inclusion of new criteria which led to the upgrading of jobs in numerous spheres of work where women are employed for the most part.[2]

60. Inherent job requirements. Skill (or knowledge evidenced by a title or diploma or by practice in the job, and abilities following from experience acquired), effort (physical or mental effort, or physical, mental or nervous strain connected with performance of the work) and responsibility (or decision) required to perform the work (having regard to the nature, scope and complexity of the duties inherent in each job, the extent to which the employer relies on the employee to perform the work and the accountability of the employee to the employer for resources and for the work of other employees), and the conditions under which the work is to be performed (including factors such as noise, heat, cold, isolation, physical danger, health hazards and any other conditions produced by the work environment) are the criteria

[1] None the less, it may be noted that in Angola, the determination of wages by "the degree of skill required or necessary for the complexity of the task to be performed" as well as "the fulfilment of output standards and other indices" is mentioned in section 102(2) of the General Labour Act, preceding the provision on equal pay in section 102(3); in Romania, the principle in section 82(2) of the Labour Code linking equal remuneration for equal work to remuneration based on the quantity, quality and social importance of the work is followed by an indication that "to enable the wage to perform its incentive function, remuneration is fixed taking into account the complexity of the work, the degree of responsibility and effort which it involves, and the level of training and seniority required; at the same time care is taken to ensure a suitable proportion between highest and lowest wages of the persons on work staffs according to the stage of development of the national economy and the principle of socialist equity".

[2] See below, para. 150.

most often referred to in equal remuneration legislation and guide-lines in order to compare work to be performed by men and by women (rather than the manner in which it is performed). These criteria are used in a varying context and perspective: in addition to a requirement that the nature of the job or functions be substantially similar in kind, quality and amount, as in Jamaica and Swaziland;[1] or to define what is work of the same or a similar nature, as in India;[2] or, finally, as factors to establish an equivalence between jobs of a different nature. In the application of the principle of equal pay for work of equal value, criteria for an evaluation of the requirements inherent in each job provide a common denominator for comparing jobs of a different nature, so that the restriction to same, similar or substantially similar work, made in a number of laws, does not appear as intrinsically linked to the approach chosen, and may be progressively discarded.

61. Concepts are still being debated in the United States, where the Equal Pay Act of 1963[3] provides for equal pay for equal work on

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[1] Under section 2 of the Jamaica Employment (Equal Pay for Men and Women) Act 1975 (LS 1975 - Jam. 2) and section 95(1) of the Swaziland Employment Act, 1980, "equal work" means work performed for one employer by male and female employees alike in which - (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality or amount; (b) the conditions under which such work is to be performed are similar or substantially similar; (c) similar, or substantially similar, qualifications, degrees of skill, effort and responsibility are required; and (d) the differences (if any) between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment, or do not occur frequently.

[2] Under section 2(h) of the Equal Remuneration Act 1976 (LS 1976 - Ind. 1) "same work or work of a similar nature" means work in respect of which the skill, effort and responsibility required are the same, when performed under similar working conditions, by a man or a woman, and the differences, if any, between the skill, effort and responsibility required of a man and those required of a women are not of practical importance in relation to the terms and conditions of employment.

[3] The Equal Pay Act (29 United States Code Section 206(d)(1)) states: "No employer having employees subject to any provisions of this section shall discriminate within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment for equal work on jobs the performance of which requires equal skill, effort and responsibility,

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jobs the performance of which requires equal skill, efforts and responsibility, and which are performed under similar working conditions. While this provision is generally held to be applicable only to jobs "substantially equal" in nature,[1] 16 States[2] have adopted laws that go beyond equal pay for equal work and call for equal pay for work of comparable worth. At the federal level, approaches to widening the scope of comparison have been made on the basis of Title VII of the Civil Rights Act of 1964, which will be considered in paragraphs 68 and 120 below. The Equal Pay Act leaves room for wage differentiation on the basis of, inter alia, a merit system or a system which measures earnings by quantity or quality of production; such performance-based systems are presented as exceptions to the general principle.

62. In Algeria, performance-related factors coexist with job-evaluation criteria under two separate equal pay principles in the Workers' Conditions of Employment Act:[3] under section 7(2) of the Act, workers shall be entitled to the same remuneration and advantages "for the same work if they have equal skill and output". Sections 104 and 106 provide that for the purposes, inter alia, of applying the principle "equal work, equal pay", the various jobs shall be classified in a coherent system, "based, to the exclusion of all other criteria, on those specific to the nature of the duties inherent in each job, their scope and complexity, the degree of skill, responsibility and physical, mental or nervous strain connected with their performance, the special demands of a purely technical nature that they imply and the degree of

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and which are performed under similar working conditions, except where such payment is made pursuant to (a) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided that an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee."

[1] See below paragraph 120.

[2] Alaska, Arkansas, Georgia, Idaho, Kentucky, Maine, Maryland, Massachusetts, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, West Virginia, and, for state employees only, California and Minnesota. See Cook, Alice H., "Comparable worth: recent developments in selected States", Labor Law Journal, August 1983, p. 496.

[3] LS 1978 - Alg. 1.

danger connected with the job".[1] Here, the term "equal work" refers, beyond same or similar jobs, to jobs given the same value within an analytical system of classification which, in the terms of section 104 of the Act, "shall enable all jobs to be related to each other on the basis of their specific characteristics and the related duties". This is the concept of equal remuneration for work of equal value, formally adopted in a number of laws whose criteria will be considered in the following paragraphs.

(c) Defining work of equal value

63. Among the laws providing specifically for equal remuneration for work of equal value,[2] some merely proclaim the principle, leaving its interpretation to implementing bodies;[3] a few mention performance criteria.[4] A number of laws which refer to job evaluation criteria or systems to define work of equal value are reviewed in the following paragraphs, before recalling the inter-relationship in many laws between the concept of work of equal value and the principle of non-discrimination.

64. Reference to job evaluation criteria and systems. Evaluation criteria based on an analysis of the inherent job requirements, such as those set out in paragraphs 60 et seq. above, are enumerated by equal pay legislation in Canada,[5] France,[6] and Ireland[7]

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[1] While section 106 excludes "all other criteria" of evaluation, a specific prohibition of discrimination based on sex is not spelled out in the Workers' Conditions of Employment Act, but included in article 39 of the Constitution.

[2] See para. 49 above.

[3] In this connection, crucial importance attaches to the burden of proving that material reasons unrelated to sex justify differential treatment, often placed on the employer where the worker establishes facts that afford grounds for assuming that discrimination has occurred on account of his or her sex - see below paras. 67, 167 and 168.

[4] See para. 56 above.

[5] e.g., section 11(2) of the Canadian Human Rights Act of 1977.

[6] Section 5 of Act No. 83-635 of 13 July 1983, inserted in the Labour Code as section L.140-2.

[7] Section 3(c) of the Anti-Discrimination (Pay) Act 1974 (L.S. 1974 - Ire. 1).

for determining an equivalence between jobs which are neither identical nor similar in nature. In the United Kingdom, demands made on a worker under various headings such as effort, skill, decision are to be evaluated in a study covering the jobs of all or any of the employees in an undertaking or group of undertakings.[1] Without listing specific criteria, the definition of "work of equal value" in Portugal refers to duties which, "although different in nature, are considered to be equivalent after the application of objective job assessment criteria".[2] Similarly, in Sweden, reference is made to "work which, in accordance with a collective agreement or the practice observed within the sphere of activity concerned, is to be regarded as equal or of equal value in the light of an agreed assessment of the job".[3] In the Netherlands, the law provides that, for the purposes of workers' entitlement to equal wages for work of equal value, "work shall be assessed in accordance with a reliable system of job evaluation; to this end recourse shall be had as far as possible to the system customary in the undertaking where the worker concerned is employed. In the absence of such a system the work shall be fairly assessed in the light of the available information."[4]

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[1] Section 1(5) of the Equal Pay Act 1970, as amended (L.S. 1975 - U.K. 1, Schedule 1). Under section 1(2)(c) of the Act, inserted by section 2 of the Equal Pay (Amendment) Regulations, 1983, the same criteria apply in cases where no job evaluation study has been performed so far. However, in comments on the application of the Convention in 1983-85, the Trades Union Congress pointed out that, under the regulation, a woman must show that the criterion of "like" or "broadly similar" work (referred to in sections 1(2)(a) and (4) of the Act) does not apply before an attempt can be made to prove equal value.

[2] Section 2(e) of Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (L.S. 1979 - Por. 3).

[3] Section 4(1) of the Act respecting equality between women and men at work, of 1979 (L.S. 1979 - Swe. 2).

[4] Section 4 of the Equal Wages for Women and Men Act of 1975 (L.S. 1975 - Neth. 1). The drafting of this provision takes account of the fact that, under sections 2 and 3, entitlement to equal wages for work of equal value may be based not only on work of equal or approximately equal value done in the same undertaking by a worker of the other sex, but, in the absence of such basis of comparison, on wages normally received by a worker of the other sex elsewhere - see paragraph 74 below.

65. Review of job evaluation systems. A number of laws on equal remuneration for work of equal value provide that not only the various components of remuneration but also all types of, and criteria for, occupational classification and upgrading schemes and all other bases for calculating remuneration, including in particular job evaluation methods, shall be the same for workers of either sex,[1] or that occupational classification systems applied for the purpose of fixing remuneration shall adopt common criteria for men and women[2] and shall be applied without discrimination based on sex.[3] In the United Kingdom, a woman is to be regarded as employed on work rated as equivalent with that of any men if her job and their job "would have been given an equal value but for the evaluation being made on a system setting different values for men and women on the same demand under any heading.[4] While all these provisions call for formal equality of men and women under classification systems, criteria and ratings, section 2 A(3) of the United Kingdom Equal Pay Act 1970 (inserted by section 3 of the Equal Pay (Amendment) Regulations 1983) moreover provides that "an evaluation contained in a study such as is mentioned in section 1(5) above"[5] "is made on a system which discriminates on grounds of sex where a difference, or coincidence, between values set by that system on different demands under the same or different heading is not justifiable irrespective of the sex of the person on whom those demands are made". A further step towards the elimination of discrimination is made in legislation which provides substantive criteria for the identification of underlying sex biases in the choice of requirements or conditions, considered in paragraph 70 below.

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[1] France, section 2 of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3), inserted in the Labour Code as section L. 140-3; Luxembourg, section 3 of the Grand-Ducal Regulations of 1974 concerning equality of remuneration between men and women; similarly, in Portugal, section 9(3) of Legislative Decree No. 329/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3) provides that "job description or assessment systems shall be based on objective criteria that are the same for men and women, so as to exclude any form of discrimination based on sex".

[2] Greece, section 4(3) of Act No. 1414 respecting the application of the principle of equality of the sexes in employment relationships (LS 1984 - Gr. 1); Italy, section 2(2) of Act No. 903, respecting equality of treatment as between men and women in questions of employment (LS 1977 - It. 1).

[3] Greece, loc. cit.

[4] Section 1(5) of the Equal Pay Act 1970, as amended (LS 1975 - U.K. 1 - Schedule 1).

[5] See also para. 64 above.

II. Defining discrimination

66. The identification in Article 1(b) of the Convention of "equal remuneration for men and women workers for work of equal value" with "rates of remuneration established without discrimination based on sex"[1] is occasionally repeated in definitions under national legislation.[2] More generally, the prohibition of discrimination based on sex is usually made explicit also in legislation dealing with equal remuneration in terms of job comparison. Often, the two complementary aspects - work of equal value and non-discrimination on the basis of sex - are referred to in mutual support; while the present survey has so far considered national laws from the viewpoint of equal remuneration for work of equal value, a number of these laws indeed place that principle within the wider context of non-discrimination on the grounds of sex, particularly in employment. The following paragraphs will focus on those laws which, without mentioning the principle of equal pay for work of equal value, develop in lesser or greater detail its counterpart, the concept of non-discrimination between men and women in remuneration or in employment in general.

67. Evidence and burden of proof. In order to give statutory effect to the principle of equal remuneration, a number of countries rely on legal provisions which prohibit unequal treatment of the workers of the same enterprise,[3] or pay discrimination between men and women by the employer[4] or more generally, discrimination in the fixing of remuneration,[5] or which call for work to be made available to every citizen subject to the same conditions and equal opportunities for all without discrimination on grounds of sex.[6] In some cases, the law provides

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[1] See para. 20 above.

[2] For example, Iceland, Article 4(2) of the Law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985).

[3] Dominican Republic, Principle VI of the Fundamental Principles of the Labour Code (LS 1951 - Dom. 1).

[4] Japan, section 4 of the Conditions of Employment Act of 1947 (LS 1947 - Jap. 3); Zimbabwe, section 5(1)(d) of the Labour Relations Act, No. 16 of 1985.

[5] Austria, section 12 of the Equality of Treatment Act of 1979 (LS 1979 - Aus. 1); Belgium, sections 127, 128 and 130 of the Economic Reform Act of 1978 (LS 1978 - Bel. 2).

[6] Iraq, section 1(a) of the Labour Code of 1970 (LS 1970 - Iraq 1): "in return for wages consistent with the effort exerted and the quality and quantity of the production". Democratic Yemen, section 5(a) of the Labour Law, No. 14 of 1978. See also para. 57 above.

further indications to define discrimination. In Austria, "the expression 'discrimination' means any differentiation made to the detriment of the person concerned without material justification" (section 2 of the Equality of Treatment Act). In Zimbabwe, a person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of one sex to be treated less favourably or more favourably than persons of the other sex, unless it is shown that such act or omission was not attributable wholly or mainly to the sex of the persons concerned (section 5(6) of the Labour Relations Act, No. 16 of 1985). Such definitions turn to a large extent upon the burden of proof, whose key role has been given similar attention in a number of equal pay and equal treatment laws.[1]

68. Job evaluation as evidence. In the United States, claims of sex-based wage discrimination can be brought either under the Equal Pay Act (considered in paragraph 61 above) or under Title VII of the Civil Rights Act of 1964 (42 United States Code Section 2000e - 2(a)). Title VII of the Civil Rights Act makes it an unlawful employment practice for an employer (1) inter alia, "to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's" sex; or (2) "to limit, segregate or classify his employees ... in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee", inter alia, because of such individual's sex. Although a reference to wage differentiation authorised by the Equal Pay Act was incorporated into Title VII of the Civil Rights Act through the Bennett Amendment, court practice entertains claims under Title VII going beyond a comparison of "substantially equal" jobs in the same establishment, without, however, theoretically endorsing the "comparable worth" or "work of equal value" concept, which allows for the comparison of different jobs on the basis of common evaluation criteria. Instead, the courts tend to rely on a finding of intentional discrimination, inter alia, where a job evaluation study has been delayed or disregarded by the employer.[2] None the less, a number of state[3] and local governments have adopted the "comparable worth" approach, also supported by AFL-CIO resolutions, in order to determine whether entire classes of jobs traditionally held by women have been undervalued and underpaid.

69. Hypothetical comparison. Under the New Zealand Equal Pay Act, 1972,[4] "'equal pay' means a rate of remuneration for work in which

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[1] See below, paras. 167 and 168.

[2] See below, paras. 120 and 148.

[3] See para. 61 above.

[4] LS 1972 - N.Z. 1.

rate there is no element of differentiation between male employees and female employees based on the sex of the employees" (section 2). Under section 3(1), criteria to be applied in determining whether there exists such element of differentiation distinguish between work which is not exclusively or predominantly performed by female employees and work which is. For determining the remuneration of "work which is exclusively or predominantly performed by female employees", section 3(1)(b) refers to "the rate of remuneration that would be paid to male employees with the same, or substantially similar skills, responsibility, and service performing the work under the same, or substantially similar, conditions and with the same, or substantially similar, degrees of effort".

70. Sex discrimination. Reflecting on the various disguises that discrimination based on sex may take, and taking a closer look at job requirements laid down in neutral language, section 5 of the Sex Discrimination Act 1984 of Australia gives the following two definitions of sex discrimination: "(1) For the purposes of this Act, a person (in this sub-section referred to as the 'discriminator') discriminates against another person (in this sub-section referred to as the 'aggrieved person') on the ground of the sex of the aggrieved person if, by reason of - (a) the sex of the aggrieved person; (b) a characteristic that appertains generally to persons of the sex of the aggrieved person; or (c) a characteristic that is generally imputed to persons of the sex of the aggrieved person, - the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or are not materially different, the discriminator treats or would treat a person of the opposite sex. (2) For the purposes of this Act, a person (in this sub-section referred to as the 'discriminator') discriminates against another person (in this sub-section referred to as the 'aggrieved person') on the grounds of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition - (a) with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply; (b) which is not reasonable having regard to the circumstances of the case; and (c) with which the aggrieved person does not or is not able to comply." It will be seen that the foregoing definitions seek to cover sex discrimination under any guise. The quantitative criterion of subsection (2)(a) should facilitate the review, inter alia, of job descriptions and classification systems in the light also of subsection (2)(b), to ensure equal treatment of women and men in employment and remuneration. Similarly, the Government of Finland indicates in its article 22 report for 1983-85 on the Convention that section 8 of a bill for an Equality Act submitted in 1985 to Parliament provides that "the comparisons of remuneration would not apply only to those performing the same work but also to those performing work of the same value. This comparison should be based mainly on the practice or the norms agreed on, which are followed in the different fields, e.g., in the

classification of jobs. If the classification systems based on agreements de facto affect the employees representing the other sex in a discriminating manner, the labour market parties are under the obligation to change and develop them so as to make them correspond to a larger extent to the objectives of equality".[1]

III. Reach of comparison

71. In dealing with a range of formulas and criteria for equal treatment of men and women in the field of remuneration, paragraphs 45 et seq. above show a progression from concepts which connect equal remuneration with same or similar work to those which provide for the comparison of different jobs in terms of equal value. A similar, albeit not always concomitant, evolution leads from provisions calling for observance of the principle of equal remuneration within the limits of the same workplace or establishment to those aspiring to its implementation on a wider basis.

72. Same establishment, enterprise or employer. In the majority of countries, legal provisions guaranteeing equal remuneration do not mention the employer or place of work. In a number of cases, however, the provisions of national legislation referred to in paragraphs 45 to 70 above appear to limit the purview of the principle of remuneration without discrimination based on sex to ensuring equality of treatment between persons employed in the same enterprise,[2] or in the same

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[1] In its article 19 and article 22 reports, the Government has transmitted comments by the Confederation of Technical Employee Organisations in Finland (STTK) indicating that differentials in the income levels of male and female workers are partly due to the fact that women hold less demanding and less responsible jobs than men, even when having high-level educations; partly there are obvious wage differentials in different occupations according to the extent of female domination. Another workers' organisation, the Confederation of Salaried Employees (TVK), has noted that remuneration classified according to jobs has not in practice guaranteed an equality of remuneration. According to the organisation, evaluation criteria and job classification systems favour the jobs of men and male-dominated fields, and the backwardness of women's remuneration has not been sufficiently taken into consideration in wage settlements. It also believes that the implementation of the Equality Act now under preparation could, in individual cases, improve the practical situation, by levelling the wage differentials between women and men.

[2] Colombia, Dominican Republic, Ethiopia, Guatemala, Portugal, Turkey.

enterprise or establishment,[1] or by the same employer,[2] or by the same employer in the same locality,[3] place of work,[4] establishment,[5] service and undertaking[6] or establishment or employment.[7] Referring to such cases in paragraph 38 of its 1975 general survey, the Committee observed that it seems difficult to narrow the framework for the application of the principle of the Convention without narrowing its scope at the same time. Where women workers are more heavily concentrated in certain sectors of activity, there is a risk that the possibilities for comparison may be insufficient at the level of the establishment. As the Committee pointed out in paragraph 22 above, the reach of the comparison between jobs performed by men and women should be as wide as allowed by the level at which wage policies, systems and structures are co-ordinated, taking into account also the degree to which wages fixed independently in different enterprises may be based on common factors unrelated to sex.

73. Functional limitations. In some countries, provisions calling for observance of the principle of equal remuneration by the employer seek to take account of the levels at which decisions affecting wages may be taken, so that there is a shift from purely geographical or organisational towards more functional limitations. Thus, in the United Kingdom, women and men employed in different establishments (throughout the country) of a group of companies come within the reach of comparison for the purposes of equal pay if common terms and conditions of employment are observed there either generally or for those concerned.[8] It appears that under this legislation, claims can be

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[1] El Salvador, Mexico.

[2] Panama, Papua New Guinea, Swaziland.

[3] Brazil (Section 461 of the Consolidation of Labour Laws).

[4] Israel.

[5] Jamaica.

[6] Cape Verde, Sao Tomé and Principe.

[7] India.

[8] Under section 1(6) of the Equal Pay Act, 1970, as amended by the Sex Discrimination Act 1975 (LS 1975 - UK 1, Schedule 1), "two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control or if both are companies of which a third person (directly or indirectly) has control, and men shall be treated as in the same employment with a woman" (and thus come within

(Footnote continued on next page)

brought across the existing boundaries of bargaining units, grading systems or job evaluation schemes. The existence of separate pay systems for manual workers and clerical staff, for example, will not stop a woman clerical worker claiming that she is employed on work of equal value with that of a male manual worker.[1] In employment under the federal jurisdiction in Canada, "it is a discriminatory practice for an employer to establish or maintain differences in wages between male and female employees employed in the same establishment who are performing work of equal value" (section 11(1) of the Canadian Human Rights Act of 1977). At present, "establishment" is defined in terms of geographical location or unit of organisation.[2] However, under section 11(2.1) of the Act, "separate establishments established or maintained by an employer solely or principally for the purpose of establishing or maintaining differences in wages between male and female employees shall be deemed for the purposes of this section to be a single establishment". Moreover, in March 1985, the Human Rights Commission published proposals[3] for amending the Equal Wage Guide-lines,[4] which are binding both on the Commission and on the human rights tribunals provided for under the Act to deal with complaints. The draft guide-lines - which have

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(Footnote continued from previous page)

the reach of comparison for the purposes of equal pay) "if they are men employed by her employer or any associated employer at the same establishment or at establishments in Great Britain which include that one and at which common terms and conditions of employment are observed either generally or for employees of the relevant classes". In Ireland, similar provisions in section 2 of the Anti-Discrimination (Pay) Act 1974 (LS 1974 - Ire. 1) are, however, limited to "the same place".

[1] M. Rubenstein, Equal Pay for Work of Equal Value: The New Regulations and their Implications, London, 1984, ISBN 0333 37557 2, p. 54.

[2] "All buildings, work or other installations of an employer's business that are located within the limits of a municipality, a municipal district, a metropolitan area, a county or the national capital region, whichever is the largest, or such larger geographical limits that may be established by the employer or jointly by the employer and the union" - see Canadian Human Rights Commission, Equal Pay for Work of Equal Value: Interpretation Guide for section 11 of the Canadian Human Rights Act, revised edition, Ottawa, 1984.

[3] Canadian Human Rights Commission, Background notes on proposed guidelines - equal pay for work of equal value, Ottawa, March 1985.

[4] Equal Wage Guide-lines, 1978 (as amended in 1982), respecting the application of section 11 of the Canadian Human Rights Act (Canada Gazette, Part II, dated 13 January 1982).

been submitted to public and private employers, employee organisations, women's groups and human rights agencies for comment and advice - propose that "establishment" be defined in functional rather than geographic terms. Employees of an employer would thus be considered to be in the same establishment when they are subject to a common set of personnel and compensation policies, regulations and procedures; and when these policies, regulations and procedures are developed and controlled centrally even though their administration may be delegated to smaller units of organisation.[1] In Finland, a bill for an Equality Act submitted to Parliament in 1985 provides in section 8 that comparison between employees should take place between the employees of the same employer. As a rule the comparison should take place within the same workplace. If the employer has several workplaces, these could also be compared with each other, taking into consideration, however, that in practice differences between localities also appear as differences in the terms of employment.

74. Comparisons between enterprises. A distinction must be made between laws which, in referring to work within the same establishment, enterprise or employment, limit the reach of comparison for the purpose of establishing the comparable worth of a job, and those which in more general terms call upon the employer to observe the principle of equal pay or non-discrimination on the basis of sex.[2] In the latter case, the obligation to pay remuneration in conformity with the principle rests on the employer, but the reach of comparison for the purpose of determining his observance of the principle may extend beyond the limits of his sphere of control. In some countries, this

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[1] Commenting on this aspect of the proposed guide-lines, the Canadian Labour Congress (CLC) has stated that the proposal to restrict job comparisons to employees of a given employer governed by a common set of personnel and compensation policies has the potential to unduly restrict the type of inquiries that should be undertaken by the Commission. Where different job classifications are covered under separate collective agreements, or where one job classification is covered by a collective agreement and the other is not, it might be argued, states the CLC, that these classifications cannot be compared for the purpose of section 11 since no common set of compensation policies exists. If the proposed guide-lines had the effect of precluding such a comparison, they could, in the view of the CLC, seriously jeopardise the right of employees of the same employer to receive equal treatment across occupational categories with respect to the right to equal pay for work of equal value. For these reasons, the CLC has recommended that the proposed guide-lines be revised to ensure that appropriate comparisons be made between groups covered by different compensation clauses (Submission by the Canadian Labour Congress to the parliamentary Committee on Equality Rights, September 1985, pp. 29-30).

[2] e.g., Indonesia, Japan, Philippines, Spain, Zimbabwe.

is specifically provided for in legislation or case law. Thus, in the United States, court practice under Title VII of the Civil Rights Act of 1964, already referred to in paragraph 68 above, has accepted a survey of wage rates paid outside the enterprise as evidence in support of a finding of international discrimination.[1] In the Netherlands, the Equal Wages for Women and Men Act,[2] already referred to in paragraph 64 above, provides in section 3(2) that "where no work of equal or approximately equal value is done by a worker of the other sex in the undertaking where the worker concerned is employed, the basis" (of comparison) "shall be the wage that a worker of the other sex normally receives, in an undertaking of as nearly as possible the same kind in the same sector, for work of equal value or, in the absence of such work, for work of approximately equal value". In such cases, "account shall be taken of general differences in the wage structures of the undertakings concerned" (section 5(3) of the Act). Finally, in Sweden, section 4(1) of the Act respecting equality between women and men at work,[3] provides that "discrimination on the basis of sex shall also be deemed to occur where an employer observes less favourable conditions of employment for a worker than those that he observes for a worker of the opposite sex, if such workers perform work which, in accordance with a collective agreement or the practice observed within the sphere of activity concerned, is to be regarded as equal or of equal value in the light of an agreed assessment of the job and the employer cannot show that the different conditions of employment are related to differences in the workers' material qualifications for the work or that they are not in any event related to the workers' sex". Here the reference to "an agreed assessment of the job", already considered in paragraph 64 above, is placed within the wider context of "a collective agreement or the practice observed within the sphere of activity concerned". Elsewhere, compliance with the principle of equal remuneration is called for under legislation dealing separately with the employer's obligations and with the provisions of collective agreements and other wage-fixing instruments of wider application, which, of course, also bind the individual employer.[4]

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[1] See below, para. 120.

[2] LS 1975 - Neth. 1.

[3] LS 1979 - Swe. 2.

[4] See the following paragraphs. In Denmark the Act respecting equal wages for men and women, already referred to in para. 45 above, which obliges the employer to pay equal wages at the same workplace, does not apply in cases where he is obliged to give equal pay in accordance with a collective agreement (section 1 of the Act (LS 1976 - Den. 1), and article 22 report for 1983-85 by the Government).

75. Collective agreements and other wage-fixing instruments. Even where the law relies on the employer for ensuring equal remuneration within the limits of a workplace, establishment or enterprise (where the actual wages and fringe benefits paid will often depend to a certain extent on individual contracts and arrangements or company regulations and agreements), there may be additional legal provisions to ensure that collective agreements, wage orders, awards and other instruments fixing remuneration on a wider scale also comply with the principle of equal pay. Thus, in Ireland, sections 2 and 3(c) of the Anti-Discrimination (Pay) Act 1974[1] require employers to pay equal remuneration to women and men employed on work of equal value in the same place, but section 5 also provides that where collective agreements, employment regulation orders, registered employment agreements or orders made by the Agricultural Wages Board contain a provision in which differences in rates of remuneration are based on or related to the sex of employees, such a provision shall be null and void.[2] In Argentina, an employer shall treat all his workers identically in identical situations under section 81 of the Consolidated text of the rules governing contracts of employment,[3] while section 172(2) moreover provides that every collective agreement or wage scale shall guarantee that the principle of equal pay for work of equal value is fully observed. In France and Luxembourg, not only is every employer bound to ensure, in respect of work of equal value, equal remuneration for men and women, but also any provision contained, inter alia, in a contract of employment, a collective agreement, a wage agreement, wage regulations or wage scales decided by an employer or group of employers, which involves a lower rate of remuneration for employees of either sex in relation to the other for work of equal value shall be automatically null and void, and the higher of remuneration shall apply.[4] Similarly, in Spain, the requirement in section 28 of the Workers'

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[1] LS 1974 - Ire. 1.

[2] In the United Kingdom, similar provisions in section 3 of the Equal Pay Act 1970, as amended (LS 1975 - UK 1, Schedule 1) are limited to provisions which apply specifically to men only or to women only; such provisions may be referred to the Central Arbitration Committee to declare what amendments need to be made in the agreement, etc., so as to remove that discrimination between men and women.

[3] LS 1976 - Arg. 1.

[4] France, sections 1 and 3 of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3), as amended by section 5 of Act No. 83-635, inserted in the Labour Code as sections L. 140-2 and L. 140-4; Luxembourg, sections 1 and 4 of the Grand-Ducal Regulations of 1974 concerning equality of remuneration between men and women.

Charter[1] that an employer shall pay the same wage for equal work, without any discrimination whatsoever on grounds of sex, covers but a small segment of section 17, under which any regulations, stipulations of collective agreements, individual contracts or unilateral decisions by an employer discriminating in favour of or against a worker by reason of his sex, inter alia, in matters of remuneration, shall be null and void.

76. National wage system. While most laws prohibiting discrimination in remuneration on grounds of sex do not indicate a limitation on the comparison between jobs performed in different places or enterprises or for different employers, such limitation may even be specifically excluded where there is a single nation-wide wage system. Reference was made in paragraph 62 above to legal provisions in Algeria under which a single nation-wide method of classification shall permit all jobs to be related to each other for the purposes, inter alia, of applying the principle "equal work, equal pay". Similarly, the reach of comparison does not appear to be limited under nation-wide wage systems provided for in most public service laws as well as in the labour and wage legislation of several countries in which most wage earners are employed by public authorities or organisations.[2]

IV. Protective provisions

77. Protection of maternity and health. Maternity protection and other special measures of protection, such as the limitation of women's access to certain jobs on medical grounds, have been among the first concerns of national and international standard setting in the social field, and are taken into account in paragraph 6(d) of the Equal Remuneration Recommendation, 1951, as well as Article 5 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). While some of these provisions, such as those limiting the night work of women, have been or are being reviewed in certain countries in the light of the principle of equality of opportunity and treatment in employment, others, including those protecting maternity, remain universally accepted. In a number of countries, specific provision has therefore been made to leave no doubt that "the adoption of measures for the labour protection of women shall be deemed to be a matter of public interest and shall in no case justify a reduction of wages" (Brazil)[3] or that "no agreement

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[1] LS 1980 - Sp. 1.

[2] See para. 57 above. However, where equal pay provisions are aimed at men and women workers performing the same work with the same skill and output, the need for far-reaching comparisons is less likely to arise than where different jobs are to be compared in terms of equal value.

[3] Section 377 of the Consolidation of Labour Laws (LS 1985 - Bra. 1).

on a lower rate of remuneration shall be justified by the fact that special provisions affording protection on account of the worker's sex apply" (Federal Republic of Germany).[1] Similarly, in India and the United Kingdom, in so far as - (a) the terms and conditions of a woman's employment, are, in any respect, affected by compliance with the laws regulating the employment of women, or (b) any special treatment is afforded to women in connection with pregnancy or childbirth - then to that extent the requirement of equal treatment for men and women shall not apply;[2] and in New Zealand, "in determining whether there exists an element of differentiation, based on the sex of the employees, in the rates of remuneration for male employees and female employees for any work or class of work, no account shall be taken of any provision in any Act or order in council which limits the work female employees may perform".[3] In the USSR, it is specified that it is unlawful to reduce a woman's remuneration on account of her pregnancy or the fact that she is breast-feeding an infant;[4] comparable provisions exist elsewhere in collective agreements.[5]

78. Prohibition of downward equalisation. In Canada, India, the United States and Swaziland, laws providing for equal remuneration specify that an employer shall not reduce wages (or the wage rate of any worker) in order to eliminate a discriminatory practice (or to comply with the law).[6] In other countries (e.g. France, Luxembourg), the law

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[1] Section 612(3) of the Civil Code, inserted by the Labour Law (European Communities Harmonisation) Act (LS 1980 - Ger.F.R. 3).

[2] India, section 15 of the Equal Remuneration Act 1976 (LS 1976 - Ind. 1); United Kingdom, section 6(1) of the Equal Pay Act 1970, as amended (LS 1975 - UK 1, Schedule 1).

[3] Section 3(2) of the Equal Pay Act 1972 (LS 1972 - NZ 1).

[4] Article 73(1) of the Fundamental Principles of 1970 governing the labour legislation (LS 1970 - USSR 1); section 170(1) of the Labour Code of the RSFSR of 1971 (LS 1971 - USSR 1) and corresponding provisions in labour codes of other Union Republics.

[5] For example, in Benin, section 44(3) of the general collective labour agreement of 1974 applicable to undertakings in the private sector (LS 1974 - Dah. 2) provides that in the event of a change of job ordered by the approved medical practitioner because of pregnancy, the woman worker concerned shall continue to receive in her new post the wages she received before such change of job.

[6] Canada, section 11(5) of the Canadian Human Rights Act 1977; India, section 4(2) of the Equal Remuneration Act 1976 (LS 1976 - Ind. 1); United States, Equal Pay Act of 1963 (29 United States Code Section 206(d)(1); Swaziland, section 96(4) of the Employment Act 1980.

provides that in cases of unequal wages for work of equal value, the higher rate shall apply automatically.[1]

C. Defining remuneration

79. Many labour codes and a number of equal remuneration and equal treatment laws provide for the same or equal wages or remuneration, or eqaul treatment in the field of remuneration for men and women, without defining the term "wage" or "remuneration".[2] A few limit its scope to "basic remuneration"[3] or "initial wage";[4] a fair number contain a general definition which is often supplemented with a detailed list of benefits specifically included in, or excluded from, the scope of remuneration in general or for the purposes of equal pay. The inclusion or exclusion of particular benefits may also be specified where "wages" or "remuneration" are not otherwise defined. In the case of certain fringe benefits such as housing and family allowances or pension rights, which sometimes match the basic wage in importance and whose equal (or unequal) attribution is intimately linked to the general status of women and men in family and society, important developments have taken place in a number of countries in the public sector, to be reviewed in Chapter V, section 1.

I. General principles

80. The formula of the Convention. The comprehensive definition of "remuneration" in Article 1(a) of the Convention[5] is based on

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[1] France, section L. 140 - 4(2) of the Labour Code, inserted by section 3(2) of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3); Luxembourg, section 4(2) of the Grand-Ducal Regulations of 1974 concerning equality of remuneration between men and women.

[2] In a number of the countries concerned, the application of the principle of equal pay to certain elements of remuneration under the Convention has given rise to comments by the Committee, some of which are reflected in Chapter V, section 2.

[3] Kuwait, section 28 of the Labour Law for the Private Sector, No. 38 of 1964.

[4] Ethiopia, section 43 of the Labour Proclamation (LS 1975 - Eth. 1).

[5] See para. 14 et seq. above.

parameters covering (i) the "ordinary, basic or minimum wage" as well as "any additional emoluments whatsoever"; (ii) payments in cash as well as in kind; (iii) payments made directly as well as indirectly by the employer to the worker - provided in all cases that the payments are "arising out of the worker's employment". This formula is closely followed in Article 119 of the Treaty establishing the European Economic Community[1] and in equal remuneration or equal treatment laws in France,[2] Greece,[3] Jamaica[4] and Luxembourg,[5] and to large extent in India.[6]

81. Cash wage. Where "in general terms, wages are the amount of money to be paid in cash by an employer or third party to a person in return for work performed", as in Turkey,[7] the limitation to cash

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[1] According to the Court of Justice of the European Community, this provision covers, inter alia, family and housing allowances and contributions to a retirement benefits scheme paid by an employer in the name of employees by means of an addition to the gross salary, and may be relied upon before the national courts - see below paras. 126 and 127.

[2] Section L. 140-2(2) of the Labour Code, inserted by section 1(2) of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3).

[3] Section 4(2) of Act No. 1414 of 1984 respecting the application of the principle of eqaulity of the sexes in employment relationships (LS 1984 - Gr. 1).

[4] Section 2(1) of the Employment (Equal Pay for Men and Women) Act 1975 (LS 1975 - Jam. 2).

[5] Section 2 of the Grand-Ducal Regulations of 1974 concerning equality of remuneration between men and women.

[6] Section 2(g) of the Equal Remuneration Act 1976 (LS 1976 - Ind. 1) does not mention explicitly indirect payments, but compensates this by omitting a reference to the employer and by listing payments "in respect of employment" as well as payment for work done: "'remuneration' means the basic wage or salary, and any additional emoluments whatsoever payable, either in cash or in kind, to a person employed in respect of employment or work done in such employment, if the terms of the contract of employment, express or implied, were fulfilled." (The last condition, added by the Act, may be considered as neutral for the purposes of the Convention.) However, section 15 specifically excludes from the scope of the Act terms and conditions relating to retirement, marriage or death and any provision made in connection with retirement, marriage or death.

[7] Section 26(1) of the Labour Act of 1971, as amended (LS 1983 - Tur. 3).

payments - unlike a reference to remuneration capable of being evaluated in terms of money - falls short of the definition of the Convention, which includes payments in kind. (Indirect payments may to a certain extent be covered by the reference to a "third party", although payments "in return for work performed" would not otherwise necessarily include all payments "arising out of the worker's employment" - see below.)

82. Direct wage. Under the labour codes of Cameroon,[1] Haiti,[2] Paraguay,[3] and the Philippines,[4] the term "wage" means any remuneration or earnings, however designated (or calculated), capable of being expressed (or evaluated) in terms of money, which is payable by virtue of a (written or unwritten) contract of employment by an employer to a worker for work done or to be done or for services rendered or to be rendered. Such definition lacks both a reference to indirect wage elements (whether by specific reference or otherwise), and sufficient width to cover any payments "arising out of the worker's employment", since wages are limited to payments by the employer for work done or to be done (or for services rendered or to be rendered).[5] Omission of "indirect wages" may to a certain extent be compensated by reference to any payments "arising out of the worker's employment" (e.g. where remuneration means any benefit to which the worker is entitled "whether or not such payment is made in return for services".[6] Similarly, an

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[1] Section 67(1) of the Labour Code (LS 1974 - Cam. 1), which adds, after "capable of being evaluated in terms of money", the terms "and fixed by mutual agreement or by the provisions of regulations or collective agreements".

[2] Section 135 of the Labour Code of 1984 which adds, after "capable of being evaluated in terms of money", the terms " and fixed by agreement or by law".

[3] Section 228 of the Labour Code of 1961 (LS 1961 - Par. 1).

[4] Article 97(f) of the Labour Code of 1974, as amended (Article 95(f) in LS 1974 - Phi. 1), which adds, after "money", "whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same", and at the end, the terms "and includes the fair and reasonable value, as determined by the Secretary of Labour of board, lodging and other facilities customarily furnished by employer to the employee".

[5] The reference to a contract of employment as the basis for payments (to be considered in para. 83 below) reinforces this limitation.

[6] Portugal, section 2(c) of Legislative Decree No. 392/76 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3).

explicit link to work performed will not diminish the scope of remuneration where "any advantages received directly or indirectly from the employer"[1] are included. Where, however, neither indirect payments nor payments "arising out of the employment" otherwise than in return for work or services are referred to in the definition of remuneration, its application may, as the Committee pointed out in paragraph 56 of its 1975 general survey, be based on the concept of a direct wage, more restrictive than the formula of the Convention, which includes remuneration payable indirectly by the employer and arising out of the employment.

83. Basis for payment. A number of laws, including those quoted in paragraph 82, refer to remuneration payable for work or services "by virtue of a contract of employment";[2] in several cases, the law explicitly mentions oral or unwritten contracts. In addition, reference is sometimes made to laws, regulations or collective agreements fixing the amount of remuneration. In Iraq and the Libyan Arab Jamahiriya, wages are generally defined in terms of compensation for work performed, but bonuses, gratuities and the like are included only if such payment is provided for in individual or collective contracts of employment, or in rules of employment, or "is sanctioned by practice or custom"[3] or "is traditionally or customarily paid to workers so that they have come to consider it as part of their payment and not as a gift".[4] Similarly, in Colombia, wages include "habitual allowances" but not "sums which the employer pays occasionally to the employee without being in any way obliged to do so, such as occasional bonuses".[5] Where the legal basis for the payment is indicated in the definition of remuneration, it should be as comprehensive as possible, since the Convention refers to "any additional emoluments whatsoever payable directly or indirectly" by the employer to the worker and "arising out of the worker's employment", without limiting in any way its purview by reference to the legal basis for the payment.[6]

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[1] Canada, section 11(6) of the Canadian Human Rights Act 1977, covering, inter alia, employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans.

[2] The Canadian Human Rights Act, mentioned in the last footnote of para. 82 merely refers to "remuneration payable for work performed".

[3] Iraq, section 44(c) of the Labour Code (LS 1970 - Iraq 1).

[4] Libyan Arab Jamahiriya, section 31(3) of the Labour Code (LS 1970 - Libya 1).

[5] Sections 127 and 128 of the Labour Code, as amended (sections 128 and 129 in LS 1950 - Col. 3-A).

[6] See also para. 90 below.

84. Context of the definition. Under the Labour Code of Czechoslovakia, the expression "wages" includes basic wages, bonuses, allowances and other rewards paid for the performance of work and a share in the economic results of the organisation.[1] In Norway, the Act respecting equality between the sexes defines "wages" as "the normal remuneration and all other supplements or advantages in cash or other benefits granted by the employer".[2] While either definition is silent on the subject of indirect remuneration, this comes within the more general purview of the entitlement to equal status guaranteed under both Acts.[3] Similarly, in the United States, the scope of the term "wages" in the Equal Pay Act of 1963 has been the subject of guide-lines (covering, inter alia, employer contributions to sickness, accident and life insurance and pensions schemes), but, more generally, any element of remuneration under the Convention is within the scope of Title VII of the Civil Rights Act, which applies to "compensation, terms, conditions, or privileges of employment" (see paragraph 68 above). In Equatorial Guinea, section 52 of the Labour Code of 1984 excludes, inter alia, family, cost-of-living and travel allowances from wages, but section 53 guarantees not only equal remuneration for work of equal value but also equality of opportunity and treatment in employment and occupation. In Spain, compensation for transfer, suspension or dismissal shall, inter alia, not be deemed wages under section 26(2) of the Labour Code,[4] but any discriminatory provisions or decisions in matters of employment or conditions thereof shall be null and void under section 17.

II. Specific elements

85. Specific elements of remuneration in the sense of the Convention may be explicitly included in, or (in the absence of wider-reaching guarantees of the kind considered in paragraph 84) excluded from the scope of legislation either in connection with a general definition of remuneration, or under separate legal provisions. Marriage, family and housing allowances, and employer contributions to insurance and pension schemes are two fields in which changing perceptions of the general status of women in society are reflected in a great diversity of legal developments affecting the concept of remuneration, to be considered in

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[1] Section 113 of the Labour Code (LS 1975 - Cz. 2).

[2] Section 5(2) of the Act (LS 1978 - Nor. 1).

[3] See paras. 49 and 57 above.

[4] LS 1980 - Sp. 1.

the following paragraphs,[1] before a brief review of other "additional emoluments" and the composition of remuneration under comprehensive national wage systems.

86. Marriage and family allowances. In Greece, "marriage allowances and child allowances granted for the first time or under the new regulations shall henceforth be paid in full to the spouse or the parent who works, independent of his or her sex ... Where both spouses or both parents are working, the marriage allowances and child allowances payable from the commencement of this Act shall be paid to the spouse or parent indicated in a joint statement presented to the employer of their choice. If the spouses or parents concerned are unable to reach an agreement or to present a joint statement on this matter, each of the employers shall pay the spouse or parent employed in his undertaking half of the amount of the marriage allowance or child allowance provided for by law.[2] In Italy, family allowances and family supplements may be paid to a female worker or to a male worker on the same conditions and within the same limits. Where application is made by both the parents, such family allowances and family supplements shall be paid to the parent with whom the child is living.[3] In the Economic Reform Act of Belgium,[4] family allowances are mentioned in connection with social security schemes exempted from the scope of equal treatment provisions in that Act. In India, any provision made in connection with marriage is exempted from the requirement of equal treatment for men and women under the Equal Remuneration Act 1976.[5] Where equal

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[1] The distinction between a legal definition of remuneration or part thereof and a specific inclusion or exclusion of certain elements of remuneration for the purposes of a statutory instrument may sometimes be blurred. The following paragraphs focus on references to specific elements of remuneration in enactments which are to give general effect to the equal pay principle. Relevant court decisions under less specific standards of general application are reviewed in Chapter IV, paras. 125 to 128. From a practical viewpoint, problems and progress noted with regard to the extension of particular benefits to women, noticeable in particular in the public sector, will be reviewed in Chapter V.

[2] Sections 4(5) and 13(1) of Act No. 1414 of 1984 respecting the application of the principle of equality of the sexes in employment relationships and to make other provisions (LS 1984 - Gr. 1).

[3] Section 9(1) of Act No. 903, respecting equality of treatment as between men and women in questions of employment (LS 1977 - It. 1).

[4] Section 116 (LS 1978 - Bel. 2).

[5] Section 15 of the Act (LS 1976 - Ind. 1).

wages for men and women are provided for in labour codes, family allowances may be mentioned in the general definition of wages as part thereof. Two otherwise similar definitions of "wage" may refer inter alia to "cost of living and family allowances"[1] or, perhaps more explicitly, to "allowances for cost of living and family responsibilities".[2] The latter formula points to the fact that family responsibilities are governed by other laws, which may or may not attribute family responsibilities in the first place to the male parent, considered as the "head of family" or "head of household". Here, the effect of equal remuneration provisions depends to some extent on the equal status of men and women under more general legislation.

87. Housing. In Zimbabwe, no employer shall discriminate against any employee on grounds of sex in relation to, inter alia, the allocation of accommodation,[3] and in Japan, with regard to the loaning of funds for building or purchasing a house.[4] In a number of equal treatment laws and labour codes guaranteeing equal wages or remuneration for men and women, the definition of wages or remuneration specifically includes reasonable value for board, rent, housing, lodging[5] or the provision of accommodation, lodging, housing or a dwelling by the employer.[6] The labour codes of Colombia and Costa Rica explicitly refer in this connection to a dwelling or lodging provided to the employee "or his family", but are silent as regards the

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[1] Libyan Arab Jamahiriya, section 31(2) of the Labour Code (LS 1970 - Libya 1).

[2] Iraq, section 44(b) of the Labour Code (LS 1970 - Iraq 1).

[3] Section 5(1)(d) of the Labour Relations Act 1985.

[4] Section 10 of the Law of 1985 to Promote Equal Employment Opportunities and Secure Equal Treatment for Both Sexes, as outlined in the Government's article 19 report; according to comments by the Japanese Confederation of Labour (DOMEI), the law has no binding power.

[5] Canada, section 11(6) of the Canadian Human Rights Act 1977.

[6] e.g., Argentina, section 105(1) of the Labour Code LS 1976 - Arg. 1); Brazil, section 458 of the Labour Code (LS 1985 - Bra. 1); Colombia, section 129(1) of the Labour Code, as amended (section 130(1) in LS 1950 - Col. 3-A); Costa Rica, sections 166(1) and 167(2) of the Labour Code (LS 1943 - C.R. 1); Mexico, section 84 of the Labour Code (LS 1969 - Mex. 1); Portugal, section 2(c) of Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3).

possibility for a working woman to obtain a family lodging on the same terms as a working man, in particular where the respective spouses also work, but for another employer.[1]

88. Insurance and pension schemes financed by employers. In paragraph 17 above, it was recalled that allowances paid under social security schemes financed by the undertaking or industry concerned were part of the system of remuneration in the undertaking and were one of the elements making up wages in respect of which there should be no discrimination based on sex. For the purposes of equal remuneration, in Canada[2] "wages" include "dismissal wages" and "employer contributions to pension funds or plans, long-term disability plans and all forms of health insurance plans"; in Iceland[3] "employment benefits" to be enjoyed equally by women and men include "the right to pensions, paid holidays and health insurance as well as any other employment rights based on labour contracts". In Norway, the Act respecting equality between the sexes[4] applies "to all spheres, with the exception of the internal affairs of religious communities", and by Royal Decree of 10 February 1984, section 5, paragraph 4, of the Regulations concerning private pension schemes was amended to ensure that "pension schemes offering survivors' pensions must grant widows' and widowers' pensions under equal conditions". In Australia, terms and conditions appertaining to a superannuation or provident fund or scheme are provisionally exempted from the scope of the Sex Discrimination Act 1984;[5] in India and the United Kingdom, terms relating to retirement

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[1] In Zambia, where the principle of equal remuneration has not been enacted in general lesiglation, Regulation 7(2) of the Employment Regulations (Cap. 512, section 80) provides that the employer shall not be required to provide housing or pay the rent allowance in lieu thereof in respect of married female employees living with their husbands, if the husbands are in employment and in receipt of wages above a certain limit, or are adequately housed, or are in receipt of a rent allowance.

[2] Section 11(6) of the Canadian Human Rights Act 1977.

[3] Article 4 of the law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985).

[4] LS 1978 - Nor. 1.

[5] Section 41 of the Act.

or death and any provisions made in connection therewith.[1] In Belgium, supplementary non-statutory social security schemes covering inter alia retirement and survivors' pensions are exempted together with statutory schemes from the application of the equal treatment provisions in the Economic Reform Act,[2] while in Italy, Act No. 903 of 1977 respecting equality of treatment as between men and women in questions of employment[3] calls for equal treatment regarding survivors' benefits both under the general compulsory disability, old-age and survivors' insurance scheme and under funds, schemes and institutions set up for workers by employers. For the purposes of the Convention, only schemes financed by the undertaking or industry concerned need to be covered (see paragraph 17 above). In Zimbabwe, no employer shall discriminate against any employee on grounds of sex, inter alia, in relation to the determination or allocation of pensions.[4] In Colombia, section 128 of the Labour Code, as amended,[5] excludes the social benefits provided for in Titles VIII and IX of the Labour Code from the definition of wages but the terms and conditions under which, inter alia, leaving grants, pensions or collective life insurance are to be provided by employers under the respective provisions do not distinguish between men and women.[6]

89. Other elements of remuneration. A number of labour codes and equal treatment laws, in particular in the Americas but also elsewhere, give a detailed enumeration of additional elements included in

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[1] India, section 15 of the Equal Remuneration Act 1976 (LS 1976 - Ind. 1) and United Kingdom, section 6(1A)(b) of the Equal Pay Act 1970, as amended (LS 1975 - UK 1, Schedule 1). In the United Kingdom, terms relating to membership of an occupational pension scheme shall, however, conform with equal access requirements - see section 6(1A)(a) of the Equal Pay Act 1970, as amended.

[2] Section 116 (LS 1978 - Bel. 2); however, National Collective Agreement No. 25 on equal remuneration is to be applied to non-statutory social security schemes once relevant provisions adopted by the Council of the European Communities enter into force.

[3] Section 11 (LS 1977 - It. 1).

[4] Section 5(1)(d) of the Labour Relations Act 1985.

[5] Section 129 in LS 1950 - Col. 3-A.

[6] With the exception that a company pension under section 260 of the Labour Code, due after 20 years of service, may be obtained by women as from the age of 50, and by men not before the age of 55.

the definition of wages or remuneration. These may be extra pay,[1] increments, cost-of-living supplements, payments for night work and shift allowances,[2] payments for overtime or for work on a compulsory or weekly rest day or public holiday;[3] bonuses or wage supplements[4] which may inter alia be long-service or productivity bonuses,[5] special bonuses,[6] annual or Christmas bonuses,[7] or bonuses for competence and loyalty[8] or honesty, loyalty and efficiency;[9] ex gratia payments;[10] compensation for deficits;[11] commissions,[12] shares in profits, sales

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[1] Panama, section 10 of the Labour Code (LS 1971 - Pan. 1).

[2] e.g., Portugal, section 2(c) of Legislative Decree No. 392/79, to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3).

[3] Colombia, section 127 of the Labour Code, as amended (section 128 in LS 1950 - Col. 3-A); Jamaica, (overtime) section 2(1) of the Employment (Equal Pay for Men and Women) Act 1975 (LS 1975 - Jam. 2); New Zealand, (overtime) section 2(1) of the Equal Pay Act 1972 (LS 1972 - NZ 1); Portugal, loc. cit., and Thailand, section 26 of the Labour Protection Announcement (LS 1972 - Thai. 2).

[4] e.g., Brazil, section 457(1) of the Consolidation of Labour Laws (LS 1985 - Bra. 1); Canada, section 11(6) of the Canadian Human Rights Act; Jamaica, loc. cit.; Mexico, section 84 of the Labour Code (LS 1969 - Mex. 1); New Zealand, loc. cit.; Panama, loc. cit.; Venezuela, section 73 of the Labour Code (LS 1983 - Ven. 1).

[5] Portugal, loc. cit.

[6] Spain, section 31 of the Labour Code (LS 1980 - Sp. 1).

[7] Mexico, Portugal, Spain, loc. cit.

[8] Iraq, section 44 of the Labour Code (LS 1970 - Iraq 1).

[9] Libyan Arab Jamahiriya, section 31 of the Labour Code (LS 1970 - Libya 1).

[10] e.g., Mexico, Panama, loc. cit.

[11] Portugal, loc. cit.

[12] Argentina, sections 108 and 109 of the Labour Code (LS 1970 - Arg. 1), providing rules for their distribution; Brazil, Canada, Colombia, Iraq, Libyan Arab Jamahiriya, Mexico, New Zealand and Portugal, loc. cit.

or payments received;[1] fringe benefits whether in cash or in kind;[2] paid holidays and vacation or leave allowances;[3] food allowances or board;[4] or land given by the employer to the employee for the sowing or harvesting of his own crops.[5] Further elements, which some laws consider as part of wages but others specifically exclude in certain cases are considered in the following paragraphs.

90. Wage protection and equality. Certain benefits and supplies are sometimes excluded from a general definition of wages, apparently to prevent their being counted toward, or deducted from the amount of wages due to the workers; in this connection, the principle of equal treatment for men and women in respect of all direct and indirect payments by the employer which arise out of the workers' employment should not be neglected. Reference has already been made in paragraph 83 above to the exclusion of "occasional bonuses, allowances and gratifications" from wages under section 128 of the Labour Code of Colombia. The same exclusion from the general definition of wages exists in section 362 of the Labour Code of Honduras[6] for occasional bonuses, allowances, and grants. Moreover, section 366(3) of the Labour Code of Honduras and section 166(3) of the Labour Code of Costa Rica provide that supplies furnished by the employer to the worker free of charge shall not be deemed to be wages in kind and shall not be deducted from the cash wage or taken into account in fixing the

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[1] Argentina, section 110 of the Labour Code; Brazil, Colombia, loc. cit.; Costa Rica, section 168 of the Labour Code (LS 1943 - C.R. 1).

[2] Argentina, section 105 of the Labour Code.

[3] Iceland, Article 4 of the law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985); Zimbabwe, section 5(1)(d) of the Labour Relations Act, 1985; Canada, Portugal, loc. cit., among others.

[4] e.g., Argentina, loc. cit.; Brazil, section 458 of the Consolidation of Labour Laws (LS 1985 - Bra. 1); Colombia, section 129 of the Labour Code; Costa Rica, section 166 of the Labour Code; Portugal, loc. cit., and many others in various regions of the world.

[5] Costa Rica, loc. cit. and Honduras, section 366(2) of the Labour Code (LS 1959 - Hon. 1); see, however, para. 90 below.

[6] LS 1959 - Hon. 1.

minimum wage. However, while the equal pay provision in section 143 of the Labour Code of Colombia refers to the general definition of wages, section 367 of the Labour Code of Honduras and, in similar terms, section 167 of the Labour Code of Costa Rica specify that, for the purposes of equal wages paid without discrimination, it is understood that such wages include not only all payments made on a day-to-day basis but also all grants, allowances, accommodation and other items received by a worker in consideration of his ordinary work. This should include supplies furnished free of charge, and might be held to cover also occasional bonuses, allowances and grants.

91. Working tools and travelling expenses. Section 128 of the Labour Code of Colombia excludes from the definition of wages, "payments in cash or in kind which are not for the personal use of the employee nor for the purpose of meeting his requirements or increasing his capital, but for the purpose of enabling him to carry out his work in a satisfactory manner, such as representation allowances, allowances for transport, working tools or other similar elements". A similar exclusion is made in section 362 of the Labour Code of Honduras. Section 131(1) of the Labour Code of Colombia provides that travelling expenses shall be considered as wages in so far as they are paid to cover the employee's food and hotel expenses; nevertheless, they shall not be considered as wages if they are solely for the purpose of enabling the employee to avail himself of means of transport or as representation allowances. In Brazil, board, lodging, clothing and other benefits in kind that the employer habitually supplies to the employee under the contract or in accordance with established custom shall be deemed for all legal purposes to be part of the wage under section 458 of the Consolidation of labour laws, but for the purposes of this section clothing, equipment and accessories supplied to the employee and used at the workplace for the performance of his work shall not be deemed to be wages. Under section 457(2) of the same code, travelling allowances and subsistence allowances not exceeding 50 per cent of the employee's wages shall not be deemed to be part of the wages. Under section 106 of the Labour Code of Argentina, travelling expenses shall be deemed to be remuneration, except for such part of the expenses as is actually paid out and substantiated by means of supporting documents, without prejudice to any special provisions in regulations and collective labour agreements. In Portugal, "transport allowances" are part of "remuneration" for the purposes of Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment. Where working tools, equipment and expenses are excluded from the definition of wages, the intention obviously is to protect workers' wages against unjustified deductions by the employer. In so far as such exclusion removes the supply of working tools and refunding

of expenses from the scope of equal treatment provisions, equal remuneration for the purposes of the Convention is, however, no more guaranteed.[1]

92. Tips. In Argentina, section 113 of the Labour Code provides that where a worker has an opportunity of obtaining advantages or income by reason of his work, his earnings in the form of gratuities or rewards shall be deemed to form part of his remuneration if they are paid on a regular basis and are not prohibited. In Brazil, section 457 of the Consolidation of labour laws specifies that for all statutory purposes, the remuneration of the employee shall include both the wages due from and paid directly by the employer in return for services and also amounts received by the employee by way of tips. The expression "tips" shall be deemed to include not only any amount given by a customer to an employee of his own free will but also any amount that the employer charges a customer as an addition to his bill, whatever the reason for the charge, if it is meant to be distributed among the employees. For the purposes of section 10 of the Labour Code of Panama, dealing with equal pay, tips are likewise included in the wage, while under section 132 of the Labour Code of Colombia, tips paid to the employee shall not be considered as part of his wages, and no stipulation may be made to the effect that sums received by the employee by way of tips shall be considered as wages for his services. While the last provision appears aimed at ensuring the payment of regular wages to the employee, the opportunity of collecting tips, provided by the employer in connection with the employment, may be considered as an indirect payment for the purposes of the Convention at least where the employer has some degree of control over the final distribution of sums collected as tips.

III. Centrally fixed remuneration

93. Reference has been made in paragraph 62 above to a nation-wide job classification system to be established under section 104 of the Workers' Conditions of Employment Act of Algeria for the purpose of determining the wage corresponding to each job and of applying the principles "To each according to his work" and "Equal work, equal pay". Section 127 of the same Act provides that wage fixing shall be a government responsibility and shall not be delegated to undertakings. Subject to transitional provisions concerning family allowances and

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[1] In Norway, unequal treatment in the allotment and laundering of working clothes in hospitals, implying an extra benefit for male personnel, has led to action by the Equal Status Commissioner - see RCE 1984, p. 198, Norway.

transport and food allowances, which shall be progressively abolished, section 139 provides that a worker's wage shall be constituted, to the exclusion of all other elements, by a "wage for the job", supplemented, where appropriate, by a "local allowance" representing bonuses corresponding to the geographical area and/or sector and by an element representing additional remuneration corresponding to the quantity, quality, productivity and results of the work. The "wage for the job" shall consist of the following elements, defined in sections 132 and 146 to 162 of the Act: the basic wage, reflecting the index fixed for the worker's job, danger allowances, shift allowances, individual output bonuses or penalties, overtime allowances or flat-rate permanent service allowances, and experience allowances. The "additional remuneration" referred to in section 139 shall consist of a collective output bonus or penalty, used to recognise the productivity of a group of workers, and a share in the results of the undertaking, defined in sections 165 to 170 of the Act. Thus, all elements of remuneration are to be co-ordinated following a single nation-wide method, to be implemented inter alia through laws and regulations aimed at progressively reducing and finally eliminating all disparities existing in systems of remuneration.[1]

94. In the USSR, the Fundamental Principles governing the Labour Legislation[2] provide in articles 36 et seq. for wage standardisation to be carried out by the State with the participation of the trade unions, and wage rates to be fixed in a centralised manner. To supplement systems of remuneration for work according to the time worked or at piece-rates, workers may receive additional payment in the form of bonuses depending on the results of work achieved by the end of the year, such bonuses being paid out of the profits made by the undertaking, establishment, institution or organisation. The amount of the bonuses shall be determined by the quality of the manual or non-manual workers' work and his length of service in the undertaking, establishment, institution or organisation. The management of the undertaking, establishment, institution or organisation

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[1] Section 132(2) of the Act refers in particular to disparities found between the civil service and socialist undertakings as well as from one socialist undertaking to another.

[2] LS 1970 - USSR 1.

shall approve rules for awarding bonuses in agreement with the works', local or branch union committee. Articles 39 to 48 of the Fundamental Principles provide, inter alia, for the fixing of standard output quotas, for overtime rates and remuneration for night work and work on public holidays; and wage guarantees to workers while performing their state or social obligations or while on mission or transfer to employment in another locality. Similar provisions are included in the labour codes of Union Republics, and, to a varying extent, in the labour codes of Angola, Cuba, the German Democratic Republic, Mongolia, and Romania.[1] Where wage rates and systems are established centrally by a national authority, the ground is laid for a comparative evaluation of all jobs throughout both the economy and the public administration for the purpose of applying the Convention.[2]

D. The scope of legislation

95. Laws embodying the principle of equal remuneration, whether they are special laws on the implementation of the principle as such, or labour codes in which the principle is enshrined, have their own scope of application which may leave out certain groups of workers.

96. Public sector. In a number of countries, such as Algeria, Angola, Australia,[3] Canada,[3] Cuba, Denmark, France, German Democratic Republic, India, Ireland, Israel, Italy, Mongolia, Norway, Philippines, Somalia, Sweden, United Kingdom, United States, USSR, public sector employees and officials are either not excluded from, or specifically included in, the scope of the legislation embodying the principle of equal remuneration, examined in this chapter. Elsewhere, the public sector as a whole or various categories of public servants may be excluded from the scope of this legislation; special laws or regulations adopted in the countries concerned to govern the employment of the persons concerned will be considered in Chapter V, section 1, below.

97. Domestic workers and family undertakings. In various countries the scope of legislation embodying the principle of equal

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[1] See para. 57 above.

[2] See paras. 22 and 76 above.

[3] Federal legislation and most State or Provincial laws on the subject.

remuneration does not extend to domestic workers[1] and family workers.[2]

98. Agricultural workers. In several countries, agricultural workers are excluded from the application of relevant

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[1] Argentina, section 2 of the Consolidated text of the rules governing contracts of employment of 1976 (LS 1976 - Arg. 1); Australia, section 14(3) of the Sex Discrimination Act, 1984 (employment to perform domestic duties in a private household); Bahrain, section 2(2) of the Amiri Decree-Law No. 23 of 1976 to promulgate the Labour Law for the private sector (LS 1976 - Bah. 1) (Domestic servants and persons regarded as such); Egypt, section 3 of the Labour Code (LS 1981 - Egypt 2); Haiti, section 257 of the Labour Code brought up to date in 1984; Kuwait, section 2(e) of Law No. 38 of 1964; Libyan Arab Jamahiriya, section 1(d) of the Labour Code (LS 1970 - Libya 1); Philippines, section 98 of the Labour Code (Presidential Decree No. 442 of 1974) as amended; Sao Tomé and Principe, section 1(2) of the Rural Labour Code of 1962 (LS 1962 - Por. 1); Syrian Arab Republic, section 5 of the Labour Code, 1959 (LS 1959 - UAR.1); Turkey, section 5(4) of the Labour Code, 1983 (LS 1983 - Tur. 3). In Honduras, section 152 of the Labour Code, 1959 (LS 1959 - Hon. 1) provides for domestic workers working in undertakings to be covered by the code.

[2] Cameroon, section 1(3) of the Labour Code (L.S. 1974 - Cam. 1) (works within the traditional framework of the family); Egypt, loc. cit., section 3; Iran, section 7 of the Labour Code (LS 1959 - Iran 1); Libyan Arab Jamahiriya, loc. cit., section 1(a); Sao Tomé and Principe, loc. cit., section 1(2); Spain, section 1(e) of the Workers' Charter (L.S. 1980 - Sp. 1): Turkey, loc. cit., section 5(3). While excluding domestic servants from their scope of application, section 47 of the Labour Code of Madagascar and section 20(1) of Legislative Decree No. 392/79 of Portugal (LS 1979 - Por. 3) provide for separate legislation to be made with respect to those workers. In Brazil, section 7(a) of the Consolidation of Labour Laws of 1943 (LS 1985 - Bra. 1), which excluded domestic workers, was repealed in 1956.

laws[1] or from their provisions concerning equal remuneration.[2] Elsewhere, agricultural workers are explicitly included in labour codes.[3]

99. As the Committee pointed out in paragraphs 64 and 65 of its 1975 general survey, workers in agriculture, family undertakings and domestic service are rarely protected by specific provisions regulating their conditions of work, although they constitute the majority of the wage earners in a number of countries. Economic or financial considerations cannot justify exceptions to a principle such as equal remuneration for women and men, and the countries concerned should endeavour to extend the application of the principle to all. In 1980, the Committee of Experts noted with satisfaction that, by June 1978, the scope of the 1976 Equal Remuneration Act of India had been extended to all sectors of employment or activity.[4]

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[1] Austria, section 1(2)-1 of the Equality of Treatment Act, 1979 (LS 1979 - Aus. 1) - (the Agricultural Labour Act, 1948 (LS 1948 - Aus. 2) as amended in 1960, 1961 and 1965 (LS 1965 - Aus. 3A, B, C, D) contains no provisions concerning equal remuneration between men and women workers): Bahrain, loc. cit., section 2(5); Costa Rica, loc. cit., section 14 (applies to agricultural undertakings in which no more than five persons are employed); Dominican Republic, section 265 of the Labour Code, 1951 (undertakings with less than 10 persons); Haiti, loc. cit., section 381; Honduras, loc. cit., section 2(1) (less than 10 persons); Iran, loc. cit., section 8, (the Government has indicated in its article 19 report that, under article 16 of the Agricultural Labour Laws of Iran, the wages and salaries of men and women workers for equal work are the same); Libyan Arab Jamahiriya, loc. cit., section 1(c); Turkey, loc. cit., section 2; Venezuela, section 9 of the Labour Code (LS 1983 - Ven. 1).

[2] Egypt, loc. cit., section 159; Syrian Arab Republic, loc. cit., section 140.

[3] Haiti, loc. cit., section 381; Japan, section 8 of the Labour Standards Law (LS 1947 - Jap. 3).

[4] RCE 1980, p. 142.

E. The indivisibility of equality

100. Reference has already been made[1] to the fact that many difficulties often encountered in realising equal remuneration for work of equal value are intimately linked to the general status of women and men in employment and society: equal evaluation of work, and equal entitlement to all elements of remuneration cannot be achieved within a general context of inequality. This has to some extent been acknowledged in Paragraph 6 of the Equal Remuneration Recommendation, which links the application of the principle of equal remuneration, inter alia, to equal access to occupations and posts (subject to the protection of health and welfare) and to equal facilities for vocational training. These aspects of equality, and more generally the equality of opportunity and treatment of men and women in employment and occupation, have become a main theme of the 1958 Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111). In paragraph 38 of its general report of 1980,[2] the Committee noted that law and practice in a growing number of countries are tending to recognise that the aim of eliminating discrimination between men and women workers in respect of remuneration for work of equal value "cannot be reached in a satisfactory way unless national policy also aims at eliminating discrimination on the basis of sex in respect of access to the various levels of employment, as provided by Convention No. 111". This view is more and more shared by governments, employers and workers. For instance, in its 1982 report,[3] the Committee noted the conclusion by the Government of the Philippines that the major issue concerning the application of the Equal Remuneration Convention is not equal pay, but rather the equal job opportunities open to women workers. In its article 19 report on the Equal Remuneration Recommendation, the Government of the USSR indicates that the implementation in practice of the principle of equal pay for work of equal value cannot be viewed separately from the participation of women on an equal footing with men in productive activity, and a series of other principles bearing on the employment of women.[4] In comments on the New Zealand Government's report on the Recommendation, the New Zealand Employers' Federation mentions positive action it has taken to promote the creation of conditions of equal opportunity within firms or companies. In comments on the application of the Convention for the period 1983-85 in India, the Centre of Indian Trade Unions indicates

[1] For example, in paras. 42, 79 and 86 above.

[2] RCE, 1980, p. 13.

[3] RCE, 1982, p. 154.

[4] See Chapter IV, section 6.

that after the passing of the Equal Remuneration Act 1976, wage inequality continued, inter alia, where women workers employed for about 10 to 12 years by the South Central Railway Administration were made casual as soon as the notification of Equal Wage was applied to railways, while their junior male colleagues were being absorbed permanently, and that this has affected their emoluments, social security and retirement benefits including pensions.[1]

101. Comprehensive approach. A rapidly growing number of States have adopted or prepared legislation dealing comprehensively with all aspects of equality of opportunity and treatment for men and women related to employment, often also establishing special machinery for translating the principle into practice. Many constitutional provisions and several equal treatment laws quoted in this chapter in fact follow this approach, and countries having first adopted specific laws on equal remuneration have followed up with broader legislation on equal status. While certain aspects of these wider concerns will be considered in some detail in Chapters IV and V below, the Committee has considered it appropriate to reserve the issues of equal treatment and opportunity in employment, although intimately linked to the subject of the present survey, for full consideration on the occasion of its general survey of 1988 on the effect given to the 1958 instruments on discrimination in respect of employment and occupation, so as to avoid unnecessary duplication.

[1] In its report, the Government indicates that the South Central Railway Administration has decided that the women concerned should be considered for absorption in different yard gangs and also loading and unloading gangs.

CHAPTER IV

IMPLEMENTING THE PRINCIPLE: THE TOOLS

102. The incorporation of the principle of equal remuneration into national law (reviewed in the preceding chapter) is an important undertaking to ensure its application to all workers within the scope of the law.[1] Further steps are, however, needed to translate the principle into practice. The measures taken by governments, often in co-operation with employers and workers, to secure respect for the principle of equal remuneration, differ according to national conditions. Where the principle of equal remuneration is embodied in the Labour Code, the task of enforcement will often be entrusted to agencies with a general responsibility for supervising the application of labour legislation. Where equal remuneration has been made the subject of special legislation dealing with equal remuneration or equal treatment in employment, specific provision has also usually been made for its implementation through a range of measures, such as the definition of non-discriminatory job evaluation criteria and systems, the creation of a specialised agency with adequate powers, the co-operation with employers' and workers' organisations for the implementation of the principle, the possibility for trade unions to bring court actions, the reversal of the burden of proof where discrimination is alleged, the protection against reprisals, the nullity of discriminatory wage rates and the recovery of wages due, and the obligation of employers to keep records. The following sections will review the roles of labour inspection, specialised bodies and the courts in promoting, enforcing or supervising the implementation of the principle; the responsibilities of employers and workers; methods of job evaluation; the remedies available to aggrieved persons; and other factors to facilitate implementation.

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[1] See paras. 25 and 28 above. For the scope of national laws, see paras. 95 to 99 above.

Section 1. Bodies to promote, enforce or supervise implementation of the principle

(a) Labour inspection

103. The majority of governments indicate that the enforcement of equal pay legislation is entrusted to the labour inspection service. In most of these cases, the supervision of equal pay provisions falls within the competence of inspectors who are more generally responsible for securing the implementation of all labour laws and regulations, including those relating to social security, health and safety. Elsewhere, prescriptions regarding equal pay are to be supervised by a specialised service of the inspectorate[1] with responsibility for a fairly narrowly defined area of interest. Specialisation by subject matter is found particularly in inspection systems based on the British model where, for example, officials may be entrusted solely with the enforcement of legal provisions relating to wages.[2] However the labour system is organised, the Committee has noted the scarcity of information both on the extent to which inspection has actually been carried out and on the degree to which it has been effective in enforcing equal pay legislation. Only infrequently do the reports received from governments or the annual reports of the labour inspection services provide any information on violations noted or results achieved with respect to the implementation of the principle. While statistics of inspections concerning, more generally, compliance with wage legislation may, in some cases, relate to equal pay requirements, specific indications have been given only by a few governments, in particular Canada,[3] India, Japan and New Zealand.

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[1] In Belgium, for example, where the inspection system is composed of several specialised services, the Labour Law Inspectorate (Service de l'Inspection des lois sociales) is authorised to recieve complaints from workers concerning violations of the rule on equal remuneration.

[2] In the United Kingdom there is no specialised system of official inspection regarding the application of equal pay in undertakings but wage inspectors appointed by the Secretary of State for Employment are to check compliance with wages council orders. Under section 4 (2) of the Equal Pay Act 1970, the Secretary has a duty to refer an order to the Central Arbitration Committee if asked to do so by a member of a wages council, or if in any case the order appears to need amendment.

[3] Considerable progress has been made at the provincial level; the Equal Pay Investigative Unit of the Employment Standards Branch of the Ontario Ministry of Labour assessed Can.$543,516 as back pay for 447 employees resulting in per annum wage increases to achieve parity totalling Can.$479,951 and benefiting 944 employees during the period 1 July 1983 to 30 June 1985.

However, even in these countries, the role of the labour inspectorate in bringing about compliance with the Convention appears rather limited when comparing the number of interventions made by labour inspectors in the field of equal remuneration with those in other fields.

104. The paucity of information on the role taken by labour inspectors in enforcing equal pay provisions may, to some extent, be related to the difficulties faced by many governments in establishing and maintaining adequate inspection services. Foremost among the problems noted by the Committee in its 1985 General Survey on Labour Inspection[1] are those relating to the shortage of human and material resources. The personnel of the inspection services is often insufficient in number; there is considerable need for training of the inspectorate; and, in many cases, the facilities available (e.g. transport and communications) are inadequate.[2] In these circumstances, it is not surprising that the inspectorates in many countries would be occupied more with problems of, for instance, safety and health than with ensuring conformity with a principle which is in many ways abstract and complicated to apply.

105. A number of governments have reported on initiatives being taken or considered to enhance the role of the labour inspectorate in securing conformity with equal pay legislation. Recent legislative enactments in some countries have, for example, made special provision for co-ordination between the labour inspectorate and specialised bodies dealing with questions of equal treatment of men and women workers. In Portugal, the labour inspectorate, which has responsibility for enforcing the decree on equality of opportunity and treatment for women and men in employment[3] must first obtain the opinion of the Committee on Equality in Work and Employment where it has reasonable doubts as to the existence of a discriminatory situation or practice

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[1] General Survey on Labour Inspection, Report III (Part 4B), 71st Session. General Survey of the Reports on Labour Inspection Convention (No. 81) and Recommendation (No. 81), the Labour Inspection (Mining and Transport) Recommendation (No. 82) and the Labour Inspection (Agriculture) Convention (No. 129) and Recommendation (No. 133). International Labour Conference, 1985.

[2] Paras. 325 ff. ibid.

[3] Legislative Decree No. 392/79 of 20 September 1979 (section 18) (LS 1979 - Por. 3).

concerning the provisions on equality of treatment and equal remuneration. In Greece, the equal treatment legislation[1] calls for sex equality offices to be set up in all the labour inspection services (directorates, sections, offices) to supervise its application. Any existing discrimination detected is to be brought directly to the attention of the Sex Equality Section of the Working Conditions Directorate at the Ministry of Labour. Under a provision of the Canada Labour Code[2] an inspector under the Code may notify the Canadian Human Rights Commission or file a complaint with that Commission where he or she has reasonable grounds for believing that the equal pay provision of the Canadian Human Rights Act (section 11 of the Act) has been breached. A 1984 Canadian Royal Commission Report on Equality of Employment[3] noted, however, that this provision, which came into force in 1978, has not yet been used. Measures to enforce equal pay have been intensified with the establishment in 1984 of an Equal Pay Programme in the Department of Labour, designed to eliminate sex discrimination against women working within the federal jurisdiction. In the framework of field officer education, the first of two-day basic workshops was held in 1985, to be followed by advanced training regarding the promotion of equal pay. Special briefing sessions were also held for labour inspectors of the Ministry of Labour in Belgium, following an opinion issued by the Commission on Women's Employment (an advisory body of tripartite composition attached to the Ministry of labour) which suggested methods to apply the principle of equal pay.[4]

106. In considering measures to strengthen the means of supervision of equality of remuneration, some countries have emphasised the need for a greater involvement of workers and their representatives in the inspection process. The Government of Tunisia states in this regard, that consideration is being given to reinforcing the role of works committees and trade unions at the enterprise level, in particular, with a view to overcoming the fear of employer reprisals directed against women workers who complain to the authorities about discrimination in remuneration. Trade unions in the socialist countries of Eastern Europe are closely associated with the exercise of inspection functions. They are, in particular, empowered to exercise labour inspection functions in respect of labour legislation, including provisions dealing with equal pay. As concerns other measures to strengthen labour inspection, the

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[1] Act No. 1414, respecting the application of the principle of equality of the sexes in employment relationships of 30 January 1984 (Section 8) (LS 1984 - Gr.1).

[2] Section 38.1 of the Canada Labour Code, R.S.C. 1970, C.L. - 1, as amended.

[3] Report of the Commission on Equality in Employment. A Royal Commission Report (Judge Rosalie Silberman Abella, Commissioner), October 1984, Canada, p. 243.

[4] Opinion No. 6 of 22 March 1976.

Committee has noted that significant progress has been made in the last couple of decades regarding the more active recruitment of women inspectors and has drawn attention to the desirability of maintaining an adequate presence of women in the labour inspection staff in order to ensure a greater sensitivity to the problems of women workers.[1] In this context, the Government of India has stated that consideration is being given to appointing women social workers as honorary inspectors under the Equal Remuneration Act, 1976 on an experimental basis.

(b) Specialised bodies to supervise, enforce or promote implementation of the principle

107. During the past decade, administrative agencies concerned with questions affecting working women have been established in a majority of countries.[2] Agencies of this type are generally given a broad mandate by their enabling legislation or by administrative arrangement to eliminate discrimination and promote equality of opportunity and treatment in employment for women. In practice, most of these bodies[3] undertake research and formulate policies on women's employment, co-ordinate and monitor governmental programmes, provide advice on the elaboration of legislation and play an active role in publicising measures designed to achive equality for women. Examples of such bodies are found in all parts of the world.[4] For instance, a governmental body has been

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[1] General Survey on Labour Inspection, 1985, loc. cit., paras. 216 and 217.

[2] The ILO Director of Governmental Bodies dealing with Women Workers' Questions (Geneva, 1983) indicates there are more than 90 countries where such agencies have been set up within the existing executive or legislative structure or as consultative bodies.

[3] (e.g., Women's bureaux and equal employment opportunities units in government departments, particularly labour departments and advisory and consultative councils concerned with questions of equality between the sexes.)

[4] Review and Appraisal of Progress Achieved and Obstacles Encountered at the National Level in the Realisation of the Goals and Objectives of the United Nations Decade for Women: Equality Development and Peace. UN Doc. A/CONF.116/5/Add. 2, Part Two (III), pp. 24-25.

created in Ghana to deal specifically with women workers' questions, to ensure the full integration of women in development and the elimination of all forms of discrimination and to serve as an advisory body to the Government on all matters relating to women. In Sri Lanka, a national committee was formed in 1975 for the International Women's Year consisting of representatives of various governmental organisations, trade unions, students' unions and other national or local organisations. By 1978, the Women's Bureau was acting as a co-ordinating body in the Ministry of Plan Implementation to ensure that all aspects of the development process involved women. Since then it has served as the central agency on women's questions with international organisations. In 1980, the Bureau drafted a charter for women that specifically included the demand for equality of rights in both public and private sectors, equal pay for equal work and maternity protection. Standing Commissions dealing with women's working and living conditions and the protection of mothers and children were formed in the USSR in 1976 under the two houses of the Supreme Soviet, the Council of the Union and the Council of Nationalities. The Commissions' powers include formulating proposals on issues relating to these matters for review by the corresponding governmental authorities. The Women's Bureau of Costa Rica was created in 1975 as part of the Ministry of Labour and Social Security and acquired the status of General Directorate for Women and the Family in 1980. The Bureau undertakes research on women workers' questions, offers professional training and provides family services.

108. In addition, the legislation establishing the right to equal pay (often within the context of measures to ensure equal treatment in employment generally) has, in a number of countries,[1] also provided specifically for a specialised agency to play a role in its enforcement.

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[1] For example, Australia, Austria, Brazil, Canada, Denmark, Greece, Iceland, Ireland, Israel, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, United Kingdom, United States. In addition, the Government of Finland has advised in its latest report on Convention No. 100 that a bill for an Equality Act, submitted to Parliament on 3 May 1985, proposes that a special authority - an Equality Councillor - be appointed to monitor the Act.

109. The creation of different bodies to carry out distinct functions in regard to equal treatment in employment has resulted in a multiplicity of such agencies in a number of countries. Sometimes, separate machinery exists to promote equality in a particular sector of employment; in other cases, each of a number of agencies may be concerned with different aspects of the equality question. In this section, particular attention will be paid to the role of those bodies vested with authority to enforce national legislation concerning equal treatment, including equal remuneration.

(i) Powers of enforcement

110. The specific powers and responsibilities conferred upon specialised bodies to implement equal employment policies, result in significant variations of approach between jurisdictions. In some countries, the competent body has the power both to receive and to initiate complaints or investigations concerning discrimination against women. This is the case with the specialised bodies responsible for enforcing sex equality legislation in, for example, Australia, Austria, Canada, New Zealand, Norway, Sweden and the United States. In other countries, the agency concerned is charged with enforcing the legislation primarily through receiving complaints (Greece,[1] Iceland, the Netherlands and Spain);[2] elsewhere the specialised body is empowered to eliminate discrimination by undertaking investigations at its own initiative rather than by dealing with individual complaints (e.g. Ireland, the United Kingdom).

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[1] The Government of Greece has advised in its report that the General Equality Secretariat (created by Law No. 1558 of 1985) is competent to receive complaints concerning breaches of the Act respecting the application of the principle of equality of the sexes in employment relationships, (No. 1414 of 1984, LS 1984 - Gr.1)

[2] The Women's Institute, created by Decree 16/83, is essentially an advisory and consultative body but it is empowered to receive complaints presented by women concerning concrete cases of discrimination in fact or in law and refer them to the competent administrative organs.

111. Agencies empowered to consider complaints are, in some cases, required to resolve disputes through conciliation. In Canada,[1] the Human Rights Act empowers the Human Rights Commission both to initiate complaints where the Commission has reasonable grounds for believing that a person is engaging in a discriminatory practice and to receive complaints. At the conclusion of an investigation, the Commission may, among other options, substantiate the complaint and appoint a conciliator to seek a settlement of the complaint. While the Commission may, at any stage after the filing of a complaint, appoint a Human Rights Tribunal to inquire into a complaint, the great majority of complaints are settled during the investigation or conciliation stages.[2] This conciliation approach to settling complaints has been taken in a number of countries. Under the legislation establishing the Human Rights Commission of New Zealand, the Commission must try to secure a settlement between the parties where, after investigation, it is of the opinion that a breach of the legislation has occured.[3] In Australia, a complaint to the Human

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[1] The Canadian Human Rights Act, R.S.C. 1976-77 (section 11 of which gives effect to the principle of equal pay for work of equal value) is administered by the Canadian Human Rights Commission. See the annual reports of the Commission for a description of its activities.

[2] Of the 70 complaints for which the Commission approved settlements during 1984, 43 were settled during investigation and 22 after conciliation. Five cases were settled by independent human rights tribunals. (p. 19, 1984 Annual Report of Canadian Human Rights Commission).

[3] The Human Rights Commission was established by Act No. 49 of 1977 which prohibits discrimination, inter alia, on the grounds of sex and marital status in employment, accommodation, education and in the market place. According to section 15(12), complaints relating "solely to equal pay shall be referred to the Secretary of Labour unless the complaint is made against the Crown".

Rights Commission, which appears to involve an unlawful act under the Sex Discrimination Act,[1] is referred to the Sex Discrimination Commissioner who investigates and endeavours to settle the matter by conciliation.[2] If no agreement is reached, the Commissioner may refer the matter back to the Commission which may conduct its own inquiry and again endeavour to resolve or effect settlement of the complaint by conciliation. Similarly, the duty of the Equality Commissioner (Ombudsman) in Sweden is defined as being primarily to induce employers to comply with the provisions of the Equal Opportunities Act[3] on a voluntary basis; and in Norway, the Equal Status Commissioner (Ombud) shall, on his/her own initiative or on the basis of an application from any third party, endeavour to secure compliance with the provisions of the Act through voluntary settlement.[4] In the United States, the Equal Employment Opportunity Commission, which is charged with administering Title VII of the Civil Rights Act 1964 and enforcing the Equal Pay Act 1963, is required to attempt informal conciliation only in respect of disputes under Title VII (dealing with discrimination in compensation, terms,

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[1] The Sex Discrimination Act, 1984 is administered by the Human Rights Commission. Although the Act does not specifically mention equal pay, it seems clear that remuneration is included in the "terms and conditions of employment" (section 14).

[2] The Commission may also investigate matters referred to it by the Commissioner or the Attorney-General; and it may itself initiate action where it appears that a person has infringed the provisions of the legislation.

[3] Act respecting equality between women and men at work. No. 1118 of 1979 (LS 1979 - Swe. 2). See also report of the Equal Opportunities Ombudsman on Activities, 1980-83.

[4] Act respecting equality between the sexes, No. 45/1978 (LS 1978 - Nor. 1), section 5 of which provides that women and men engaged in the same activity shall have equal wages for work of equal value, is enforced by the Equal Status Commissioner and the Equal Status Appeals Board.

conditions or privileges of employment, among other unfair labour practices). The Commission does not have to attempt to effect conciliation between the parties before filing suit under the Equal Pay Act.[1]

112. While in practice specialised bodies may be able to assist in bringing about voluntary settlements between the parties in most cases, some means of enforcement beyond conciliation is required if the guarantees of equal pay and equality of opportunity and treatment are to be implemented effectively. In Canada and New Zealand, the legislation establishing a Human Rights Commission also provided for the establishment of administrative tribunals before which civil proceedings may be brought, either by the Commission or the complainant, for the adjudication of complaints not settled by conciliation. Orders of the tribunals may, upon registration in the relevant court in each country, be enforced as orders of the court. If the Equal Status Commissioner in Norway fails to bring about a voluntary settlement, the matter may be submitted to the Equal Status Appeals Board which may order whatever measures are necessary to ensure conformity with the legislation. The Commissioner may also make such orders where there is a reason to assume that difficulty or prejudice would arise were the matter to await a decision by the Board. The Board does not have the power to take a decision binding the Crown or any ministry; it may however express an opinion regarding the degree to which administrative decisions are in conformity with the legislation.[2] In other countries, adjudication of a dispute is before the courts. If the Equal Employment Opportunity Commission of the United States is unable to resolve a complaint concerning discrimination under Title VII through mediation and conciliation, a court suit may be brought against the alleged violator either by the Commission

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[1] Bureau of National Affairs, Labor Relations Report, Fair Employment Practice Manual, pp. 431:527.

[2] The Government of Norway has advised in its last report on Convention No. 100 that no cases concerning the application of the equal pay provision in the legislation have been brought before the Equal Status Appeals Board; nor have any such cases been submitted to the ordinary courts of justice or the labour court.

or by the aggrieved individual.[1] An employee alleging a violation of the Equal Pay Act may either present the claim directly to a court or may rely on the Commission to make an investigation and file a lawsuit on the individual's behalf.[2] Where voluntary agreement has not been reached in a sexual discrimination complaint, the Equality Commissioner in Sweden may institute proceedings in the Labour Court on behalf of any individual in cases where the Commissioner considers that a judgement in the dispute is important for the application of the law. However, when the complainant is a member of a trade union, the Commissioner may only institute legal proceedings if the organisation does not do so. Apart from dealing with infringements of the ban on sexual discrimination, the Commissioner is charged with ensuring that employers conform with their obligation under the Act,[3] to adopt a policy for the active promotion of equality at work. Cases concerning shortcomings in this area may arise either as a result of complaints or at the initiative of the Commissioner. Failing agreement with the employer on the way active measures for the promotion of equality between women and men are to be planned and conducted in future, the Commissioner may apply to the Equal Opportunities Board for a penal injunction.[4]

113. Following the prescribed conciliation procedure, the Australian Human Rights Commission may make a determination in respect of substantiated complaints which remain unsettled. A

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[1] While the courts have shown great reluctance to dismiss a complaint merely because the plaintiffs have not proceeded properly before the Commission, the filing of a charge with the Commission is generally held to be a prerequisite to filing a court suit under Title VII loc. cit., pp. 431:212.

[2] Bureau of National Affairs, loc. cit., pp. 431:525.

[3] Section 6 of Act No. 1118 of 1979 loc. cit.

[4] The efforts by the Commissioner to achieve voluntary agreement with the employer concerning measures for the promotion of equality have been successful in so far as it has not been necessary in one single case to apply to the Commission for a penal injunction against an employer. (See Report of the Equal Opportunities Ombudsman, loc. cit., p. 9.)

determination may call upon the employer not to repeat or continue unlawful conduct, to take action to redress any loss or damage suffered by the complainant or to promote, employ or re-employ the complainant. The Commission's determinations are not binding or conclusive between any of the parties to the determination: the Commission or complainant may, however, institute a proceeding in the Federal Court for an order to enforce the determination.[1]

114. Evidence of anything said or done in the course of conciliation proceedings is usually inadmissible as evidence in any subsequent proceedings. In addition to protecting the parties, such a situation is considered to facilitate conciliation: parties to a dispute are unlikely to enter into constructive negotiation if there is a possibility that their discussions will be submitted as evidence at a subsequent inquiry or hearing.[2]

115. In those countries where the specialised body is not specifically required to conciliate complaints in the way described above, an attempt to secure voluntary compliance with the legislation is made before legal proceedings are taken to enforce the matter. Similar procedures have been adopted in Austria[3] and Iceland[4] to

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[1] Under section 82(2) of the Sex Discrimination Act, the Federal Court may make such orders as it thinks fit, where it is satisfied that the respondent has engaged in conduct or committed an unlawful act under the legislation.

[2] Under sections 35 and 37 of the Canadian Human Rights Act, the functions of investigation and conciliation must also be conducted by different individuals.

[3] The Equality of Treatment Committee, established under the Equality of Treatment Act, No. 38 of 1979 (LS 1979 - Aus. 1) considers questions concerning discrimination in the fixing of remuneration in employment contracts governed by civil law, on application by a worker, an employer, a works council, one of a number of designated representative bodies or on its own initiative. The Act also makes provision for the establishment of Equality of Treatment Committees in the provincial governments for agricultural and forestry workers.

[4] The Law on the Equal Status and Equal Rights of Women and Men, No. 65 of 1985, is implemented by the Equal Status Council.

mediate allegations of infringements of the equality legislation. If, after examination, it appears that the legislation has been infringed, proposals for specific action to remedy the breach are submitted to the party concerned. The Equal Status Council in Iceland is authorised to initiate legal proceedings to establish the recognition of a party's rights where its proposals for amendment are not accepted; and in Austria, application may be made to the competent labour court, by designated employers' or workers' bodies, for confirmation that the principle of equality has been infringed where the employer does not comply with a proposal of the Equality of Treatment Committee within one month. Mention may be made here of the situation in the Netherlands where claims before the court for the payment of wages under the equal pay legislation are not receivable unless the worker submits an opinion from the specialised body. According to the provisions of the legislation,[1] the Committee on Equal Treatment for Men and Women at Work shall, on the application of a worker, an employer or both, furnish the parties with a written and substantiated opinion on the worker's wage entitlement under the Act. This opinion, whether it finds in favour of or against the applicant, must, as mentioned above, be produced before a worker's claim is receivable before the competent court.

116. As noted above, the respective bodies responsible for working towards the elimination of discrimination and promoting

[1] The Equal Wages for Women and Men Act, No. 129 of 1975 (LS 1975 - Neth. 1) established a Committee on Equal Wages for Women and Men which became the Committee on Equal Treatment for Men and Women at Work under the Men and Women (Equal Treatment) Act of 1980 (LS 1980 - Neth. 2). An Act of 2 July 1980 concerning Equal Treatment of Men and Women in the Civil Service established a separate committee to deal with equality questions for public servants.

equality of opportunity and treatment in employment in the United Kingdom[1] and in Ireland,[2] are largely divested of the task of investigating individual complaints. Complaints of discrimination in the United Kingdom are dealt with by industrial tribunals; in Ireland, disputes are investigated by Equality Officers of the Labour Court. The agencies in both countries are, however, empowered to assist individuals who wish to assert their rights to take legal action, when the matter raises a question of principle or when the plaintiff cannot reasonably be expected to take the necessary steps without assistance. When the Government of the United Kingdom was considering the various types of enforcement agency that it might establish, it felt there would be certain disadvantages in entrusting a body with the investigation and conciliation of individual complaints. Apart from the cost of establishing a large administration, the Government was concerned that complainants would feel justifiably aggrieved at being denied the right to seek legal redress while the complaint was being processed; and that the agency would be distracted, by an ever-increasing backlog of individual complaints, from playing its crucial general role in changing discriminatory practices and encouraging positive action to secure equal opportunity.[3] It would be misleading to suggest, however, that the notion of conciliation is entirely absent from the procedures for dealing with equal pay claims in the United Kingdom: the Advisory Conciliation and Arbitration Service (ACAS) has a statutory duty to attempt conciliation in complaints by individuals against employers made to industrial tribunals under the Equal Pay Act. Both the British and Irish

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[1] The Equal Opportunities Commission was set up under the Sex Discrimination Act, 1975, Schedule 1 of which contains the amended and supplemented text of the Equal Pay Act, 1970. The delayed entry into force of the equal pay provisions meant, however, that both Acts entered into force on 29 December 1975.

[2] The Employment Equality Agency was established by the Employment Equality Act of 1977, which amended the Anti-Discrimination (Pay) Act of 1974.

[3] White paper on Equality for Women, CMD 5724, September 1974.

specialised bodies are empowered to conduct investigations (at their own initiative, or as required by the Minister responsible) into suspected unlawful acts or discriminatory practices. After such formal investigations, the body in each country may recommend changes in practices or procedures, or if satisfied that there has been a breach of the equal pay or sex discrimination legislation, issue a non-discrimination notice requiring the recipient not to commit any unlawful discriminatory practices or acts and, where compliance involves changes in practices, to effect such changes. Breaches of non-discrimination notices within the next five years and other cases of persistent discrimination may be restrained by court injunction or order.

(ii) Power to review legislation

117. An important function of some specialised bodies is that of reviewing existing and proposed laws, regulations and practices to determine the existence, or possibility, of problems in applying the principles of equal pay and equal opportunity and to advise on such review, including recommendations for change, to the appropriate minister. The Committee has noted with interest that, in a number of cases, proposals for the amendment of legislation have been made by the body responsible for its enforcement, in order to ensure full application of the principles of equality. In Ireland, the Employment Equality Agency recently presented proposals to broaden the scope of both the equal pay and the employment equality legislation; and action was taken to review the legislation in co-operation with the social partners and other interested bodies. Included among the proposals were recommendations for extending the scope of the Employment Equality Act to cover contract workers; and to place the onus of proof on the employer or other respondent to show that discrimination did not take place against the applicant, where a set of facts in which the applicant could be discriminated against has been proven. The Agency also proposed that it be enabled to provide financial assistance to employees actually or prospectively involved in legal proceedings under the equal pay legislation.[1] The Swedish Equal

[1] RCE 1985, p. 248 (Ireland). See also the 1981, 1982 and 1983 Reports of the Irish Employment Equality Agency. In its latest Article 22 report on Convention No. 100, the Government has stated that the review has been completed and proposals for amending the Acts are being considered.

Opportunities Commissioner (Ombudsman) has also indicated that proposals have been made to the Minister of Labour for certain amendments to the Equal Opportunities Act. As regards the material provisions of the Act, the Commissioner observed that problems existed with respect to the possibilities of proceeding against subsequent discrimination, that is, the harassment of persons reporting sexual discrimination.[1] Substantial amendments to the Canadian Human Rights Act in 1983 featured a number of changes sought by the Human Rights Commission.[2] The amendments covered, inter alia, an expanded definition of sex discrimination and specific employer responsibility for discrimination by its employees. More recently, the Commission has recommended to Parliament that the Act be further amended to apply clearly to indirect discrimination. In the view of the Commission, this amendment would ensure that the Act applies to neutral policies that, although applied evenhandedly, hinder certain groups from having equal opportunities, such as height and weight requirements that are not necessary to fulfil the essential duties of a job and that result in excluding women disproportionately.[3] As mentioned elsewhere in this report,[4] the Canadian Human Rights Commission is also empowered to adopt equal wage guidelines which are binding on itself and on human rights tribunals. The present guidelines set out definitions of the criteria provided for under the Act for assessing the value of the work (viz. skill, effort, responsibility and working conditions); and prescribe the factors which may be used to justify differences in wages paid to men and women performing work of equal value.[5] Recently, the Commission formulated draft guidelines

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[1] Swedish Equal Opportunities Ombudsman: Report on Activities, 1980-83.

[2] See 1983 Annual Report of the Canadian Human Rights Commission.

[3] 1984 Annual Report of the Canadian Human Rights Commission.

[4] See paragraph 73 above.

[5] Equal Wage Guidelines, 1978, SJ/78155, Canada Gazette, Part II, Vol. 112, No. 18, amended in January 1982, Canada Gazette, Part II, 13 January 1982, SI 82-2. See also RCE, 1985, p. 247 (Canada).

concerning, among other matters, the procedures for dealing with complaints involving occupational groups, where the complaining group must be predominantly of one sex and the group(s) to which a comparison is to be made, predominantly of the other sex; and the criteria for determining when a group of employees is to be considered predominantly male or predominantly female.[1] Lastly, a number of advisory and promotional bodies established over the last decade in other countries have been given authority to review legislation and make recommendations for the adoption of new provisions to apply the principles of equal pay and equal treatment. For example, the National Equality Council in France is to advise on draft legislation aimed at ensuring occupational equality between men and women as well as on texts concerning particular working conditions for either sex.[2] Similar functions are carried out by the Committee on Equality in Work and Employment in Portugal[3] and the National Committee on Women's Rights in Brazil.[4] By a recent legislative enactment in Tunisia, a division of the Ministry for the Family and the Promotion of Women is charged, among other things, with proposing measures and legislative texts to improve the situation of the family and of women in particular, in the fields of public law, personal rights and in social and economic legislation.[5]

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[1] Canadian Human Rights Commission: Background notes on proposed guidelines - equal pay for work of equal value, March 1985. These new guidelines are expected to be finalised in the near future.

[2] Decree No. 84-136 of 22 January 1984, supplementing the Labour Code to apply section L.330-2 concerning the National Equality Council.

[3] The Committee was established within the Ministry of Labour under, and for the purpose of promoting Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment. LS 1979 - Por. 3.

[4] Created by Act No. 7.353 of 29 August 1985, the Committee is a body linked to the Ministry of Justice, with its own administrative and financial autonomy.

[5] Decree No. 84-864 of 1 August 1984 to organise the Ministry for the Family and the Promotion of Women.

(iii) Effectiveness of specialised agencies

118. The degree to which specialised bodies are effective in promoting and enforcing guarantees for equal pay and equal treatment obviously depends, to a large extent, on the scope of these guarantees under national legislation, considered in Chapter III above. Equally important, however, are the powers assigned to specialised bodies. Accordingly, some governments have found it necessary to review and modify an agency's powers and responsibilities during the course of its activities.[1] While major changes to an agency's duties usually require legislative action, it appears that most national bodies are themselves permitted a wide discretion in determining their own enforcement priorities. The Committee has noted from the reports provided by governments that the elimination of indirect discrimination has become a priority for a number of specialised bodies.[2] In addition to their enforcement role,

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[1] For example, the Government of the Netherlands has stated in its Article 19 report that bills are being prepared to merge the two Committees on equal remuneration and equal treatment which deal with the public and private sectors respectively. It is also proposed to give the new Committee more powers, including the right to make investigations on its own authority without a complaint being filed. In the United States, the functions of the Equal Employment Opportunity Commission (EEOC) have been extended on several occasions: in 1972, Congress authorised the EEOC to initiate court action to redress violations of Title VII of the Civil Rights Act to strengthen its original methods of conference, conciliation and persuasion; and in 1979 responsibility for enforcing the Equal Pay Act was transferred to the EEOC from the Department of Labour.

[2] For example, the Employment Equality Agency of Ireland has stated in its 1983 Annual Report at p. 8, that it plans to "concentrate on the elimination of indirect discrimination and on securing equal pay for work of equal value as its main concern"; attention has also been called to the question of indirect discrimination by the Human Rights Commissions of Australia (in its brochure "Putting the Sex Discrimination Act into Practice) and of Canada (see para. 117).

specialised bodies of the type described in this section generally perform a wide range of educational, advisory and promotional activities, such as conducting special programmes to assist employers to comply with the equality legislation, holding seminars in the community and responding to individual inquiries. These diverse activities are required for the legislation to have any real impact.[1] This in turn necessitates adequate resources being made available to the specialised bodies.[2]

(c) The courts: Interpretations of the principle

119. In some countries, progress in the implementation of equal pay has been brought about more by judicial interpretation than legislative action. On the basis of broadly - stated or, in other cases, relatively restrictive constitutional or legal provisions, the courts in a number of jurisdictions have been responsible for developing concepts of "equal pay" and definitions of "remuneration" corresponding to those of the Convention. Mention has already been made of the situation in both the Federal Republic of Germany and in Italy (see paragraph 39 above) where the application of the principle of equal pay for work of equal value has been made clear by the constitutional courts through a body of jurisprudence based on general constitutional provisions, developed well before the enactment of legislation guaranteeing the enjoyment of the right to equal pay in more detailed terms (paragraph 49).

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[1] For example, the Employment Equality Agency in Ireland has stated that a more imaginative use of the equal value concept is required in order to reverse the steady attrition of equal pay references to Equality Officers and to ensure that individuals recognise in equal pay proceedings a remedy worth seeking. RCE, 1985, p. 249 (Ireland).

[2] The need for adequate resources is important if agencies are to deal with claims for equal pay in a reasonable time. See in this regard, RCE, 1984, p. 197, (Netherlands). In commenting on the United Kingdom Government's report for 1983-85, the TUC has expressed the view that the resources allocated to the Equal Opportunities Commission were inadequate and needed to be increased.

120. Judicial decisions in the United States have also brought about important gains for the application of equal remuneration principles. In that country, equal pay for men and women workers is implemented principally through two federal laws: the Equal Pay Act of 1963 (see paragraph 61 above) and Title VII of the Civil Rights Act of 1964 (see paragraph 68). The Equal Pay Act requires an employer to pay equal wages in an establishment to men and women doing equal work on jobs requiring equal skill, effort and responsibility, and which are performed under similar working conditions, unless one of four "affirmative defences" is established: wage differentiation between men and women performing the same job is permitted if it results from a seniority system, a merit system, a system which measures earnings by quantity or quality of production or a differential based on any other factor other than sex. The scope of equal work under the Equal Pay Act has been the subject of a number of judicial interpretations. The courts generally have found that to prove a violation, it is not necessary that the job be absolutely equal or identical. It is sufficient that they be "substantially equal".[1] Title VII of the Civil Rights Act prohibits discrimination on the basis of race, colour, religion, sex or national origin in all employment practices, including compensation. The Equal Pay Act was partially incorporated into Title VII via the Bennett Amendment, which states: "It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorised by the provisions of [the Equal Pay Act]". The interrelationship between the Equal Pay Act and Title VII was uncertain for a number of years. Some judicial interpretations had held that the wage discrimination requirements of the Equal Pay Act and Title VII must be read "in pari materia" (that is, in harmony); i.e. that jobs being compared to establish claims of pay discrimination against women under Title VII must meet the Equal Pay Act standard of "substantially equal". An alternative interpretation held that the Bennett Amendment was meant to incorporate only the defences available to an employer that are enumerated in the Equal Pay Act (so that, if an employer could show that pay differences stemmed from seniority,

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[1] See, for example, Schulz v. Wheaton Glass Co., 421 F.2d 259 (Third Cir. 1970).

merit, differences in productivity, or differences in any factor other than sex, then those differences in pay were not illegal) but did not limit the scope of Title VII to discrimination between persons performing work of a substantially equal nature.[1] The issue was resolved in 1981 when the US Supreme Court ruled, in County of Washington et al. v. Gunther et al. in favour of the "latter interpretation".[2] The Supreme Court emphasised, however, that the claim was not based on the concept of comparable worth; rather, the women were seeking to prove, by direct evidence, that their wages were depressed because of intentional discrimination. The broad remedial purposes of Title VII and the Equal Pay Act required the Court, in its view, to avoid interpretations of Title VII that deprive victims of discrimination of a remedy without clear congressional mandate. If it were held that only those sex-based wage discrimination claims that satisfy the "equal work" standard of the Equal Pay Act could be brought under Title VII, this would mean, stated the Court, that a woman who is discriminatorily underpaid could obtain no relief - no matter how egregious the discrimination might be - unless her employer also employed a man in an equal job in the same establishment, at a higher rate of pay.

121. Many cases have been filed in the United States courts in the wake of Gunther. A report by the Comptroller General of the United States notes that since the Gunther decision, "it appears that courts have expressed a preference for the findings of intentional discrimination and have rejected claims based solely on the theory of comparable

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[1] For a full discussion on the relationship between the Equal Pay Act, 1963 and Title VII of the Civil Rights Act, see E. Robert Livernash: Comparable Worth; Issues and Alternatives, Chapter VII, Equal Employment Advisory Council, Washington, 1980.

[2] 452 US 161, 167-181 (1981). In this case, four female correctional officers at an institution also employing male guards, contended that their Title VII rights had been violated because of intentional sex discrimination in that the County set their wage scale at a lower level than its own survey of outside markets and the worth of the jobs warranted. Specifically, the women alleged that the county had evaluated their jobs and determined that female officers should be paid approximately 95 per cent of what male guards earned. In fact the female officers were paid only 70 per cent.

worth".[1] In litigation which raises the issue of comparable worth, courts have sometimes been called upon to examine various aspects of job classification systems and pay-equity studies undertaken by the employer. As the Comptroller General's report observes, "Generally, Federal Courts have been unwilling to identify strengths or deficiencies in specific job-evaluation methodologies ... although several courts have commented on statistical models employed in wage-discrimination litigation".[2]

122. Finally, it is interesting to note that, in considering employers' arguments that the elimination of sex discrimination in compensation would be too costly, the American courts[3] have held that Title VII does not countenance a cost justification.

123. In considering the interpretation to be given to the concept of equal pay for the "same or substantially the same work"[4] the National Labour Court in Israel ruled that the law must be interpreted on the assumption that the legislator intended to uphold Convention No. 100, which Israel had ratified. The Court also stated that in

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[1] Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems, GAP/GGd-85, 1 March 1985, pp. 74-75.

[2] ibid., pp. 85-86.

[3] Decision by the Supreme Court in City of Los Angeles v. Manhart, 435 US 702 (1978).

[4] The Male and Female Workers (Equal Pay) Law 5724-1964, as amended by the Male and Female Workers (Equal Pay) (Amendment No. 2) Law 5733-1973 provides that "an employer shall pay to a female worker a wage equal to the wage paid to a male worker at that place of employment for the same or substantially the same work".

determining whether work is the same or substantially the same, it is clear that the opinion of an expert on occupational analysis will not only further the deliberation but will also contribute to its proper solution, even though no such requirement is prescribed in the legislation.[1]

124. Judicial decisions have also served to expose unforeseen anomalies in the legislation of some countries. Under the Anti-Discrimination (Pay) Act 1974 in Ireland, persons are regarded as employed on "like work" where, inter alia, the work performed is of a similar nature on the whole or "where the work performed by one is equal in value to that performed by the other in terms of the demands it makes in relation to such matters as skill, physical or mental effort, responsibility and working conditions".[2] In two separate claims for equal pay under the legislation, a comparison of the work performed by the female complainant concerned, with that of a male worker (on the basis of factors such as skill, physical and mental effort, responsibility and working conditions) showed that the work performed by the women was higher in value than that of the men. In both cases, the work performed by the women was thus found not to be "like work" within the terms of the legislation; and equal pay was not therefore awarded. In reporting these matters, the Irish Employment Equality Agency[3] expressed its concern about this problem and stated that it was seeking to have the "like work" section of the Act amended to make provision for Equality Officers to recommend remedies in situations where it has been found that a claimant is, in fact, performing work of higher value than the person with whom the comparison is made.

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[1] "Elite" Israel Sweets and Chocolate Industry Ltd. v. Lederman, 5 March 1978; RCE, 1980, p. 143 (Israel).

[2] Article 3 of the Anti-Discrimination (Pay) Act, 1974 (LS 1974-Ire. 1).

[3] Annual Report of the Employment Equality Agency, 1983, pp. 16 and 17. Arthur Guiness & Son Co. (Dublin) Ltd. and a Female Employee (EP 17/83, DEP 11/83; and AnPost and 29 Female Post Office Factory Workers (EP 28/83, DEP 6/84).

(i) Definition of remuneration

125. Numerous cases involving claims for equal pay in respect of benefits supplementing the basic or ordinary wage have come to the attention of the Committee.[1] For this reason, it is possible to refer only to a representative selection of them to illustrate the various ways in which discrimination may arise.

126. A number of cases have concerned the payment of allowances to the "head of the household" in conditions discriminatory to women. This question arose in a Japanese case where the salaries of bank employees were supplemented by allowances accorded to heads of families. Whereas eligibility for this payment was in no way limited in so far as male employees were concerned, female employees only retained eligibility for the payment so long as their husbands' salaries remained below a specified level. The court interpreted the bank's salary regulations as reflecting a presumption by the bank that only males served as head of families. In the view of the court, such a situation discriminated against female employees. Accordingly, the court found that the criterion of sex was not justifiable and nullified the regulation in question.[2] Cases concerning discrimination based on sex have also arisen in other countries

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[1] Many such claims have been made by women workers in countries of the European Economic Community. Article 119 of the EEC treaty defines "pay" in terms following closely the definition of "remuneration" in Convention No. 100, viz. "pay" means the ordinary, basic or minimum wage or salary and any other consideration, whether in cash or in kind, "which the worker receives, directly or indirectly, in respect of his employment from his employer".

[2] Judgment of the District Court of Morioka in the Iwate Bank case, 28 March 1985 in Legal Journal "Hanreijiho" No. 1149. Under the Labor Standards Law (LS 1947 - Jap. 3), discrimination between men and women in wages on the basis of sex is prohibited (section 4). Section 11 defines wages as "the wage, salary, allowance, bonus and every other payment to the worker from the employer as remuneration of labour ...".

where the payment of various benefits, in cash or in kind, were connected with the concept of "head of household", on the implicit or explicit assumption that only males were to be so considered. Among examples of infringement proceedings initiated by the European Court which led to remedial action by the countries concerned may be mentioned the case against Luxembourg in respect of the payment of family allowances granted to civil servants and equivalent staff in conditions constituting discrimination against women.[1] Similarly, proceedings were initiated against Belgium in connection with an order which laid down different conditions for men and women in the granting of an accommodation or residence allowance to the staff of Ministries[2] and against France, where a housing allowance for members of the staff of mines was granted only to heads of households (defined as married men, men caring for dependent parents or siblings and married women with dependent husbands).[3]

127. Two further decisions illustrate how the definition of "pay" has been construed broadly to cover considerations not paid directly to the employee. In one case, male and female clerical workers in a bank were contractually obliged to join the bank's pension scheme. The women's scheme was not contributory to the age of 25, while men below that age paid pension contributions of 5 per cent of their salaries. To compensate for this, men under 25 years of age received an addition to their gross pay of 5 per cent, so that their net pay was the same as the women's. However, men leaving the bank's employment received a refund of pension contributions with interest whereas women

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[1] In the Commission v. the Grand Duchy of Luxembourg (case 58/81 (1982) 3CMLR 482) the Court found that Luxembourg was violating the principle of equal pay for men and women in Article 119 of the EEC Treaty as interpreted in the EEC Directive on Equal Pay. Subsequently, however, the Government enacted legislation of 20 May 1983 establishing equal treatment between men and women in respect of the family allowance. RCE 1985, p. 250 (Luxembourg) (observation of satisfaction).

[2] The Royal Order of 30.1.67 granted allowances to married men but to women only if they had a dependent child. The Commission of the European Communities withdrew its complaint to the Court when the Order was amended (by Royal Orders of 10.9.81 and 14.12.81) to award the allowance to male and female officials on the same criteria. RCE 1984, pp. 190-1 (Belgium) (observation of satisfaction).

[3] The infringement proceedings were abandoned when the Government abrogated the provision by Order of 2 May 1979. RCE 1981, pp. 149-150 (France) (observation of satisfaction).

resigning before the age of 25 received no such payment. The European Court of Justice, to which the question had been referred by the British Court of Appeal, ruled that a contribution to a retirement benefit scheme which is paid by an employer in the name of employees, by means of an addition to the gross salary and which therefore helps to determine the amount of that salary, constitutes "pay" within the meaning of Article 119 of the EEC Treaty.[1] The term remuneration has also been held to cover facilities granted voluntarily by an employer to former employees. In the particular case, a woman alleged discrimination on the grounds that female employees of British Rail ceased to enjoy travel concessions for their families upon retirement where male employees continued to be granted the facility. The European Court concluded that the travel concessions were in the nature of a grant in kind to the employee or his/her dependants directly or indirectly in respect of his/her employment and as such, constitute "pay" within the meaning of Article 119. Where an employer (although not bound to do so by contract) provides special travel facilities for former male employees to enjoy after their retirement, this constitutes discrimination against former female employees who did not receive the same facilities.[2]

128. In a matter before the Federal Labour Court of the Federal Republic of Germany, women workers claimed equal pay in respect of two wage supplements, an unspecified supplement and a special "employment market" supplement. The employer argued that the unspecified supplement was to compensate for particular hardships incurred by the night shift and was paid also because the night shift could not otherwise be filled. The Court rejected the first argument on the ground that compensation for the particular hardship was already served by a night shift supplement (received only by men in view of the prohibition on night work for women). Where, stated the Court, one supplement served a given purpose, it should generally be presumed that another supplement was not intended for the same purpose. The term "employment market" supplement failed to indicate clearly its purpose. If the supplement was granted because certain posts could not otherwise be filled, then there was no unlawful discrimination. If however the supplement was paid because men were unwilling to work for the same wages as women employed in the same posts under the same conditions, then the supplement constituted unlawful discrimination against women.[3]

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[1] Warringham & Humphreys v. Lloyds Bank Ltd. Case 69/80 (1981) [ECR 767].

[2] Garland v. British Rail Engineering Ltd. Case 12/81 (1982) 3CMLR 696; (1982) [IRLR 259]. The House of Lords followed the Community Court's ruling and interpreted the exclusion clause regarding retirement in the UK Equal Pay Act 1970 in a restrictive manner so as not to be inconsistent with Article 119.

[3] Decisions of 25 August 1982; 5AZR/107/80 and 5AZR/108/80, Der Betrieb 1982, p. 2354; referred to as the Schickedanz case.

(ii) Indirect discrimination

129. In considering the application of equal pay legislation, the courts have been faced with cases of indirect as well as direct discrimination. Legal action involving part-time workers illustrates the difficulty of distinguishing between sex-based discrimination and a difference in the value of the work performed by the men and women workers concerned. A case in this area concerned an action in the United Kingdom by a part-time female worker who was paid a lower hourly rate than a full-time male worker employed on the same work.[1] The European Court of Justice, to which the matter was referred for a preliminary ruling, held that a difference in pay between full-time and part-time workers does not amount to discrimination unless it is in reality merely an indirect way of reducing the pay of part-time workers on the ground that the group of workers is composed exclusively or predominantly of women. The British tribunal subsequently held that a differential in pay between part-time workers who are predominantly women and full-time workers could only be justified by showing a genuine "material difference" (within Section 1(3) of the Equal Pay Act). It was not sufficient for the employer to state that he did not have actual or covert intentions of discriminating against women.[2] A similar decision was taken by the Federal Labour Court in the Federal Republic of Germany in the case of a female part-time worker who, under the pension regulations of the undertaking, was entitled to a pension only after 15 years of full-time employment. According to the Court, the general principle of equal treatment is deemed to have been infringed if pension regulations exclude part-time employees (who are predominantly women) as a whole from entitlement to benefits and there are no special grounds justifying such differentiation. The difference in the volume of work between full-time and part-time employment does not in itself constitute

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[1] The industrial tribunal hearing the matter dismissed the claim under the UK Equal Pay Act on the ground that there was a "material difference" other than the difference of sex between the work of the women and her male comparator. On appeal to the Employment Appeal Tribunal, the claimant relied on Article 119 of the EEC Treaty (Jenkins v. Kingsgate (Clothing Productions Ltd.) (1981), IRLR 71).

[2] Reducing absenteeism and obtaining the maximum utilisation of plant were mentioned by the Employment Appeal Tribunal as objectives which might justify lower pay for part-time workers. It emphasised, however, that the employer must prove the differential in pay in fact produces these results: the defence of "material difference" does not deal with the case where the employer intends to produce these results without proving that the results were in fact produced. ibid.

sufficient grounds.[1] In Ireland, claims of female part-time workers for the same hourly rate of remuneration as that paid to male colleagues working full time have been resolved through comparing the different jobs on the basis of the criteria cited under the equal pay legislation, viz. skill, physical or mental effort, responsibility and working conditions.[2]

(iii) Past discrimination

130. Claims for equal pay have occasionally been made on the basis that differences in the remuneration of men and women workers are the result of previous sex discrimination. In a case in the United Kingdom, a group of male workers had retained their higher rate of pay when job reorganisation had reduced the prescribed rate for the job. No woman was in this group because at the relevant time the grade was not open to women. The Employment Appeal Tribunal ruled that an employer can never establish that a variation between a man's and a woman's contract is genuinely due to a material difference (other than the difference of sex) when it can be seen that past sex discrimination has contributed to the variation.[3] A case in the United States involved a Title VII challenge to an insurance company's practice of paying new sales agents a "monthly minimum" salary based in part on their prior earnings. The female plaintiffs argued that, since women's wages were historically depressed, the company's practice of basing wages on prior earnings operated to "freeze" the status quo. A district court found the company liable under Title VII because it paid women less than men for equal work,

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[1] When, in the view of the Court, predominantly female workers are adversely affected by pension regulations excluding part-time workers, this could constitute covert discrimination in violation of article 3, paragraphs (2) and (3) of the Constitution. (Der Betrieb, 3AZR/134/79, 6 April 1982, pp. 1466 ff., summarised by the Government in an annex to its report for 1981-83 on Convention No. 100).

[2] Dunnes Stores Ltd. (Navan) and 17 Female Employees (EP14/83) and Dunnes Stores Ltd. (Newbridge) and 7 Female Employees (EP16/83, DEP 9/83) summarised in 1983 Annual Report of Irish Employment Equality Agency. In the first case, the Equality Officer considered that a comparison on the basis of the criteria set out in Section 3(c) of the Anti-Discrimination (Pay) Act 1974 showed that the claimant's work was not equal in value with that of the male comparator; in the second case, a comparison showed that overall the work performed by the claimants was equal in value to that of the male comparator and awards for equal pay were made accordingly.

[2] Snoxell and Davies v. Vauxhaull Motors Ltd., 16 March 1977, as summarised in the Government's report for 1976-78.

and because it failed to sustain its burden of proving that the wage differential was justified by a "factor other than sex", one of the Equal Pay Act's four defences.[1] The court rejected the employer's argument that prior earnings constituted a legitimate factor based on the market rate, stating that "[a] resort to the so-called market rate where the market rate is itself a reflection of historical discrimination will not be considered as a sufficient justification under the Equal Pay Act".[2]

(iv) Contemporaneous work

131. In claims for equal pay, the question has arisen as to whether a woman can compare her work with that of a man whose employment is not concurrent with her own. On a reference by the English Court of Appeal, the European Court of Justice established that it was possible under Article 119 of the Treaty of Rome for a woman to compare herself with a male predecessor who did equal work for the employer.[3] A similar ruling was given by a labour court in Switzerland which granted a female complainant equal pay for work of equal value on the basis, in particular, of a comparison of the work performed by her with that of her male predecessor in the same job.[4]

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[1] See paragraph 120 above for a discussion of the relationship between Title VII of the Civil Rights Act 1964 and the Equal Pay Act 1963.

[2] The court ruled that the company could not continue its pay-setting practice unless it could demonstrate that it had assessed the previous salaries and determined that they were based on factors other than sex, such as job responsibilities and hours of work. An appeals court reversed and remanded the case, stating that an employer may defend its reliance on previous earnings by demonstrating an "acceptable business reason" for the wage-setting practice. However, after remand the case was settled out of court, the insurance company reportedly agreeing to change its pay-setting method and to set up a trust fund for the female employees affected. Kouba v. Allstate Ins. Co., 523 F.Supp. 148 (ED Cal. 1981), reversed and remanded, 691 F.2d. 873 (9th Cir. 1982). Summarised in the Report of the Comptroller General of the United States, loc. cit., p. 76.

[3] Macarthys Ltd. v. Smith (1979) 3CMLR 381; (1980) 2CMLR 217.

[4] Decision of 4 June 1985 of the Unterrheintal Labour Court (Canton of St. Gall) Ref. AG 53/84.

Section 2. Co-operation with employers' and workers' organisations

132. Without the active participation of employers and workers, no significant progress can be made in the implementation of the principle of equal remuneration. Specific recognition of the need for co-operative action between governments and organisations of employers and workers is in fact given both in the Convention (Article 4) and in a number of provisions of the Recommendation (Paragraphs 1, 2, 3(2) and (4) (see paragraph 31 above). The particular arrangements developed for tripartite consultation and co-operation in this area take on various forms depending, to a large extent, on the industrial relations system of the country concerned. Also apparent are differences in the degree to which employers' and workers' organisations are involved in procedures to enforce guarantees of equality. In some countries, their participation is an essential feature of the machinery established to promote and implement equality between men and women workers. Elsewhere, the available information suggests that they play only a limited role.

133. Some countries have introduced or are considering the adoption of legislation to require employers to undertake active measures for the promotion of equality between men and women. In Sweden, the Equal Opportunities Act[1] which is designed to promote equal rights for women and men in questions of work, including equal pay for work of equal value, makes it the duty of the employer to undertake specifically planned measures for the promotion of equality. Among other things, this involves making special efforts to ensure that vacancies are applied for by persons of both sexes, and, by means of training and other suitable measures, to establish an even balance between women and men in various types of work and within employee categories. The rules concerning active measures for the promotion of equality may, however, be overridden or supplemented by collective agreements at national level, in which case the enforcement of such agreements becomes entirely the responsibility of the social partners. In practice, Equal Opportunities Agreements have been concluded between the employer and worker organisations concerned, for salaried employees and workers in the private sector and in the local government and state employment sectors.[2] Under the provisions of proposed legislation in Finland,[3] employers will

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[1] LS 1979 - Swe. 2.

[2] Publication of the Ministry of Labour, Sweden: "The Swedish Act on Equality between Women and Men at Work: Equal opportunities' agreements in the private and the public sector", Mar. 1985. See also RCE 1982, pp. 155-6 (Sweden).

[3] A Government Bill for legislation concerning equality between women and men was submitted to Parliament in May 1985.

be obliged to promote equality at the workplace. In Canada, an employer may be ordered by a human rights tribunal appointed by the Human Rights Commission to take affirmative action measures (called "special programmes" in Section 41 of the Human Rights Act) to prevent the occurrence of a discriminatory practice. Under the legislation, the Commission may, on application, also provide advice and assistance on the adoption or implementation of special programmes undertaken voluntarily by employers to eliminate or reduce the disadvantages suffered by certain groups by improving their opportunities in a number of areas including employment (Section 15(1)). In the opinion of the Human Rights Commission, voluntary affirmative action was preferable in view of the lack of data on which to base a comprehensive programme and because of the desirability of allowing employers a certain flexibility. Since employers are not availing themselves of the opportunity to implement these programmes voluntarily, however, the Commission has recently expressed its support for mandatory affirmative action.[1] The 1983 legislation concerning occupational equality between both sexes in France authorises the adoption of temporary measures to remedy occupational equalities suffered by women, within the framework of an "occupational equality plan" negotiated by both sides of industry at the plant level.[2] Other examples of affirmative action programmes relating more particularly to equality of access in employment are discussed in section 6 below.

134. Under Article 2, paragraph 1 of the Convention, a government is obliged to ensure the application of the principle of equal remuneration in so far as this is consistent with the methods in operation for determining rates of remuneration. In the case of wage rates fixed by collective agreement, such an obligation would arise either where the binding force of collective agreements establishing wage rates is extended by state authority to workers or enterprises which were not represented by the parties to the agreement or where the principle of equal remuneration is embodied in national legislation empowering the government to enforce the principle more generally in respect of wage rates fixed by collective agreement. Where the government is not in a position to ensure observance of the Convention, it must promote its application (see paragraphs 24 to 29 above). The Committee has pointed out that measures of encouragement were of particular importance in a

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[1] Canadian Human Rights Commission. Annual Report 1984, p. 16. Recommendations for the collection of data and for mandatory employment equity/affirmative action were made in the Royal Commission Report on Equality in Employment, loc. cit.

[2] LS 1983 - Fr. 2. In order to facilitate the implementation of such plans, section 18 of the legislation provides for state financial assistance under conditions laid down in a decree of 30 January 1984. See Social and Labour Bulletin, ILO, 1/84, p. 152 for an example of such plans.

country where many collective agreements provided for different minimum wages for women and men, and where, while the authorities refuse to give general binding force to agreements containing differential rates for men and women for work of equal value, the great majority of collective agreements were not meant to receive general binding force.[1] In this connection, the Committee has also stated that respect for the parties' freedom and independence in collective bargaining should not inhibit promotional action by the authorities, called for in the Convention, where this appears necessary for improving the practical application of a matter of public policy, such as equal remuneration.[2] As concerns the concrete action which might be taken to give full effect to the Convention, the Committee has stressed the desirability of governments instituting, in co-operation with the occupational organisations, a general examination of collective agreements to bring to light any cases of discrimination that they might contain, including any of concealed discrimination.[3]

135. Employers' and workers' organisations are usually consulted on, or participate in, the preparation of minimum-wage decisions. Numerous governments report that the occupational organisations concerned have a direct involvement in these deliberations as their representatives are members of the bodies responsible for minimum-wage fixing. Co-operative efforts in this regard are not only important for the better application of Convention No. 100 but are also requirements of the ILO instruments on minimum-wage fixing.[4]

136. With a view to encouraging a more active involvement of employers' and workers' organisations in the implementation of equality legislation, a number of countries have also established enforcement agencies (described in section 1(b) above) with a tripartite composition.[5] According to the reports provided by the Governments concerned,

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[1] RCE 1984, p. 199 (Switzerland).

[2] RCE 1977, p. 191 (Austria) and p. 198 (Switzerland); RCE 1984, p. 200 (Switzerland).

[3] See, for example, RCE 1977, p. 191 (Austria) and p. 192 (Belgium); RCE 1980, p. 138 (Austria), p. 139 (Belgium) and p. 143 (Ireland).

[4] Conventions Nos. 26 (1928), 99 (1951) and 131 (1970), and Recommendations Nos. 30 (1928), 89 (1951) and 135 (1970). See Starr, G.: Minimum-wage fixing (Geneva, ILO, 1981).

[5] This is the case, for instance, with the Equality of Treatment Committees, Austria; the Equal Status Council, Iceland; the Employment Equality Agency, Ireland; the Equal Appeals Board, Norway; the Committee on Equality in Work and Employment, Portugal; and the Equal Opportunity Commission, Sweden.

the promotional activities of these enforcement agencies are often undertaken in co-operation with employers' and workers' organisations. In Sweden, for example, the Ombudsman has arranged several seminars with the industrial organisations to discuss appropriate measures to eliminate existing differences between women's and men's remuneration. The measures discussed included the possibility for the social partners to allot special resources to jobs dominated by women within the context to regular wage negotiations; the possibility of the employer to devise an instrument for evaluating different jobs in order to be able to compare, for example, the jobs of nurses and plumbers, within the framework of his obligation to take active measures to promote equality; and the desirability to have wage statistics broken down by sex.

137. In its 1975 general survey (paragraph 170), the Committee observed that those sectors of employment exempted from the scope of equal pay legislation often also tend to be sectors ill-protected, if protected at all by trade unionism, e.g. the traditional sector, agriculture, the small undertaking and homeworkers, many of whom are women. The absence of trade union representation of particular sectors had adverse implications for the application of the Convention. Various studies have demonstrated that unionisation significantly improves women's earnings and decreases the earnings gap between men and women. One study showed that the male/female differential in unionised establishments is 10 per cent smaller than in non-unionised establishments.[1] Such indications call attention to the need for trade unions to encourage women members' active participation and to play a more dynamic role in seeking to eliminate discrimination in employment. That trade union intervention may be a decisive influence in the field of equal pay, is evident from the statement of the Centre of Indian Trade Unions, which noted that the Equal Remuneration Act 1976 in India was implemented wherever pressure was brought by the trade union movement.

Section 3. Objective evaluation of jobs

138. Article 3, paragraph 1 of the Convention calls for measures to be taken to promote an objective appraisal of jobs on the basis of the work to be performed "where such action will assist in giving effect to the provisions of the Convention".[2] As is apparent from the indications provided earlier in this report,[2] the notion of paying men

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[1] Gunderson, M.: Male-female wage differential and the impact of equal pay legislation. 57 Review of Economics and Statistics (Nov. 1975), p. 467.

[2] See paragraphs 21 et seq. above.

and women in accordance with the value of their work necessarily implies the adoption of some technique to measure and compare objectively the relative value of the jobs performed. Such a technique is moreover essential in determining whether jobs involving different work may none the less have the same value for the purposes of remuneration. Because men and women tend to perform different jobs,[1] a technique to measure the relative value of jobs with varying content is critical to eliminating discrimination in the remuneration of men and women. Job evaluation, which provides a way of systematically rewarding jobs for their content, without regard to the personal characteristics of a worker, has come to be considered in an increasing number of countries as the most feasible technique of extending equal remuneration to men and women.

(a) Methods of job evaluation

139. Basically, job evaluation is a formal procedure which, through analysing the content of jobs, seeks to hierarchically rank those jobs in terms of their value, usually for the purpose of establishing wage rates. It is concerned with evaluating the job and not the individual worker. Before describing the basic methods of job evaluation, it is necessary to note that the two principal elements of any job evaluation plan are job analysis and job description.[2] Job analysis entails a systematic examination of jobs to determine the nature of the tasks performed, the skill and effort required and the working conditions associated with a job. On the basis of the information thus collected, job descriptions are prepared, detailing the essential characteristics of each job. After job analysis and the preparation of job descriptions comes the essential stage of job evaluation, namely the systematic comparison of jobs in order to establish a hierarchy. There are four traditional types or methods of job evaluation. Of these the two major non-analytical methods of job evaluation - the ranking method and the classification or grade description methods - establish a hierarchy by comparing whole jobs without analysing their component factors. Under the two basic analytical methods of point rating and factor comparison, the duties of each job are broken down into common elements or factors to which points or other values are attributed, the total number indicating the importance of each job in the hierarchy. A brief description of each of the four basic methods will serve to illustrate their main features.

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[1] Various studies have demonstrated that even in occupations which include male and female workers the jobs men and women actually hold are segregated by sex (see in this regard D.J. Treiman and H.I. Hartman (eds.): Women, work and wages: Equal pay for work of equal value (Washington , DC, National Academy Press, 1981), p. 52; and B.F. Reskin and H.I. Hartmann (eds.): Women's work, men's work: Sex segregation on the job (Washington, DC, National Academy Press, 1986), pp. 18 ff.

[2] For a full explanation, see: ILO: Job evaluation, Geneva, 1986.

(i) Non-analytical methods: Ranking, grade description

140. Once the relevant information has been collected and job descriptions prepared, the ranking method proceeds by selecting and ranking a limited number of bench-mark or key jobs which are representative of a group of jobs. The remaining jobs are ranked in order of their overall importance around the bench-mark jobs. A wage structure is then fixed by grouping the resulting hierarchy of jobs into grades. This method is relatively simple amd may quickly supply a basis for a coherent wage structure. It does, however, rely on the assessors being familiar with the content of the jobs they examine; and consequently is not easily applied in large organisations. Moreover, from the standpoint of equal pay, this method has the limitation that the job and personal characteristics of the incumbent may not be clearly separated. The grade description or classification method differs from ranking in that the order of operations are reversed. In grade description, the number and structure of grades (e.g., unskilled, semi-skilled, skilled and highly skilled) are determined and defined before the jobs are classified into those grades. A job evaluation scheme based on this method is more exact and objective than ranking because the grades have to be defined with reference to specified factors (e.g., education, skills, responsibilities, working conditions). The difficulty of defining grades clearly though, particularly in large enterprises where there are many jobs with very varied content, often leaves considerable scope for making subjective judgements.

(ii) Analytical methods: Point rating, factor comparison

141. The point rating method has certain advantages over the two non-analytical methods mentioned above: it permits a systematic comparison of jobs by employing explicit and clearly defined factors, thereby reducing the latitude for subjective decisions. In point rating systems, a set of factors is selected, generally based on an examination of bench-mark jobs. The factors are commonly variants of skill, effort, responsibility and working conditions, though the available choice of factors is very wide. For this reason the technique may be adapted to suit the target population (e.g. manual or clerical posts). A total point value or weight is assigned to each factor; and the jobs are evaluated on each factor to obtain a hierarchy. This method is particularly suitable for a large

organisation which seeks to harmonise wages and working conditions in its various departments or establishments. It is, in fact, the most frequently used method in the majority of countries. It should be noted that, in this method, the selection and definition of factors is a critical step and care should be taken so that selected factors are free from sex bias or other forms of implicit discrimination. The other analytical method, the factor comparison method, was originally an offshoot of point rating. As originally developed, the factor comparison method involved the ranking of different jobs in respect of factors to which it assigned a scale of money values; the ranking of a job therefore determined directly its wage level. This wage-fixing procedure has been criticised strongly and nowadays many schemes based on factor comparison separate the job grading operation from wage fixing. Evaluation is easier than by the point method, as a set of similar jobs are compared and ranked against each other. The analysis of bench-mark jobs is also very complete under this method. On the other hand, the method is comparatively complicated to apply.

142. Finally, it should be mentioned that there have been a number of innovations in job evaluation over the years. The four conventional methods have undergone improvements and a number of new methods have emerged, often comprising various features of the basic methods. For the most part, these developments have been prompted by a concern to reduce the degree of subjectivity in job evaluation, notably in the choice and weighting of factors or to make job evaluation more consistent by incorporating elaborate verification procedures. Efforts have also been made to reduce the costs involved and to ensure a greater acceptability of job evaluation schemes by increasing the involvement of workers and management in all stages of the process.

(b) The extent and levels at which job evaluation is practised

143. The extent to which job evaluation is used differs not only between countries but also between national sectors of industry and individual enterprises. Accordingly, it is very difficult - especially in the absence of detailed information - to determine with any great precision, the proportion of workers covered by job evaluation plans

in most countries. At the outset, it should be noted that there is not necessarily any direct connection between the reliance on job evaluation plans as a basis to fix relative wage rates and the implementation of the principle of equal pay for work of equal value. Forms of job evaluation have been used over long periods of time in some countries as aids to establish pay rates for jobs. Only relatively recently though, has there been sustained interest in the process as a means of applying the objective of the Convention. However, as is discussed later in this section, special attention must be paid to eliminating the sex bias in job evaluation techniques if they are to play a positive role in detecting and resolving pay discrimination.

144. Job evaluation is practised at various levels. Experience with the use of nation-wide job evaluation plans tends to be most prevalent in those countries where it is an essential part of the government's wage fixing policy. In the Eastern European planned economy countries, for example, job evaluation is applied as an integral part of the centralised wage-fixing system. As discussed in paragraph 62 above, a single nation-wide method of classification has been established by legislation in Algeria to permit all jobs to be related to each other for the purposes, inter alia, of applying the principle "equal work, equal pay". The widespread use of job evaluation in the Netherlands[1] is largely due to the government having introduced a system of national job evaluation as part of its post-war reconstruction programme, which was only abandoned at the end of the 1950s. In other countries, job evaluation tends to be confined to particular sectors of industry. In both Canada and the United States, it has long been practised in the civil service sector and is prevalent in most large enterprises. Similarly, in the United Kingdom some form of evaluation is used by the majority of medium- and larger-sized enterprises. In the Federal Republic of Germany and in France, the use of job evaluation techniques is concentrated in large enterprises though in France, its use is somewhat limited by the constraints imposed by collective bargaining agreements. Job evaluation methods do not appear to have been particularly adaptable to traditional wage systems such as that prevalent in Japan where wages are usually based on the worker's individual characteristics, such as level of education, seniority

[1] It is estimated that plans of one kind or another apply to about 80 per cent of manual workers and about 40 per cent of non-manual workers. Industrial Relations Journal (London), Vol. 8, No. 1. Spring 1977.

and individual abilities. For example, production programmes in factories are not based on the individual worker but on a section or service. The Government of Japan has, however, stated, that there is a trend to move from a seniority wage system towards a wage-fixing system based on job content, which should theoretically promote the principle of equal remuneration for men and women by reducing the differences in earnings due to the shorter average length of women's service.[1] In Sweden, where job evaluation methods are widely used, the various schemes are elaborated at the industry level and are thus related directly to the structure of collective bargaining. While there has been a very limited use of job evaluation techniques to date in developing countries, the interest in job evaluation methods has clearly been growing. In a number of African countries (Cameroon, Ethiopia, Nigeria and Zaire) job evaluation techniques have either been introduced, or are contemplated, for the public sector. In Ghana, there is movement towards a broader application of job evaluation techniques and principles. With the exception of the situation in the Philippines, the use of job evaluation in Asia seems inhibited by the type of traditional constraints hindering its use in Japan. There is, however, a growing use of job evaluation in Latin American countries, mainly Mexico and Chile where it is used commonly by multinational corporations.

(c) Limitations of job evaluation

145. From the point of view of promoting equal remuneration, several aspects of the methods generally used in job evaluation plans are considered problematic. Since job evaluation is an inherently subjective method in the final analysis, sex stereotyping can easily enter the process, resulting in an underevaluation of jobs held mainly by women.[2] Factors and factor weights may be biased in that they do

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[1] RCE 1984 p.196 (Japan).

[2] Various studies, e.g., by the American National Academy of Sciences' National Research Council have pointed to the likelihood of predominantly female jobs being undervalued relative to predominantly male jobs in the same way that women are undervalued relative to men. Treiman and Hartmann, loc. cit.

not give sufficient consideration to qualities regarded as essentially "feminine". Moreover, where job evaluation plans use market wage rates to establish the relative weights of factors, these weights will tend to reflect any historical discrimination that exists in the labour market. Another difficulty is that many organisations use different job evaluation plans for different categories of workers (e.g., white-collar, blue-collar, clerical, technical and professional employees) thereby restricting comparisons between jobs in those categories.[1] As will be seen in paragraphs 148, et seq., below, greater attention is being paid to overcoming such difficulties in the application of job evaluation. Certain other limitations, however, derive from the very nature of the method itself. Since job evaluation assumes that there are jobs whose individual content is definable and more or less fixed, there may be problems in introducing the method into some sectors which are moving towards making work organisation more flexible, both to avoid monotony and to be more readily adaptable to changes in production and technology.[2] Furthermore, because job evaluation provides a basis for determining the rate for the job and not the amount actually earned by the worker, it may be said that the proclaimed equity concerns only part of the wage[3] in many cases. In so far as any additional payments making up the individual worker's actual earnings are dependent on some appraisal of his performance or other factors unrelated to the evaluation of the job, the criteria used in these regards should also be chosen or re-examined in the light of the Convention, so as to eliminate any discrimination based on sex.

(d) Use of job evaluation in applying the principle of the Convention

146. Recent years have seen an increasing emphasis on the importance of job evaluation as a means of giving effect to the Convention. No doubt this was inevitable as governments, employers

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[1] Report by the Comptroller General of the United States, loc. cit., p. 30.

[2] Job evaluation, loc. cit., p. 155.

[3] General Survey 1975, para. 140.

and workers better appreciated the extent to which job segregation and employment practices constitute obstacles to the application of the principle of equal pay for work of equal value. Faced with a persistent wage gap, a number of countries have begun to use formal job evaluation plans more systematically to examine and compare those jobs in which women predominate with jobs in which men predominate, in order to identify and correct instances of pay discrimination. For example, parties to instruments covered by the Equal Pay Act 1972 and individual employers in New Zealand were required to establish the classification (and the corresponding rate of remuneration) of the work performed by female workers in relation to the work performed by male workers by comparing the degrees of effort, skill and responsibility involved and the conditions under which the work was performed. In female-dominated occupations, they were required to calculate the "notional male rate", i.e. the rate which would be paid to a male employee with the same or similar skills, responsibility and service performing the work under the same or similar conditions with the same or similar degrees of effort.[1] The Norwegian Employers' Confederation and the Confederation of Trade Unions in Norway have concluded a framework agreement regarding the systematic appraisal of jobs as the basis for wage fixing. Under this agreement, a wage-fixing system based on job appraisal may be introduced in individual undertakings or branches of industry.[2] The Government of the United States has stated in its report that attempts have been made in some quarters to define the relative value of various classes of jobs to the employer in order to determine whether entire classes of jobs traditionally held by women have been undervalued and underpaid. While this concept - "referred to as equal pay for work of equal value, equal pay for work of comparable value and comparable worth" - has not been adopted by the federal government, the approach has been adopted by a number of state[3] and local governments and the AFL-CIO and other trade union organisations. The city government of Los Angeles and the American Federation of State, County and Municipal Employees, a union

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[1] LS 1972 - NZ1. Section 4.

[2] RCE 1984, p. 198 (Norway).

[3] See para. 61 above.

composed of public employees, entered into a three-year employment contract in May 1985, which provides special raises of 10 to 15 per cent to 3,900 clerks and librarians, most of whom are women, so that their salaries will equal the salaries of maintenance workers, gardener, caretakers and others in male-dominated job classifications. The State Governments of New York and New Jersey have also taken action to address perceived inequities. The Government of New York plans to spend $16 million in 1986 and more than $16 million in 1987 for special pay increases for female state employees to help raise their salaries to those of men in jobs of comparable worth. The Government of New Jersey estimates that it will spend approximately $70 million a year to increase the salaries of jobs usually occupied by women. Also, in 1981, the city Government of San Jose in the State of California agreed to spend $1.5 million for pay equity adjustments of 5 to 15 per cent over two years for over 60 female-dominated job classifications and in 1984, the city Government of West Hollywood in the State of California approved an ordinance which requires equal pay for comparable jobs in city Government. Some examples are provided in the paragraphs below, of the way in which job evaluation methods have been used in the settlement of pay disputes. More generally, the role of job evaluation has been enhanced in those countries which have adopted legislation calling for equal remuneration for jobs found to be of equal value on the basis of an evaluation of the work involved. As indicated above,[1] these provisions sometimes use the language of job evaluation (viz. skill, effort, responsibility and working conditions) in specifying the criteria for assessing the value of work.

147. The Committee has noted a number of cases where awards for equal pay have been made on the basis of job evaluation. The Canadian Human Rights Commission has, for example, approved settlements in disputes involving comparisons of different types of jobs, after evaluation found the jobs to be of equal value.[2] Comparisons have thus been made between a predominantly female group of librarians with a predominantly male group of historical researchers;

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[1] See para. 64.

[2] Under Section 11 of the Canadian Human Rights Act, men and women working in the same establishment must receive equal pay for work of equal value. Value is measured by skill, effort and working conditions.

and between a female nursing director in a hospital and the hospital's other directors, all of whom were males.[1] Similar cases are to be found elsewhere. In the first successful claim under the 1983 amendments to the Equal Pay Act[2] in the United Kingdom, an industrial tribunal found the work of a female cook to be of equal value with that of three male shipyard tradesmen - a painter, a joiner and a thermal engineer - on the basis of an evaluation of the jobs carried out by an independent expert commissioned by the tribunal.[3] Two further settlements in the United Kingdom illustrate how job evaluation has assisted in remedying pay inequities. In one case, an independent expert appointed by the industrial tribunal to analyse the jobs performed by female fishpackers and to compare them with that of a male labourer, found that 9 of 14 women were, in terms of the demands made on them, carrying out work of equal value to that of the male worker. However, the tribunal took a broader approach and ruled that because the other five women scored so closely to the male with whom they compared their work, the differences between them were not relevant and made no real material difference. Accordingly, all 14 women were considered to be doing work of equal value to that of the male labourer and were entitled to equal pay.[4] The second case involved a 17 year-long dispute concerning the grades into which predominantly female sewing machinists had been placed under a job evaluation scheme. A claim in the matter under the Equal Pay (Amendment) Regulations 1983 was dismissed by an industrial tribunal which stated that it did not have reasonable grounds to determine whether the machinists' work was of equal value to a male worker's, because it had no evidence that the 1966 job evaluation scheme was discriminatory. Further industrial action, however, led to the appointment of an independent job evaluation panel which reprofiled the sewing machinists' job and, as a result, awarded it a higher grade than had been determined under the earlier scheme. In accounting for the differences between the original and updated evaluations, the independent panel pointed out that some aspects of the work had changed; and that there had been developments in the

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[1] Canadian Human Rights Commission: Equal Pay Casebook 1978-1984. See also RCE 1985, p. 247 (Canada).

[2] See para. 64 above.

[3] Hayward v. Cammell Laird Shipbuilders Limited (Case No. 5979/84) 1985 ICR 71. In its comments on the application of Convention No. 100 for 1983-85, the Trades Union Congress of the United Kingdom has advised that the employer's appeal in this case was upheld and the complainant is currently appealing against this later decision.

[4] D. Wells & others v. F. Smales & Son (Fish Merchants) Ltd. Case No. 10701-15/84.

evaluation technique ("profiling") since its first applications. There is now a much greater awareness of the ways in which job factors can be interpreted in a discriminatory way.[1]

148. Several court decisions have suggested that an employer who undertakes a job evaluation study voluntarily, must also remedy any pay discrimination disclosed by the study. It has been held in the United Kingdom that the requirements of the equal pay legislation were intended to "bite" at the moment when the evaluation study and exercise had made available a comparison which could show discrimination.[2] Similarly, in the United States, an employer who fails to remedy pay differentials disclosed by job evaluation may face liability for intentional sex discrimination under Title VII of the Civil Rights Act.[3] It is interesting to note that one US court also held an employer liable for intentional sex discrimination under Title VII, partly because it had failed to undertake a job evaluation of sex-segregated jobs prior to the trial. In that case, the court was also willing to address the conflicting claims of job evaluation experts retained by the defendant, a grocery wholesaler, and the plaintiffs, employees of an all-female grocery store department.[4]

149. In 1985, the Equal Employment Opportunity Commission in the United States issued a decision[5] which describes the evidence it

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[1] Ford Sewing Machinists' Case. Industrial Relations Review and Report: 345, 4 June 1985.

[2] O'Brien and others v. Sim-Chem Ltd. [1980] IRLR373 (House of Lords).

[3] County of Washington v. Gunther, loc. cit.

[4] The court found that the plaintiffs' plan had been more widely used and tested over a longer period of time than the defendant's. It also found that the plaintiffs' plan contained more discrete categories of job analysis, which were more carefully defined than the defendant's, which was considered more subjective in nature; and in the court's view, the plaintiff's expert had far more experience in the field of job evaluation than did the defendant's (Taylor v. Charley Bros. Co., 1981, in Report by the Comptroller General of the United States: Options for Conducting a Pay Equity Study of Federal Pay and Classification Systems, March 1985).

[5] EEOC Decision 85-8.

believes proves a claim of sex-based wage discrimination under Title VII of the Civil Rights Act. The Commission held that claims of sex-based wage discrimination may be proved by (1) evidence of the discriminatory application of a wage policy or system or the discriminatory use of wage-setting techniques such as job evaluations or market surveys, (2) evidence of barriers to equal access to jobs, or (3) the preponderance of direct or circumstantial evidence that wages are intentionally depressed because of the sex of the occupants of the job. It also ruled that there is no statutory basis or case law support for the conclusion that evidence consisting solely of a comparison of the intrinsic worth or difficulty of one job with that of other jobs in the same organisation or community is suffficient to establish a violation of Title VII of the Civil Rights Act.

(e) Prospects

150. The more extensive use of job evaluation to apply the principle of the Convention has been accompanied by a greater concern among countries to eliminate subjective and discriminatory elements in the various methods. Thus, attention has been called to the need to ensure that the criteria for the appraisal of jobs do not undervalue the skills normally required for jobs that are in practice performed by women.[1] In comparing the work of men and women, care should therefore be taken to balance the various job components to ensure a fair and just evaluation.[2] It has been pointed out in this connection that even though a very large set of compensable factors may be developed, many systems omit or ignore job content characteristics that are disproportionately found in the work women tend to carry out. These include for example, job stress features such as doing repetitive tasks over a long period of time and working around people who are sick and disabled with no hope of recovery; and skill features such as creating a filing or record-keeping system. In addition, evaluators may confuse the content and responsibilities of a paid job with stereotypic notions about the qualities they consider to be intrinsic to women (especially in jobs relating to child care) and hence do not regard them as job-related skills.[3] The criteria

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[1] See, for example, the comments of the Central Organisation of Finnish Trade Unions, RCE 1984, p.192, (Finland).

[2] Importance has been attached to balancing the criteria for evaluation by, for example, the Irish Employment Equality Agency. RCE 1985, p. 248, (Ireland).

[3] Identifying Wage Discrimination and Implementing Pay Equity Adjustments, R.J. Steinberg in Comparable Worth: Issue for the 1980s; A Consultation of the US Commission on Civil Rights, Vol. 1, June 1984.

used for the evaluation of jobs must also be explicit; if the criteria are capable of different interpretations, discrimination may enter the process.[1] In some countries, a widening of the criteria used for comparing work has resulted in an upgrading of the jobs concerned. For example, in Hungary, a more objective appraisal of jobs has been facilitated by widening the criteria to include, among others, nerve strains which are more intense in numerous spheres of work where women are employed for the most part (weaving, spinning, shoe industries, etc.). These jobs were consequently classed in a higher wage category.[2] As has been discussed above, discrimination may also enter the process if the weighting of factors is not equitable.

151. Information is sparse on the extent to which the introduction of job evaluation has brought about a reduction in the overall wage gap. From various indications on the impact it has had in particular sectors of employment, however, it appears that the application of evaluation schemes has considerable potential for reducing pay differentials between men and women. Apart from the examples already provided above, it may be noted that in Finland, a 50 per cent drop in the difference in wage rates for office employees in industry in 1974-75 was attributed to the adoption of a new wage determination system based on an objective description and classification of jobs, the reassessment of the respective weights given to the "qualities peculiar" to men and women and the account taken of the degree to which the work is exacting and difficult.[3] Moreover, a study on the efficacy of job evaluation as a means of applying equal pay in the United Kingdom, concluded that where job evaluation was used for implementing equal pay, women were more likely to be graded and paid at an appropriate skill level. By contrast, where job evaluation was not used and even within a collective agreement, women were often graded and paid below their skill level in relation to men

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[1] The Government of Belgium had stated in its Article 19 report that some indirect discrimination could remain in the criteria of evaluation of functions and certain classifications with a sufficiently wide wording to permit different interpretations. At the present time, the Department of Employment and Labour is studying systematically, collective labour agreements to uncover and eliminate any such instances of discrimination.

[2] The Government of Hungary stated in its report on the Convention for 1983-85 that these wage rates were effective from the beginning of 1984.

[3] RCE 1977 p.193 (Finland).

in the same pay structure. This was most common where organisations relied exclusively on industry agreements.[1]

152. Despite the limitations of traditional job evaluation plans, it is evident that the process can do much to promote equal remuneration. By making the criteria of compensation explicit and by applying the criteria consistently, it is probable that pay differentials resulting from traditional stereotypes regarding the value of "women's work" will be reduced. In this regard, it should be stressed that the determination of criteria and their weightings are matters on which the co-operation between employers and workers is particularly important. If job evaluation is to make a positive contribution to resolving wage discrimination, there must also be a legal and administrative framework enabling aggrieved workers to claim equal pay on the basis of an assessed value of their jobs, together with a right to claim redress when job evaluation systems have been found to be discriminatory.

Section 4. Control of the legality of clauses in individual and collective agreements

(a) Registration and approval of collective agreements

153. In a number of countries, legislation provides for the registration and/or approval of collective agreements by the authorities (in general, the labour administration or labour courts), which thus may control the legality of their provisions and, in particular, the observance of the principle of equal remuneration. In Greece, according to the Government's report on the Convention for 1983-85, the control of the legality of collective agreements by the Ministry of Labour is provided for in Legislative Decree No. 73 of 25 September 1974 to bring back into force national collective agreements, repeal the right of intervention concerning agreements and supplement Act No. 3239 of 1955 on collective bargaining.[2] According to the report, agreements

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[1] Department of Employment Gazette (London, July 1978). Glucklich, Povall, Snell and Zell: "Equal Pay and Opportunity" (London School of Economics). The study monitored the implementation and effects of the Equal Pay and Sex Discrimination Acts in 26 organisations over the three years between 1974 and 1977.

[2] LS 1955 - Gr. 2.

have been sent back to the bargaining parties for adjustment when it was noted that they contained provisions contrary to public policy or mandatory law, such as the rules concerning equal remuneration. In Guatemala, according to the Government's report on the Convention for 1979-81, collective agreements are submitted to the Ministry of Labour and Social Affairs for registration which is authorised, unless they contain clauses prejudicing workers' rights; such clauses are null and void, and the Ministry must order the immediate compliance with minimum standards of labour legislation, including ratified ILO Conventions. In Guyana, according to the Government's report on the Convention for 1981-83, the Ministry of Manpower and Co-operatives vets all agreements before countersigning them, so as to ensure that there are no breaches of the laws, Conventions and established industrial relations, customs and practices.

(b) Extending collective agreements

154. In certain countries, legislation enables the effects of a collective agreement, which at first bound only the employers and workers represented by the bargaining parties, to be extended to all workers and employers in a particular branch of activity and/or in a geographical region. This extension procedure is followed in a number of European countries (for example, Austria, Belgium, France, Federal Republic of Germany, Italy, Luxembourg, the Netherlands, Portugal and Switzerland). In Africa, it is possible in the French-speaking countries as well as in others, such as Ethiopia, Ghana and Sierra Leone. Legislation also provides for the extension of collective agreements in some Latin American countries (for instance, Argentina, Bolivia, Brazil, Ecuador, Mexico and Peru). The legislation empowering the authorities to give general binding force to collective agreements enables the authorities to control the legality of their provisions and, in particular, observance of the principle of equal remuneration as a condition for granting the extension.[1] In some cases, the

[1] e.g., in Switzerland, section 2(4°) of the Federal Act to permit the extension of the scope of collective labour agreements (LS 1956 - Swi. 2) provides that "the agreement must not violate the principle of equality before the law and must contain nothing contrary to the mandatory provisions of federal or cantonal law". By virtue of this provision, the authorities refused to give general binding force to agreements providing for different minimum wages for men and women for work of equal value, following the ratification in 1961 of Convention No. 111.

legislation also specifies that collective agreements capable of being extended shall contain provisions concerning the modes of applying the principle "equal pay for equal work".[1] Elsewhere, agreements may not be rendered generally binding by virtue of equality legislation proscribing distinctions between men and women in relation to their conditions of employment. In the Netherlands, for example, the Collective Agreements Act of 1937[2] empowers the authorities to declare certain provisions of a collective agreement generally binding. It was as a consequence of the 1980 Equal Treatment Act[3] however, that collective labour agreements distinguishing between men and women were no longer declared generally binding.[4] Decisions to extend collective agreements may, in some countries, be a matter for consideration by tripartite bodies. In Cameroon, for example, the National Joint Collective Agreements and Wages Board (composed of an equal number of employers' and workers' representatives and presided over by the Minister in charge of employment and social insurance) is empowered, inter alia, to make any suggestions and recommendations in the matter of collective agreements, and especially as regards the conclusion, extension or application of such agreements; and to make any provisions that it is deemed advisable to introduce into the collective agreements.[5]

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[1] For example, in France, section L.133-5, paragraph 4°(d) of the Labour Code, inserted by section 31g, paragraph 2(d) of Act No. 50-205 respecting collective agreements (LS 1950 - Fr. 6A), as amended by Act No. 82-957 of 13 November 1982, provides that every national collective agreement shall contain provisions regarding the modes of applying the principle "equal pay for equal work" and the procedures for settling any difficulties which may arise in this connection. Similar provisions are to be found in the Labour Codes of the French-speaking African countries (see, for example, section 71.7 of the 1974 Labour Code of Togo).

[2] LS 1937 - Neth. 3).

[3] LS 1980 - Neth. 3).

[4] RCE 1982, p. 153 (Netherlands). See also, in this connection, RCE 1982, p. 154 (Portugal), where the Committee noted with interest that following the adoption of legislative Decree No. 392/79 concerning equality of opportunity between women and men in employment (LS 1979 - Por. 3), the Ministry of Labour refused to extend discriminatory provisions still contained in seven collective agreements concluded in 1980.

[5] Section 127 of Law No. 74-14 instituting the Labour Code (LS 1974 - Cam. 1).

In such circumstances, it would be appropriate to suggest that consideration be given to including provisions concerning equal pay in collective agreements which are capable of extension.

155. In the absence of legislation empowering the government to enforce the principle of equal pay in respect of wage rates fixed by collective agreement, the extension procedure provides the State with a means of supervising the contents of collective agreements. Obviously, though, the degree to which the procedure is effective in eliminating discriminatory wage rates depends on the number of collective agreements which are in practice extended. Thus, even where the authorities refuse to extend the binding force of agreements which discriminate between men and women, other measures may be called for to bring about compliance with the principle in respect of those collective agreements which are not meant to receive binding force. In this respect, the Committee has pointed to the importance of measures to encourage the social partners to give full effect to the principle of the Convention.[1]

(c) Control of legality by labour inspection

156. Paragraphs 103 to 106 above discuss the role of labour inspection in enforcing the principle of equal pay, the difficulties noted and the measures being taken by some governments to strengthen this means of supervision. The following paragraphs summarise briefly the duties and responsibilities conferred on the labour inspectorates by legislation, to supervise the observance of the principle in individual and collective agreements. In many countries where the provisions on equal pay are contained in the labour codes, inspectors are empowered to supervise the application of these provisions by virtue of the general powers vested in them to secure the implementation of all labour legislation. These powers include the right of access to undertakings, the inspection of documents and the power to give formal notices to employers - either directly or through the competent administrative or judicial authorities - to remedy deficiencies observed. In countries where special legislation concerning equal pay has been adopted, the powers and competence of labour inspectors are sometimes restated or expanded upon in the law, in terms specific to their task of securing the observance of the principle. In France, the labour and manpower inspectors, the agricultural labour law inspectors or, in certain cases, other inspectors with similar duties, are responsible for ensuring and, together with the police and other

[1] RCE 1984, p. 199 (Switzerland).

officials attached to the criminal courts, of reporting on the application of the principle of equal pay under the 1972 legislation.[1] The implementing Decree of 27 March 1973[2] provides, inter alia, for the imposition of fines on employers who refuse to provide the inspectors with details of the various elements which go to make up remuneration in the undertaking and, in particular, the standards, categories, criteria and the bases for calculating remuneration. The equal pay legislation in India[3] provides for the appointment of inspectors to investigate compliance with the provisions of the Act; and specifies the powers of those inspectors in respect of access to premises, examination of documents and taking evidence from persons (section 9). The Equal Pay Act of New Zealand[4] sets out the powers of inspectors under the Act (right to enter any place of work, right to examine the records employers are required to keep by law, right to ask questions of any persons concerning any such records or concerning the employment of any person) and provides that inspectors shall have, in addition to any powers conferred by the Act, all those granted under the Industrial Conciliation and Arbitration Act, 1954.

157. The labour inspectorate is often empowered to supervise the application of the principle in respect of individual and collective agreements. In its 1985 general survey on labour inspection,[5] the Committee noted that many countries have adopted measures to enable the labour inspectorate to enforce binding collective agreements and/or arbitration awards.[6] However, in certain countries the inspection service is empowered to enforce only collective agreements that have been extended to other undertakings by government decision.

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[1] Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3), as amended by section 5 of Act No. 83-635, inserted in the Labour Code as section L.140-2 (LS 1983 - Fr. 2).

[2] Journal officiel of 29 March 1973.

[3] Equal Remuneration Act, 1976 (LS 1976 - Ind. 1).

[4] Section 16 of the Equal Pay Act, 1972 (LS 1972 - N.Z. 1).

[5] Loc. cit., paragraph 65.

[6] (For example, Australia, Bolivia, Colombia, Costa Rica, France, Gabon, Guatemala, Guyana, Italy, Luxembourg, Libyan Arab Jamahiriya, New Zealand, Romania).

(d) Action through public contracts (contract compliance)

158. Guaranteeing equal remuneration in contracts awarded by the public authorities can be an extremely effective tool in ensuring respect for the principles contained in the Convention. Work executed under the terms of public contracts has been singled out by Recommendation No. 90 as an area for action, where appropriate, in the application of the principle of equal remuneration (Paragraph 2(c)). In addition, the Labour Clauses (Public Contracts) Convention, 1949 (No. 94) reinforces this means of application in appropriate cases for countries which have ratified it.[1]

159. The means of enforcing equal remuneration guarantees in contracts awarded by the public authorities may include the making of contract awards contingent upon a pledge of non-discrimination; the mandatory inclusion of non-discrimination clauses in the contracts and subcontracts awarded; the review of the implementation of such contracts, with the possibility of requiring corrective measures in cases of non-compliance; the insistence on the contractor's development of an affirmative action plan; the suspension or cancellation of contracts in cases of non-compliance; the fining of contractors; the debarring of contractors found in violation from bidding on future contracts; and the publication of the names of violators.

160. To date, the most extensive experience in using federal contract compliance to enforce equal employment opportunity laws appears to have been accrued in the United States. Executive

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[1] Pursuant to that Convention, workers employed under contracts issued by a central public authority are to include clauses ensuring them wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on (Article 2, paragraph 1; see also paragraph 2). Thus where national laws or regulations, arbitration awards or collective agreements guarantee equal remuneration for workers in the trade or industry involved, the workers engaged under a public contract which is encompassed by Article 1 of that Convention should also be working under conditions of equal remuneration.

Order 11246 of 1965[1] requires that every non-exempt contract[2] with the federal government contain clauses that impose upon contractors and subcontractors the obligations not to discriminate against employees or applicants because of race, colour, religion, sex or national origin, and to take affirmative action to ensure employment without regard to those factors. The Order also includes a standard contract clause obliging the contractor to comply with the provisions of the Executive Order and any rules, regulations or orders issued under it, to include an equal employment clause in every subcontract or purchase order, and to co-operate in reporting activities and investigations related to enforcement.[3] The written affirmative action plan required of larger employers with federal contracts or subcontracts[4] must include, inter alia, a detailed listing of specific steps to be taken to guarantee equal employment opportunity and a table of job classifications, setting out job titles, principal duties and rates of pay.[5] In the event of the contractor's non-compliance with the non-discrimination clauses of the

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[1] Executive Order 11246 of 24 September 1965, as amended by Executive Order 11375 of 13 October 1967 and Executive Order 12086 of 8 October 1978, codified in Code of Federal Regulations, Vol. 41, part 60-1. The Executive Order was issued under the Walsh-Healey Act, United States Code, Vol. 41, sections 35 to 45.

[2] The Executive Order applies to all contracts for supplies, services or the use of real or personal property, in amounts exceeding US$10,000. It also applies to federal and federally assisted construction contracts (Code of Federal Regulations, Vol. 41, parts 60-1.3 and 60-1.5(a)(1)). The Order covers an estimated one-third of the workforce in the United States. B. Schlei and P. Grossman, Employment Discrimination Law, 2nd ed., 1983, p. 874.

[3] ibid., sections 202(4), (5), (7), 203(a) and 205.

[4] Only contractors or subcontractors employing 50 persons or more and having a contract of over US$50,000 are required to develop written affirmative action plans. (Code of Federal Regulations, Vol. 41, sections 35 to 45.

[5] Bureau of National Affairs: Fair Employment Practices Manual, p. 431:502.

contract or with any of the rules, regulations or orders issued under the Executive Order, the contract may be cancelled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for further contracts with the Federal Government.[1] The Secretary of Labour, whose department is, together with the Office of Federal Contract Compliance Programs (OFCCP), in charge of the Order's enforcement, may in addition recommend that lawsuits be instituted by the Justice Department to compel compliance, may recommend action by the Equal Employment Opportunities Commission or the Justice Department under Title VII of the Civil Rights Act[2] and may publish the names of non-complying contractors or trade unions.[3] The OFCCP has established techniques for handling compliance reviews, as well as procedures for handling discrimination cases, including applicable standards of proof, back pay standards and time limitations.[4]

161. In enforcing the Order, the OFCCP has placed primary emphasis on compliance reviews in which the contractor's overall employment programme is evaluated, rather than on encouraging individual complaints.[5] The compliance review may include an on-site inspection, during which the compliance officer may examine company records, interview employees, check the accuracy of job descriptions, wage rates and so forth, and locate any clustering of minorities or women in lower-paying jobs.[6]

162. In appropriate cases, the OFCCP and the Equal Employment Opportunity Commission[7] have co-ordinated action in litigation involving instances of alleged discrimination under Executive

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[1] Executive Order 11246, section 202(6).

[2] United States Code, Vol. 42, sections 2000e et seq.

[3] Executive Order 11246, sec. 209.

[4] OFCCP Order No. 760a1 of 10 March 1983.

[5] Bureau of National Affairs, loc. cit., p. 431:501.

[6] ibid., p. 431:502.

[7] See paragraph 111 above for a description of the Equal Employment Opportunity Commission.

Order 11246 and Title VII of the Civil Rights Act.[1] The first example of this was the settlement agreement they reached, aided by the Justice Department, in litigation with the American Telephone and Telegraph Company and its operating companies in 1973. Under the agreement resolving that suit, the largest private employer in the United States at that time, agreed to pay about US$15 million to 13,000 women and 2,000 minority men who had been denied pay and promotion opportunities. Back pay was awarded to some women who had been paid less than men for substantially equal work, and agreement on a new promotion and pay policy was reached.[2]

163. In Canada, the Federal Fair Wages Policy Order[3] requires that a provision be inserted in all federal government construction and supply contracts prohibiting discrimination in employment by the contractor. A similar non-discrimination section appears in the Regulations under the Federal Fair Wages and Hours of Labour Act,[4] which is applicable to every contract made with the Government of Canada through a contracting authority for the construction, modelling, repair or demolition of any work. Furthermore, the requirement in the Ontario Human Rights Code, 1981, to provide equal treatment with respect to employment, applies specifically to persons engaged in government contracts.

164. Under the Federal Canadian Human Rights Act (section 19), the Governor in Council is empowered to make regulations requiring compliance with the Act, including its equal pay provisions, from organisations operating under contracts or licences from the

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[1] Unlike Title VII, Executive Order 11246 does not create an individual right to sue in court: enforcement lies exclusively with the competent authorities. See e.g. Cohen v. Illinois Institute of Technology, 524 F.2d 818, 822, note 4 (7th Cir. 1975), certiorari denied, 425 US 943 (United States Supreme Court, 1976).

[2] Bureau of National Affairs, Fair Employment Practices Manual, p. 431:71 and 431:72. The text of the settlement is at p. 431:73 et seq. In 1978, the Supreme Court let the settlement stand by declining to review the approval of the decree by the United States Court of Appeals for the Third Circuit (Communication of Workers of America et al v. EEOC, 438 US 915 (1978).

[3] CRC 1978, c. 1621.

[4] RSC 1970 C. L-3.

federal government, but such regulations have not yet been passed. A 1984 Royal Commission Report on Equality in Employment examined contract compliance as a method of implementing equality.[1] It noted that contract compliance may be a difficult programme to monitor effectively; in 1980 the Canadian Government had contracts with between 25,000 and 30,000 companies, worth 6.5 billion Canadian dollars to the private sector and an addition 5.5 billion to Crown corporations.[2] Ideally, the report pointed out, every business or corporation under federal, provincial and territorial jurisdictions would be subject to employment equity legislation, just as these businesses are now subject to anti-discrimination laws. In the absence of such legislation, however, contract compliance was deemed "the next best alternative as a method of implementing employment equity in federally and provincially regulated business that contract with the federal government".[3] Accordingly, the Commission recommended that under those circumstances, the federal government should utilise legislatively-based contract compliance.[4] Under contract compliance, the recommendations continued, "the federal government would purchase goods and services only from businesses that agree to implement employment equity".[5] Those contracts could include, in addition to the requirement to implement employment equity, other clauses to accommodate local needs. It was recommended that the agency charged with enforcing employment equity also be used to enforce contract compliance.[6]

165. Other governments have not reported on provisions similar to those just described. Legislation in many countries does, however, prescribe a fair wage clause in public contracts to ensure that the workers concerned receive wages which are not less favourable than those established for work of the same character by collective agreements, arbitration awards or national laws and

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[1] loc. cit., pp. 226 and 227.

[2] ibid.

[3] ibid., p. 226.

[4] ibid., p. 260.

[5] ibid.

[6] ibid.

regulations. The Committee has called the attention of certain governments[1] to the possibility of including, for example, in the specifications of contracts entered into by a public authority for the carrying out of public works, manufacture or the transport of materials or supplies, and the carrying out or furnishing of services, a clause providing for the observance of the national equal pay provisions by the contracting undertaking. The Committee would again suggest to governments - as it did in its 1975 general survey (paragraphs 85 and 175) that they devote particular attention to the most appropriate means to be adopted for effectively supervising observance of the principle in this area.

Section 5. Remedial action

(a) Right of individuals to bring a complaint

166. Individuals who allege discrimination in respect of remuneration may seek recourse through various means, depending on the legal and industrial relations system of the country concerned. Where the principle of equal remuneration is embodied in the labour code, women workers are usually entitled to seek redress through the machinery established to resolve labour disputes in general. Complaints may thus be made to a labour inspector who is often empowered to investigate and conciliate complaints. In the event settlement has not been reached, the legislation of some countries authorises the labour inspectorate to bring the matter before the courts (see paragraph 173 below). In most countries, individual workers may also initiate legal proceedings directly before the competent courts. For instance, the Labour Codes of the French-speaking African countries provide for individual disputes to be brought before the labour courts;[2] elsewhere, claims for equal

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[1] e.g. comments addressed to the Government of Switzerland (direct requests of 1980 and 1982; and RCE 1984, p. 200 (Switzerland)) in which the Committee asked the Government to state whether measures have been taken or are under consideration to give effect to the principle of the Convention in work carried out under contracts entered into by a public authority.

[2] e.g. Madagascar, section 130 of the Labour Code, 1975 (LS 1975 - Mad. 1); Mali, section 241 of the Labour Code, 1962 (LS 1962 - Mali 1).

pay may be brought before the civil courts.[1] Individual disputes regarding the application of equal pay provisions are settled, in some countries, by bodies composed of representatives of employers and workers.[2] As has been discussed in paragraphs 107 to 118 above, a number of countries which have adopted legislation dealing specifically with equal pay - and often equal treatment questions - have established specialised bodies competent to receive complaints from individual workers concerning violations of those legal provisions.

(i) Burden of proof

167. Discrimination in remuneration is often difficult to prove, particularly when it is indirect and arises from discriminatory criteria or classification and evaluation systems. Employees may also face difficulties in substantiating allegations of discrimination because they lack access to the necessary records and information. For these reasons, a number of governments have taken legislative action to place the burden of proof on the employer in equal pay disputes. For example, the 1980 equality of treatment legislation in the Federal Republic of Germany reverses and places on the employer "the onus of proving that material reasons unrelated to a particular sex justify differential treatment", where a worker establishes "facts that afford grounds for assuming that discrimination has occurred on account of his sex".[3] Similarly, in France,

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[1] e.g. Japan (see paragraph 126 above); Jordan, section 26 of the Labour Code, 1965, as amended in 1972.

[2] For example, in France, "conseils de prud'hommes" are responsible for settling individual disputes between employers and workers in respect of contracts of employment. In the USSR, complaints concerning labour disputes in general are made initially to the labour disputes boards (composed of an equal number of representatives of the local trade union committee and of the management of the undertaking). If workers are not satisfied with the decision of a board or, if there is no unanimous decision, they may appeal to the local works or factory trade union committee of the enterprise in which they are employed. Direct appeals lie to the district people's courts.

[3] Section 1 of the Labour Law (European Communities Harmonisation) Act, 13 August 1980, LS 1980 - Ger. F.R. 3, see RCE, 1982, p. 151 (Federal Republic of Germany).

the employer bears the responsibility for justifying the inequality of remuneration at issue under the equal pay provisions introduced into the Labour Code in 1983. Under the legislation, the worker shall have the benefit of any doubt which remains after consideration of the various elements in the matter.[1] The legislation of some countries sets out the particular circumstances in which discrimination is presumed to have occurred; in such cases, the employer bears the onus of proving that the different treatment is unrelated to the workers' sex. In Sweden, discrimination on the basis of sex is deemed to occur when an employer observes less favourable conditions of employment for a worker than those he observes for a worker of the opposite sex, if such workers perform work which is to be regarded as equal or of equal value in the light of an agreed assessment of the job and the employer cannot show that the different conditions of employment are related to differences in the workers' material qualifications for the work or that they are not in any event related to the workers' sex.[2] The Labour Relations Act of Zimbabwe also provides that a person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of one sex to be treated less favourably than persons of the other sex, unless it is shown that such act or omission was not attributable wholly or mainly to the sex of the person concerned.[3] Draft legislation concerning equality between women and men in Finland would also place on the employer the burden of proving that differential treatment regarding remuneration is due to reasons other than those related to sex.[4]

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[1] Section 5 of Act No. 83-635 to amend the Labour Code and the Penal Code as to equality in employment between women and men, 13 July 1983 (LS 1983 - Fr. 2).

[2] Section 4.1 of the Act respecting equality between women and men at work of 17 December 1979 (LS 1979 - Swe. 2).

[3] Section 5(6) of the Labour Relations Act, No. 16 of 1985.

[4] Section 8 of the Government Bill to Parliament for legislation concerning equality between women and men, May 1985, supplied by the Government with its Article 22 report for 1983-85.

168. In cases concerning the dismissal of workers who have exercised their rights to claim equal pay, the legislation of some countries provides that the employer bears the onus of proving that the making of the claim was not the sole or principal reason for the dismissal or other action to prejudice the employee's position.[1]

(ii) Protection against reprisals

169. For an effective application of the principle of equal pay, there must be guarantees against dismissal or other forms of reprisal for women workers who complain to the competent authorities or initiate legal action to enforce their right. Women workers must also be made aware of the existence of measures to protect them against retaliatory action: particularly in times of high unemployment, there may be an inclination to tolerate discrimination rather than risk dismissal. Provisions designed to protect workers against victimisation are now contained in the legislation of many countries. The protection against dismissal following a complaint or action aimed at obtaining equal pay, is included in the equal pay or equal treatment legislation of all the member States of the European Economic Community. Article 5 of the EEC Equal Pay Directive of 10 February 1975[2] specifies that member States "shall take the necessary measures to protect employees against dismissal by the employer as a reaction to a complaint within the undertaking or to any legal proceedings aimed at enforcing compliance with the principle of equal pay". In some of these countries, employers who infringe the legislative provisions concerning dismissal in this area are obliged to pay compensation or fines (Belgium, Denmark, Ireland, Luxembourg, Portugal, and the United Kingdom). A right to reinstatement may also be available, but if the worker refuses to be re-employed, damages are to be paid. In France, a dismissal is null and void if it lacks real and serious grounds and is in fact a measure adopted by the employer as a consequence of the worker having brought a lawsuit. In these circumstances, the worker has a right to re-instatement and is considered as not having ceased to occupy the post. Compensation is to be paid to a worker who refuses to perform the contract of employment.[3] Such unwarranted dismissals are also

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[1] e.g. Ireland (section 9 of the Anti-Discrimination (Pay) Act, 1974, LS 1974 - Ire. 1); New Zealand (section 15 of the Equal Pay Act, 1972, LS 1972 - N.Z. 1).

[2] Council Directive 75/117/EEC.

[3] Act No. 83.635 (LS 1983 - Fr. 2).

null and void in the Federal Republic of Germany, Italy and the Netherlands and may be declared null and void by a tribunal in Greece. Provisions designed to prohibit employer reprisals are also contained in the legislation of other countries: for example, section 94 of the 1984 Sex Discrimination Act of Australia provides, inter alia, for the imposition of fines on persons who subject or threaten to subject another person to any detriment for making or proposing to make a complaint under the Act. In Ghana, the 1969 Labour Regulations[1] prohibit employers from discharging or otherwise discriminating against any person who has made a complaint or given evidence or assisted in any way in respect of the initiation or presentation of a complaint or other proceedings to secure the right to equal pay. The Labour Codes of Guatemala[2] and Honduras[3] contain similar provisions prohibiting reprisals against employees from exercising the rights granted to them by the Constitution, the Labour Code, or other labour or social welfare laws. According to the Labour Standards Law of Japan,[4] employers shall not dismiss or discriminate against workers who have reported a breach of the law to the labour inspectorate. In New Zealand, the Equal Pay Act of 1972[5] specifies that an employer commits an offence if he dismisses any employee or alters any employee's position in the undertaking or business within 12 months of the employee making or causing a complaint to be made. An employer who retaliates against an employee for asserting rights under the Equal Pay Act[6] of the United States may be liable for "such legal or equitable relief as may be appropriate to effectuate the purposes" of the Act, including employment, reinstatement, promotion and back pay, and an additional equal amount in liquidated damages.[7]

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[1] LS 1969 - Ghana IC, section 70.

[2] LS 1961 - Gua. 1, section 10.

[3] LS 1959 - Hon. 1, section 10.

[4] LS 1947 - Jap. 3, section 104.

[5] LS 1972 - N.Z. 1, section 18.

[6] Paragraph 61 above.

[7] Bureau of National Affairs, Fair Employment Practices Manual, loc. cit., p. 431:526.

(iii) Financial assistance to claimants

170. The possibility of incurring a heavy financial burden is another factor likely to deter women from initiating legal action to redress grievances. Provision has accordingly been made in a number of countries for claimants to receive assistance in proceedings to secure their legal rights. For instance, in Australia, assistance in respect of expenses incurred in connection with an inquiry by the Human Rights Commission or with proceedings before the Federal Court may be given both to claimants and to persons who have committed, or are alleged to have committed, an unlawful act under the Sex Discrimination Act, 1984 (sections 83 and 84). Legal assistance to needy persons whose claim is not obviously unfounded is also available to persons who institute legal proceedings in respect of equal pay in Italy.[1] In addition, the labour legislation in a number of countries specifies that proceedings for labour disputes in general shall be free of charge. For example, in Argentina, there is to be no charge to a worker or to his dependents for judicial or administrative proceedings connected with the application of the legislation concerning contracts of employment. Where it becomes clear from the evidence that a claim has been unjustifiably overstated, the costs are to be defrayed jointly by the plaintiff and the legal representative conducting the case.[2] Proceedings in labour disputes are also to be free of charge in Mexico[3] and in Senegal, legislation provides that proceedings in the labour courts shall be free of charge.[4]

(b) Exercise by trade unions of right of complaint

171. As the Committee pointed out in its 1975 general survey on equal remuneration,[5] it should be possible for proceedings to be

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[1] Act No. 533 respecting the procedure for the settlement of individual labour disputes concerning compulsory social insurance and assistance (LS 1973 - It. 1).

[2] Section 20 of Decree No. 390 to approve a consolidated text of the rules governing contracts of employment. Dated 13 May 1976 (LS 1976 - Arg. 1).

[3] Section 685 of the Decree to amend the Federal Labour Act. Dated 30 December 1979 (LS 1979 - Mex. 1).

[4] Section 210 of Act No. 80-01 to repeal and replace certain sections of the Labour Code, 22 January 1980 (LS 1980 - Sen. 1).

[5] loc. cit., paragraph 73.

set in motion other than by the filing of a complaint by an individual woman worker. The legislation of many countries in fact provides for trade union organisations to institute proceedings on equal pay on behalf of their members, whether the action is brought before a court or a specialised body.[1]

172. In most cases, a trade union must be authorised to act on a worker's behalf. However, sometimes the consent of an alleged victim of discrimination need not necessarily be a precondition for the complaint being accepted by the competent body.[2] In some

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[1] e.g. Australia (section 50 of the Sex Discrimination Act, 1984); Austria (sections 5 and 6 of the Equality of Treatment Act, 1979 (LS 1979 - Aus. 1); Belgium (section 132 of the Economic Reform Act, 1978 (LS 1978 - Bel. 2) provides, inter alia, that representative organisations of employers and workers may, for the purpose of defending their members' rights, be parties to any disputes; Brazil (section 839 of the Legislative Decree No. 5452 to approve the consolidation of Labour Laws (LS 1985 - Bra. 1)) provides for complaints regarding individual disputes to be submitted, inter alia, by the occupational organisations; Jordan (section 26 of the Labour Code, 1965 (LS 1965 - Jor. 1) as amended in 1972); New Zealand (section 13 of the Equal Pay Act, 1972 (LS - 1972 - N.Z. 1); Norway (section 11 of the Act respecting equality between the sexes, No. 45 of 1978 (LS 1978 - Nor. 1) provides for applications to be made to the Equality Officer from any third party); Sweden (under the Act respecting equality between women and men at work, 1979 (LS 1979 - Swe. 2)) - the Equality Commissioner (Ombud) shall only institute proceedings on behalf of an individual complainant unless the workers' organisation does not do so; United States (under the Equal Pay Act, 1963, a trade union may represent members with their specific written authorisation; under Title VII of the Civil Rights Act, 1964, organisations may bring the action both on behalf of themselves and on behalf of their members); Zimbabwe (section 9 of the Labour Relations Act, 1984 (No. 16 of 1985)) provides that a trade union or a workers' committee commits an unfair labour practice if it fails to represent an employee's interests with respect to any violation of his rights under the Act or under a valid collective bargaining agreement.

[2] For instance, section 32(2) of the Human Rights Act, 1983, of Canada provides only that the Human Rights Commission "may refuse to deal with the complaint [made by someone other than the individual concerned] unless the alleged victim consents thereto".

countries, trade union organisations may take legal action without having received prior authorisation from the worker concerned. Workers' organisations in Belgium have capacity to bring proceedings based on decrees giving binding effect to collective decisions or agreements, on the application and performance of collective agreements and on the rights conferred on members of the organisation by collective employment agreements. The organisations are granted a completely independent power to defend the rights of their members who need not therefore authorise them to do so.[1] In France, groups which are entitled to institute proceedings whose members are bound by a collective employment agreement may institute proceedings arising from the agreement in favour of their members without having to prove that they have been authorised to do so by the person concerned, provided he has been notified and has not stated his opposition. The person concerned may at any time intervene in the proceedings instituted by the group. In these circumstances, a trade union may, provided it establishes an interest, institute proceedings before any civil, criminal or administrative court to defend the professional interests of its members or the collective interests of the trade or profession.[2]

(c) Ex officio

173. Legislation dealing with equal pay in some countries confers authority on the body responsible for the supervision or implementation of the principle to initiate proceedings on behalf of claimants. Some examples have been given, in paragraphs 112 and 113 above, of instances where specialised bodies are empowered to initiate legal action on behalf of aggrieved individuals. In certain countries where labour inspectors are empowered to supervise the application of equal pay provisions, they are also authorised to bring claims for the recovery of wages before the competent court.[3]

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[1] Section 4 of the Act respecting collective industrial agreements and joint committees of 5 December 1968 (LS 1968 - Bel. 1). See also the report of the Commission of the European Communities on the application of the principle of equal pay for men and women, COM (78) 711 final, Brussels, 16 January 1979, p. 36.

[2] Articles L.135-4 and L.411-11 of the Labour Code. See also the Report of the Commission of the European Communities, p. 41.

[3] In New Zealand, for example, claims under the Equal Pay Act (section 13 of the Equal Pay Act, 1972 (LS 1972 - N.Z. 1)) may be made to the Arbitration Court by an inspector, in the same manner as claims for the recovery of wages under the Industrial Relations Act 1973.

(d) Effect of decision by responsible authority

174. The remedies available to women workers who have successfully brought an equal pay claim, generally include awards to adjust the woman's future remuneration to correspond with that of a man performing, as the case may be, the same or similar work or work of equal value. (As discussed in paragraphs 119 to 131 above, orders to nullify discriminatory provisions in legislation or employment regulations are also made by some courts.) An order of a competent court or administrative authority may also include an award for back pay, special compensation and even, in some cases, punitive damages. While specific provision is usually made in the legislation for payments of this kind, the relevant tribunal or specialised body may be allowed a wide discretion to determine the amount of compensation to be actually paid to a victim of discrimination. For example, the Canadian Human Rights Act, 1977, provides that a Human Rights Tribunal may, at the conclusion of its inquiry, make an order which includes any of the terms laid down in the Act (section 41), including an order that the respondent compensate the victim as the Tribunal "may consider proper, for any or all of the wages that the victim was deprived of and any expenses incurred by the victim as a result of the discriminatory practice" (section 41(2)(c)). (The Act also empowers a Tribunal to order that the respondent adopt a "special programme, plan or arrangement" in order to prevent the same or a similar practice from occurring in the future (section 41 (2)(a)).) The amount of compensation awarded to a successful claimant may, of course, be affected by legislative provisions limiting the period for which arrears of remuneration may be recovered. In some countries, the equal pay legislation specifies that the right of action in proceedings to recover arrears of remuneration is limited to two or three years;[1] elsewhere, claimants are entitled to seek back pay from the date a charge was first filed[2] or from the date of the introduction of the

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[1] e.g., Ireland (three years); United Kingdom (two years, except that claims under the equal value provisions introduced in 1983 (paragraph 49 above) were not permitted for periods before the date of introduction of the new legislation, i.e. 1 January 1984).

[2] e.g., in the United States, under Title VII of the Civil Rights Act, the back pay period can be computed from the date the charge is filed with the Equal Employment Opportunity Commission; and under the Equal Pay Act, the period is computed from the date the lawsuit is filed (Schlei and Grossman, loc. cit., pp. 439-441).

legislation.[1] It should be noted that damages may also be awarded for non-cash benefits (such as working clothes or the use of a company car).[2]

(i) Nullity of discriminatory provisions in individual and collective agreements

175. In many countries, provisions in individual or collective agreements which are contrary to the principle of equal pay are deemed null and void, according to legislation or jurisprudence.[3]

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[1] In Canada, the Human Rights Commission has settled cases with retroactive awards to the day the Human Rights Act came into force (Equal Pay Casebook, 1978-84, Canadian Human Rights Commission); United Kingdom, see footnote on previous page.

[2] Equal Pay: A Guide to the Equal Pay Act, Department of Employment, United Kingdom 1/85.

[3] Argentina, sections 13 and 172 of Decree No. 390 of 13 May 1976 (LS 1976 - Arg. 1)); Belgium, sections 9, 10 and 11 of the Act respecting collective industrial agreements and joint committees, 1968 (LS 1968 - Bel. 1) and section 130 of the Economic Reform Act, 4 August 1978 (LS 1978 - Bel. 2); Byelorussian SSR, section 5 of the Labour Code, 23 June 1972; Equatorial Guinea, sections 5 and 6 of the General Labour Ordinance 11/1.984 of 20 June 1984; France, section 3 of Act No. 72-1143 respecting equal remuneration for men and women (LS 1972 - Fr. 3) and section L.123-2 of the Labour Code, as inserted by Act No. 83-635, to amend the Labour Code and the Penal Code as to equality in employment between women and men (LS 1983 - Fr. 2); Federal Republic of Germany (the Federal Labour Court has established that discriminatory provisions in agreements are automatically null and void, under article 3 of the Basic Law); Ireland, section 5 of the Anti-Discrimination (Pay) Act, 1974 (LS 1974 - Ire. 1); Italy, section 19 of Act No. 903 of 1977 respecting equality of treatment as between men and women in questions of employment (LS 1977 - It. 1); Luxembourg, section 6 of the Act respecting equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (LS 1981 - Lux. 1); Netherlands, section 8 of the Equal Wages for Women and Men Act (LS 1975 - Neth. 1); Portugal, section 12 of Legislative Decree No. 392/79 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3); Spain, section 90 of Act No. 8 to promulgate a Worker's Charter, 10 March 1980 (LS 1980 - Sp. 1); Sweden, section 5 of the Act respecting equality between women and

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Moreover, the legislation of some of these countries further provides that the lower rate of remuneration prescribed in the contract or agreement shall be replaced automatically by the higher rate.[1]

(ii) Class actions

176. An individual claim for equal pay results in the most sweeping and effective remedies if brought as a class action,[2] that is, on behalf of an entire group of similarly situated women, which may include past and future employees. Use of this procedure in the area of discrimination in employment and occupation appears to have developed mainly in the United States. Actions may be maintained as class actions under Title VII of the Civil Rights Act, 1964, subject to Rule 23(a) of the Federal Rules of Civil Procedure which enables class action only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defences of the representative parties are typical of the claims or defences of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. In addition to the above four requirements, one of three more requirements under

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men at work (LS 1979 - Swe. 2): section 8 of the Act provides that where a worker is discriminated against on the basis of his sex as a result of a stipulation in a contract concluded with the employer or because the employer terminates a contract or takes any other measure of this kind, the stipulation or measure shall be declared null and void if the worker so requests; USSR, section 5 of the Labour Code (LS 1971 - USSR 1).

[1] e.g. Argentina, France, Luxembourg, Portugal (in Equatorial Guinea, provisions in agreements or contracts, which derogate from the law, are to be replaced by the standards prescribed; section 53(2) of the Labour Code provides for equal pay for work of equal value).

[2] The Trades Union Congress of the United Kingdom, commenting on the shortcomings of the Equal Pay Act, 1970, as amended (in comments on the Government's report for 1983-85), has stated that there is no scope for class action, a trade union or a group of employees bringing a case collectively; and therefore each action has to be taken individually.

Rule 23(b) must be met: (1) separate actions would create a risk of inconsistent adjudications or adjudications which would substantially impair the ability of non-parties to protect their interests; (2) where injunctive relief is sought, the party opposing the class has acted or refused to act on grounds generally applicable to the class; (3) questions of law or fact common to the members of the class predominate over questions affecting only individual members, and class action is the superior method for fairly and efficiently adjudicating the controversy.[1] Class actions are also permitted under the Equal Pay Act, 1963, but they are governed by the "opt-in" provision: an employee must specifically give consent in writing to become a party plaintiff.[2]

177. While no provision is made under the Federal Canadian Human Rights Act for class actions as such, complaints filed jointly or separately by more than one individual or group may be dealt with together if the Commission is satisfied that the complaints involve substantially the same issues of fact and law (section 32(4)). In the province of Quebec, the Code of Civil Procedure[3] which applies to the Quebec Charter of Human Rights and Freedoms[4] provides for class actions.[5] The Human Rights Commission Act, 1977, of New Zealand empowers the Commission to bring proceedings on behalf of a class of persons and to seek, on behalf of persons belonging to that class, any of the remedies provided for under the Act (section 38).[6] On the basis of established jurisprudence, any interest group or special group in India can bring social action litigation in court seeking enforcement of the right of women to equal remuneration for work of equal value, which is a constitutional and legal right. According to the Sex Discrimination Act, 1984, of

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[1] Bureau of National Affairs, loc. cit., p. 431:225.

[2] ibid., p. 431:525.

[3] RSQ, 1977, C. C-25.

[4] RSQ, 1977, C.C-12.

[5] 1984 Royal Commission Report on Equality in Employment, loc. cit., p. 238.

[6] As will be recalled, complaints relating solely to equal pay must be referred to the Secretary of Labour unless the complaint is made against the Crown (section 15 (12)). See paragraph 111 above.

Australia, the Human Rights Commission may deal with complaints from "a person or persons included in a class of persons aggrieved by [an unlawful act] on behalf of the persons included in that class of persons" (section 50 (1)(c)) provided that the Commission is satisfied, inter alia, that the class is so numerous that joinder of all its members is impracticable; that there are questions of law or fact common to all members of the class; that the claims of the claimant are typical of the claims of the class; and that multiple complaints would be likely to produce varying determinations that could have incompatible or inconsistent results for the individual members of the class (section 70(2)). Even if these requirements have not been satisfied, the Commission may still decide that the justice of the case demands that the matter be dealt with, and a remedy provided for, by means of a representative complaint. Where the Commission has found a complaint substantiated, it is not, however, empowered to make a declaration that the respondent pay damages by way of compensation to the complainant.[1]

(e) Sanctions

178. Neither Convention No. 100 nor Recommendation No. 90 consider the question of imposing penalties on persons who breach equal remuneration provisions. Penalties are, however, prescribed in the laws of a large number of countries.[2] Where no specific

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[1] Section 81(1)(iv) of the Sex Discrimination Act provides that the Commission may make a declaration that the respondent should pay to the complainant damages by way of compensation for any loss or damage suffered "except where the complaint was dealt with as a representative complaint".

[2] Canada, section 46 of the Canadian Human Rights Act, 1977; Cape Verde, section 307 of the Rural Labour Code of 1962 (LS 1962 - Por. 1); Denmark, section 12 of the Act respecting equality of treatment as between men and women with regard to employment, etc., No. 161 of 21.4.78 (LS 1978 - Den. 3); Dominican Republic, sections 678 and 679 of the Labour Code, 1951; Ecuador, section 605 of the Labour Code, 1978; France, section L.152-1 of the Labour Code, as amended in 1983; Ghana, section 71 of the Labour Regulations Act, 1969 (LS 1969 - Ghana 1C); Greece, section 12 of the Equality Act (LS 1984 - Gr. 1); Iceland, sections 18 and 19 of the Law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985); India, section 10(2)(b) of the Equal Pay Act (LS 1976 - Ind. 1);

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sanction is prescribed by the legislation incorporating equal pay provisions, penalties may still be provided for under other legislation, such as the penal code.[1] Usually the penalty prescribed is in the form of a fine, though in a few countries, imprisonment may also be imposed under certain conditions.[2] In countries where

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Iran, section 58 of the Labour Code (LS 1959 - Iran 1); Ireland, sections 6(4)(b), 8(4)(b), 9(1) and 10(2) of the Equal Pay Act (LS 1974 - Ire. 1); Italy, section 16 of the Employment Equality Act (LS 1977 - It. 1); Jamaica, sections 3(2), 5(1) and 6(4) of the Equal Pay Act (LS 1975 - Jam. 2); Japan, section 119 of the Labour Standards Law (LS 1947 - Jap. 3); Libyan Arab Jamahiriya, section 159 of the Labour Code (LS 1970 - Libya 1); Mexico, section 886 of the Federal Labour Act (LS 1969 - Mex. 1); New Zealand, section 18 of the Equal Pay Act (LS 1972 - N.Z. 1); Panama, section 1064(2) of the Labour Code (LS 1971 - Pan. 1); Papua New Guinea, section 97 of the Employment Act, 1978; Philippines, section 299 of the Labour Code (Presidential Decree No. 442 of 1974) as amended; Portugal, section 17 of the Legislative Decree on Equality (LS 1979 - Por. 3); Sao Tomé and Principe, section 307 of the Rural Labour Code of 1962 (LS 1962 - Por. 1); Somalia, section 144 of the Labour Code (LS 1972 - Som. 1); Spain, section 57 of the Workers' Charter (LS 1980 - Sp. 1); Syrian Arab Republic, section 224 of the Labour Code (LS 1959 - UAR 1); Turkey, section 99 of the Labour Code (LS 1983 - Tur. 3); United States, section 1620.22 of the Equal Pay Act Recordkeeping and Administration Regulations, 1982, as amended; USSR (sections 37 and 249 of the Labour Code of the RSFSR (LS 1971 - USSR 1), Venezuela, section 274 of the Labour Act (LS 1983 - Ven. 1); Zimbabwe, section 5(3) of the Labour Relations Act, 1984.

[1] For instance, Ethiopia, section 113(5) of the Labour Proclamation (LS 1975 - Eth.1); USSR, sections 77 and 249 of the Labour Code of the RSFSR and section 138 of the Criminal Code of the RSFSR (see also section 134 on obstructing women in the exercise of their equal rights).

[2] e.g., France, Ghana, Jamaica, Japan, Philippines, Somalia, Syrian Arab Republic, United States, Zimbabwe.

specialised machinery has been set up to enforce legislation dealing with equal pay and equal treatment in employment (discussed in paragraphs 107 to 118 above), provision is also often made for the imposition of penalties on persons who fail to co-operate with the agency concerned during its investigation of claims.[1]

179. In its last general survey on the equal remuneration instruments,[2] the Committee observed that effective application of the principle depends very largely on the existence of provisions imposing sufficiently deterrent sanctions, notably of a penal nature, for violations. The Committee would emphasise again on this occasion, the need for governments to review the adequacy of the penalties laid down in legislation; and particularly where progress in the implementation of the principle continues to be slow, to consider increasing the sanctions to a sufficiently high level to discourage offences.

Section 6. Other factors to facilitate the application of the Convention

180. Throughout the report, mention has been made of the fact that many difficulties encountered in realising implementation of the principle of equal pay are intimately linked to the general status of women and men in employment and in society.[3] These broader considerations have been acknowledged, to some extent, in Paragraph 6 of the Recommendation which advocates that a number of measures should be taken to ensure that women workers have equal or equivalent facilities for vocational guidance, vocational training and placement and to encourage women to use them (Paragraph 6(a) and (b)), to provide welfare and social services which meet the needs of women workers,

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[1] For example, in Australia, the Sex Discrimination Act (loc.cit.) prescribes fines for failure to provide actuarial or statistical data (section 87), attend a conference (section 88), furnish information (section 89) or for obstructing the work of the Human Rights Commission in other specified ways (section 90). In Canada, heavy fines may be imposed on persons or organisations obstructing the investigation of a complaint (section 35(3)) or for obstructing a human rights tribunal in carrying out its functions (section 46) under the Human Rights Act (viz., 50,000 Canadian dollars in the case of an employer, an employer organisation or an employee organisation, and 5,000 Canadian dollars in any other case.

[2] Paragraph 173, 1975 general survey.

[3] e.g., in paragraphs 42, 79, 86, 100 above.

particularly those with family responsibilities and to finance such services from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex (paragraph 6(c)) and to promote equality as regards access to occupations and posts (paragraph 6(d)). It is impossible to summarise in a few pages the diversity of issues involved in these areas. Instead, this section draws from the reports submitted by governments, together with the comments received from employers' and workers' organisations, some general conclusions about the developments and trends noted, with some examples of specific measures, under two headings of education and employment: welfare and social services.

(a) Education and employment

181. Along with the enactment of provisions to broaden the scope of their equal pay policies (considered in Chapter III), a number of countries have also taken legislative and other action to tackle simultaneously all the sources of wage inequality in the labour market. Such initiatives indicate a shift in emphasis since the Committee's last survey. Previously, it was considered that the implementation of equal remuneration would be facilitated if discriminatory employment practices for reasons of sex were prohibited in the areas of vocational training, recruitment and promotion. Measures to protect women against discrimination are certainly important but it is doubtful that these efforts alone have affected certain prevailing negative attitudes towards the employment of women, which are attributable in large part to indirect forms of discrimination both within and outside the labour market. With a greater understanding of the link between occupational segregation and the gap between men's and women's wages, equal employment policies have tended, more recently, to propose the introduction of positive measures to increase career options for women in non-traditional occupations, by encouraging changes in their pre-employment education and training and promoting their participation to levels and in areas of employment which were closed to them in the past. This section highlights some of these measures.

(i) Education in schools

182. Differential treatment of girls and boys at school has consequences for their future employment prospects. With this in view, a number of countries have included in their equality laws, provisions requiring teaching facilities at schools to be free of discrimination. In Iceland the law on the Equal Status and Equal Rights of Women and Men (No. 65 of 1985) specifies that schools and other educational institutions provide instruction on issues concerned with equality between women and men: and that educational aids and

textbooks used in those institutions be designed so as not to discriminate against either of the sexes. The Act further provides that attempts be made to modify the traditional choice of employment and education among men and women (section 10). In Norway, according to the Act respecting equality between the sexes,[1] teaching facilities used in schools and other educational establishments shall contribute to equality between the sexes (section 7).

183. The Government of Czechoslovakia has provided, in its report, a very detailed description of the education system of the country which makes no distinction between men and women. Among other things, provision is made for the material security of pupils training for occupations in apprenticeship branches and for other students. In addition to a monthly cash payment they receive food and lodging either free or against reimbursement and travelling and transfer allowances.[2] The legislation also provides for special grants to be paid to student mothers and for students living alone who have sole responsibility for a child.[3]

184. Other countries have also adopted measures to promote educational equality. In 1974, the United States Congress adopted the Women's Educational Equity Act which authorises federally funded grants for activities designed, inter alia, to aid research, development and educational activities to advance educational equity and to develop educational activities to increase opportunities for adult women, including continuing educational activities and programmes for under-employed and unemployed women.[4]

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[1] Act No. 45 of 1978 (LS 1978 - Nor. 1).

[2] Section 24(1) of Law No. 29/1984 Sb. concerning the system of primary and secondary schools and Notifications of the Ministries of Labour and Social Affairs and of National Education Nos. 93/1979 Sb. and 95/1979 Sb.

[3] Notification of the Ministry of National Education on the granting of allowances and material security to students of secondary schools and secondary occupational schools No. 84/1984 Sb. and No. 88/1984 Sb.

[4] Section 408(d)(1) of the Education Amendments of 1974, 20 US Code, section 1866. In 1972, Congress had already prohibited the exclusion, on the basis of sex, of persons participating in the benefits of educational programmes receiving federal assistance. Title IX of the Education Amendments of 1972, 20 US Code, sections 1681 et seq.

(ii) Vocational training and guidance

185. A great many countries report that women ejoy the same facilities as men for vocational guidance and training.[1] In addition, some countries have described the special programmes being undertaken to encourage women to enter non-traditional areas of employment. For example, in Ireland, the Training Council, known as An Chomhairle Oiliúna (AnCO)[2] has a specific policy for women which focuses on their increased participation in training programmes, the integration of women into occupations traditionally held by men and the unique training needs of women who return to paid employment after a break. AnCO initiated a pilot programme in 1975 to integrate women into apprenticeship training for skilled trades[3] and since 1981 has run a programme to train older women for semi-skilled engineering occupations. It also implemented in 1978 a special programme to involve more women in management training which, according to the Government's report on the Recommendation, is no longer needed due to the almost equal male/female representation in AnCO management courses.

186. In New Zealand, women as a group are still unrepresented in many forms of training, especially trade and technical training.[4] Believing that traditional attitudes are responsible for the imbalance of men and women in training, the Vocational Training Council ran a

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[1] e.g., Austria, Barbados, Byelorussian SSR, Colombia, Cuba, Czechoslovakia, German Democratic Republic, Federal Republic of Germany, India, Japan, Poland, Portugal, Sweden, Ukrainian SSR, USSR.

[2] An Chomhairle Oiliúna [the Training Council] was established by the Industrial Training Act, 1967 (LS 1967 - Ire. 2).

[3] According to the Government's report on the Recommendation, 109 female apprentices were registered by the end of 1983 from eight in 1975 when the programme was initiated.

[4] According to the Government's report on the Recommendation, as at 31 March 1984, women made up 9.2 per cent of apprentices in the private sector and 0.8 per cent in the public sector. As at 1 July 1983, women made up 25 per cent of those enrolled for full-year Authority for Advanced Vocational Awards (AAVA), Technicians' Certificate and New Zealand Certificate courses.

public education programme in 1983 designed to make the community at large, including parents, employers, educators and women themselves, aware of the need for women to consider a wider range of training and employment than in the past. Following a successful pilot programme in 1983, the Department of Employment recently implemented a Positive Action Programme which aims to broaden the job horizons of women by encouraging their employment in non-traditional occupations. The activities include special training courses for women and counselling women who are registered as unemployed to encourage a broadening of their job horizons. In Ecuador, the percentage enrolment for women is much greater than for men in diversified technical courses (the last three years of secondary technical education) which, according to the Government, might be considered encouraging were it not for the fact that the majority of women enter upon subordinate careers in commerce and administration as well as other traditional female activities which means they are debarred from real participation in the social and economic development of the country.[1]

(iii) Access to and promotion in employment

187. From the reports submitted by governments for the purpose of the present survey as well as those received regularly from member States which have ratified Convention No. 111, it appears that there have been considerable developments over the past decade to repeal provisions in legislation which prohibit the access of women to public and private sector employment. In these reports, many governments have also referred to the specific action being taken to encourage equality of opportunity and treatment for women in employment and occupation. Significant among measures of this kind, however, are those programmes designed to break down historic patterns of indirect discrimination (or 'systemic' discrimination, as it is sometimes called) by requiring positive measures to be taken in regard to recruitment and promotional criteria. Essentially, these affirmative action programmes recognise that it is not sufficient merely to ensure equality of opportunity in respect of access and promotion, because people who have suffered discrimination in the past cannot be expected to compete on equal terms with those who have not been subject to the same disadvantages.

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[1] Report of the Government of Ecuador to the UN Committee on the Elimination of Discrimination against Women (CEDAW), Document CEDAW/C/5/Add.23, 29 August 1984.

188. Legislation requiring employers to adopt active measures for the promotion of equality in employment has been adopted in a number of countries, notably those in the Nordic region. In Iceland, employers are required to work actively towards the goal of promoting a more equal status of the sexes within their firm or institution and to make an effort to prevent occupations from being divided into separate categories of work for women and men under section 9 of the law (No. 65 of 1985) on the Equal Status and Equal Rights of Women and Men. In Finland, the Government Bill for legislation concerning equality between women and men of May 1985 places a duty on public and private sector employers to promote equality by acting in such a way that both women and men apply for vacant jobs, promoting the equitable placement of women and men into different kinds of jobs and creating equal opportunities for them to advance in their careers and to develop working conditions suitable for both women and men. An employer shall fulfil his obligation according to his possibilities and available resources (section 6). The Act respecting equality between women and men at work[1] in Sweden also requires employers to adopt an appropriate policy for the active promotion of equality at work. Having regard to his resources and the other circumstances of the case, the employer must ensure, inter alia, that the conditions of employment are applicable to both women and men, that applications for vacancies are received from both sexes and through training and other appropriate action, that women and men are evenly distributed in the different types of work and classes of workers. Where, at any workplace, women and men are not in general evenly distributed in a particular type of work or class of workers, the employer shall make a special effort to receive applications from members of the under-represented sex and endeavour to ensure that the proportion of workers of that sex is progressively increased (section 6). An employer failing to comply with the Act may be ordered to discharge his obligations and shall otherwise be liable to a penalty (section 9).

189. In 1984, the Government of Australia announced a number of proposals in its policy discussion paper on affirmative action for women, including the creation of a 12-month voluntary pilot programme involving the participation of 28 leading companies and three tertiary educational institutions to improve women's position in the workforce by ensuring that discriminatory practices or traditions are reviewed and removed. Particular emphasis was placed on improving the representation of women in positions of authority in government, business, trade unions and other organisations of authority in the community. A working party of ministers, employers, trade unions and

[1] Act respecting equality between women and men at work. Dated 17 December 1979 (LS 1979 - Swe. 2).

representatives of higher educational institutions and women's organisations was also established to frame options for legislation on the basis of the pilot programme.[1]

190. Referring to the programmes introduced to ensure equality of opportunity and treatment in employment, a few countries have reported on measures taken to prohibit discrimination in advertisements for vacancies and opportunities for promotion; and to developments in working arrangements (such as part-time work, flexible working hours, job-sharing, staggered working hours, etc.) which accommodate the distinctive needs of women workers with family responsibilities. For the purposes of the present survey, it need only be emphasised that these various initiatives are crucial if equality in employment is to be fully realised. As has been noted in paragraph 101 above, however, full consideration will be given to the issues which have a direct or indirect bearing on women's equal employment opportunities in the Committee's general survey on the 1958 instruments on discrimination in respect of employment and occupation, in 1988.

(b) Welfare and social services

(i) Maternity protection

191. Provisions relating to the protection of the health of pregnant women and nursing mothers, the payment of health benefits, the right to adequate paid leave, guarantees of re-entry at the same level of employment and measures to prohibit discrimination against pregnant women or mothers in the areas of hiring, promotion and dismissal are closely connected with the question of equal remuneration and equality of opportunity of employment. A primary cause of sex discrimination in employment relates to women's childbearing role, and the view of some employers and male colleagues that women are not valuable employees because they will become pregnant or adopt children and leave the workforce.

192. Legislation and practice in this area differ greatly between countries. The most extensive provisions, however, appear to be contained in the labour legislation of the socialist countries. In the USSR, for example, the legislation provides that pregnant women, nursing mothers and mothers with children under one year of age are

[1] Hansard Report, House of Representatives. 5 June 1984. Paper and Ministerial Statement by the Prime Minister. See also RCE 1985, p. 278 (Australia).

transferred to lighter work on production of a medical certificate.[1] So as to prevent a reduction in the remuneration of women because of their pregnancy, provision has been made for them to continue to receive, during this period, the average remuneration for their previous job, calculated on the basis of their earnings over the last six months before the transfer, without taking maternity leave into account.[2] Since 1981, pre- and post-natal maternity leave (during which 100 per cent of the previous wage is paid) has been supplemented with partly paid leave to care for a child aged up to one year old, which a women may obtain if she wishes, and during which time she is paid a monthly allowance under state social insurance. State lump-sum benefits were also introduced in 1981, to be paid out of state social insurance funds, at the birth of the first, second and third child; in accordance with the legislation in force, women with three children are paid both a lump-sum and monthly benefit at the birth of the fourth and subsequent children. In addition, section 72 of the Fundamental Principles governing labour legislation, provides for additional nursing breaks with pay for working mothers, to be considered as time worked and to be paid at the average rate of remuneration.

(ii) Family responsibilities

193. Measures to alleviate the adverse effects of home and family responsibilities on a woman's commitment to full-time continuous employment have been intensified in some countries. As is known, the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), which were adopted by the International Labour Conference in 1981, provide that men and women workers must be enabled to exercise their right to obtain or engage in employment without being subject to discrimination because of their family responsibilities and to the extent possible "without conflict between their employment and family responsibilities".

194. Legislation to prevent discrimination on the grounds of marital status and family responsibilities, coupled with programmes to develop child care and social service programmes for the aged, are some of the strategies considered necessary prerequisites for the full

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[1] Section 70 of the Fundamental Principles governing the labour legislation of the USSR and the Union Republics (LS 1970 - USSR 1).

[2] Order of 15 May 1976 of the State Labour and Social Affairs Committee of the USSR and the Secretariat of the All-Union Central Council of Trade Unions.

realisation of equality in employment, including equal pay for work of equal value. Some countries have referred to the measures taken in this regard, particularly as concerns childcare. The Labour Act of Venezuela[1] provides that every establishment which employs more than 30 women (irrespective of their age and civil status) shall provide a crèche attached to but independent of the workplace, where women can nurse their infants under one year and leave them while at work (section 118). Similar provisions can also be found in the labour legislation of Argentina.[2] In less specific terms, legislation in Japan provides that the State and local public authorities are to establish nursery institutions and infant care centres.[3] In New Zealand, the Government has, since 1973, paid subsidies towards the cost of day care for pre-school children under the Social Security Act 1964. Apart from the protective measures and special treatment provided for pregnant women and nursing mothers (see paragraph 192 above) the Labour Code of the USSR provides that women with children under one year of age may be granted partly paid leave. Women may also be granted additional unpaid leave to care for a child aged under one-and-a-half years: any such additional unpaid leave shall count towards the woman's overall uninterrupted service and also towards her occupational seniority in any specialised branch but the period is not to count towards the period of service for calculating the annual leave entitlement for the following year.[4] In Romania, women who have sick children under the age of three years are granted, on medical advice, paid leave to look after them, which shall not count as part of the annual leave.[5] Furthermore, women with children under the age of six years, who have to look after them, may work half the normal working hours if no day nursery is available; and such half-time work is counted as full-time work in calculating service seniority.[6]

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[1] Labour Act, as amended in 1983 (LS 1983) - Ven. 1).

[2] Section 179 of Decree No. 390 to approve a consolidated text of the rules governing contracts of employment. Dated 13 May 1976 (LS 1976 - Arg. 1).

[3] Child Welfare Act, 1948.

[4] Sections 165, 167 and 168 of the Labour Code of the RSFSR, 9 December 1971, as amended. (LS 1982 - USSR 1).

[5] Section 157 of the Labour Code, 1972 (LS 1972 - Rom.1).

[6] ibid., section 158.

195. As concerns the actual provision of child care facilities, the Government of the German Democratic Republic has stated in its report on the Recommendation, that, in 1983, care was provided in day nurseries for 61.1 per cent of children up to the age of three years; in kindergartens, for 91 per cent of children of pre-school age and in day care nurseries attached to schools, for 81.6 per cent of children in the first to fourth years of schooling. The Government of China has indicated in its report that the central and local governments as well as enterprises pay special attention to the development of canteen and child-care services so as to reduce the family responsibilities of women workers. According to the report on the Recommendation supplied by the Government of Barbados, public and private child care facilities exist to enable workers with young children to make full use of their employment opportunities, and the number of public day care nurseries will be increased as finances permit.

196. Measures to assist workers with family responsibilities incur costs. As will be recalled, the Recommendation suggests these facilities be financed from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex. In this regard, the Portuguese Confederation of Industry has stressed that, given the current economic conditions in Portugal, the financing by enterprises of services for women workers with family responsibilities is totally out of the question.[1] Finally, it is interesting to note that two tax rebates have been made available for child care costs in New Zealand. The Donations and School Fee Rebate and the Housekeeper Rebate are available for any form of child care costs.

(iii) Publicity, information and investigation

197. Reference has been made throughout the report to the various means adopted by governments, often in collaboration with employers' and workers' organisations, to promote the application of the Convention by carrying out public information programmes, seminars for employers' and workers' organisations and undertaking studies to investigate the causes of wage discrimination. For this reason, and also because much of what these functions involve is obvious, only a few brief comments are called for here.

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[1] In its report on the Recommendation, the Government of Portugal has referred to the provisions of Act No. 4/84 of 5 April 1984 respecting the protection of maternity and paternity which grants, inter alia, equal rights for men and women workers with regard to excused absences to care for sick children (section 13), special leave to care for children (section 14) and part-time work and flexible working hours (section 16).

198. The most important element in any educational programme undertaken to promote equal remuneration, or more generally, equality of opportunity and treatment in employment, is to ensure that employers and workers are well informed as to the requirements of the legislation and/or government policies in this area. The actual means by which this purpose can be achieved are diverse and may range from disseminating information through trade unions and women's organisations,[1] to posting the legislation in every workplace,[2] or to holding seminars for employers' and workers' organisations and conducting information and publicity campaigns. Many countries have also supplied copies of pamphlets which outline the main legislative requirements and the means of redress available to women workers.[3]

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[1] The Government of Afghanistan states in its report on the Recommendation that information regarding the legal requirements pertaining to equal rights and obligations for working women is disseminated through the Central Council of the Afghanistan Trade Unions and the Women's Democratic Organisation of Afghanistan.

[2] e.g., in France, section L. 140-7 of the Labour Code inscribed by section 6 of the Act of 1972 respecting equal remuneration for men and women (LS 1972 - Fr. 3) requires that the text of the legislation and the subsidiary legislation thereunder shall be posted up in the workplace as well as in the premises where staff are recruited or at the gate or entrance to such premises.

[3] The Government of India has recently produced a brochure on the Equal Pay Act which has been widely distributed.

CHAPTER V

PROBLEMS AND PROGRESS OBSERVED IN THE APPLICATION OF THE PRINCIPLE OF EQUAL REMUNERATION

Section 1: Application of the principle in the public sector

A. The public administration as employer

199. In 1975, the Committee pointed out in paragraph 77 of its General Survey that there had been a significant increase in public employment as a result of increased state intervention in many activities. Today it would appear, however, that because of the economic recession and the need to stabilise budgets, and with the introduction of policies designed to reduce the role of the public sector in the national economy, the tendency is for the public service workforce to remain at the same level or even decline in a number of market-economy countries. (Joint Committee on the Public Service, Third Session, Geneva, 1983, General Report, page 4.) Staff stabilisation or reduction policies are being implemented in industrialised countries (Belgium, Federal Republic of Germany, Japan, Switzerland, Sweden, United Kingdom, United States, where the level necessary to maintain the operation of the public service seems to have been attained. However, in many developing countries (Honduras, India, Madagascar, Mauritius, Panama, staff expansion is still encouraged because of the role played by the public service as a development agent, particularly in employment policy. Although staff expansion is not so general as during the last decade, the public sector is none the less a primary source of employment in almost all countries. The importance of state-dependent employment is increased by the State's potential influence on the private sector not only through its economic and social policy but also through its own staff policy.

200. The staff policy of public service administrations is governed by forces that differ from those of private undertakings, the latter being normally subject to market forces whereas the public employer is primarily bound by government policy which is directed more towards social considerations. In so far as the State as employer is subject to the principles which it recommends for general application, and

because of the size of state-dependent employment, the public sector plays a key role in the general implementation of the Government's social policy and thus with respect to equality of remuneration, especially since a significant number of women work in the public sector.

201. Women in the public service. According to the General Report of the Joint Committee on the Public Service, the number of women employed in the public service is steadily increasing in many countries. In Mauritius, it rose by 62 per cent between 1974 and 1980, and in Colombia, where the proportion of female public officials was previously one in six, it went up to one in three in 1980. The number of women staff in the public service in Finland between 1976 and 1980 also rose more than that of men (by 10.2 per cent against 1.7 per cent). In some sectors, such as health and education, women now sometimes exceed the number of men, according to the Report. In France and Portugal, for instance, there is a majority of women in teaching (63.9 per cent and 76.3 per cent respectively). But although there has been a positive development with respect to the access of women to the public service, it should be stressed that in some countries they are strongly represented among the auxilliary and non-permanent staff (in France, for instance, they represent 54.8 per cent of the categories without permanent tenure) and that they are still under-represented in the higher categories. In the United Kingdom, in 1980, out of 541,777 officials in the non-industrial civil service, there were 293,164 men and 248,613 women; the majority of the women were employed in the general category where they also outnumbered men (132,128 as against 104,887). At the open structure[1] levels there were 782 men and 30 women and in the highest grades, 68 men and one woman. In Latin America, the global figures show that the share of women staff is greater among the staff employed by the State (45 per cent on average) than in private employment (36 per cent), but that women occupy only 23 per cent of the higher posts (such as administrators, managers) in the service of the State.[2]

B. The principle of equality of remuneration in the standards applicable to the public service

202. Constitutional guarantees. Public servants, in principle, like all other citizens, enjoy the constitutional guarantees in force

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[1] i.e., a unified structure, not divided horizontally and vertically into separate classes; this system has, however, been established only at the very top of the service.

[2] Rafael Echeverria: Empleo en America Latina, PREALC/OIT, 1985, p. 64.

with respect to equality of treatment and remuneration. Many constitutions contain a special provision on the equality of citizens with respect to access to and conditions of public employment.[1] In some countries, constitutional guarantees may be invoked in the courts by anyone, whoever his or her employer may be;[2] elsewhere this course is open to persons in the service of the State.[3]

203. Generally applicable legislation. In a number of countries, the provisions on equal pay in labour laws or in acts adopted to protect workers in general against discrimination in employment or remuneration are also applicable to the public sector.[4] Sometimes, however, the latter exclude state or local authority workers[5] or public servants.[6]

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[1] See para. 37 above.

[2] See para. 39 above.

[3] India (see para. 37 above). In its report on the Recommendation, the Government of Austria also referred to this possibility for persons in the service of public employers, who are excluded from the field of application of the Federal Act respecting equality of treatment (LS 1979 - Aus. 1).

[4] See the examples in para. 96.

[5] Austria, article 1(2), 2° and 3° of the Federal Act respecting equality of treatment (LS 1979 - Aus. 1) (see also para. 202 above) Portugal, article 20(2) of Legislative Decree No. 392 of 1979 to guarantee equality of opportunity and treatment for women and men in matters of work and employment (LS 1979 - Por. 3), which is to be extended to workers in the service of the State, local authorities, municipal services and provident institutions "as soon as possible". This exclusion was considered to be discriminatory by the General Confederation of Portuguese Workers in its comments in connection with the application of the Convention for the period 1981-83. According to the Government's report on the application of the Convention for 1983-85, a Bill extending the field of application of Legislative Decree No. 392 to the public sector was approved by the Council of Ministers on 8 March 1984 and is awaiting promulgation and publication before entry into force.

[6] Federal Republic of Germany: The Labour Law (European Communities Harmonisation) Act (LS 1980 - Ger. F.R. 3), which has included the principle of equality of remuneration in the Civil Code, affects only

(Footnote continued on next page)

Labour Codes and other more general legislation mentioning the principle of equality of remuneration are often not applicable to public servants.[1] This exclusion is generally connected with the existence of laws or regulations applicable only to the public sector, which sometimes explicitly mention the principle of equality of remuneration. But this is not always the case and the Committee has often asked governments what provisions ensure that the principle is applied to public servants where the public service is explicitly excluded from the field of application of legislation ensuring equality of remuneration in general.

204. Formal neutrality of specific legislation and systems of remuneration in the public sector. In most countries, employment and remuneration in the public service are governed by special legislation. Normally, this does not distinguish between men and women workers, and a number of governments have indicated that equality of remuneration in the public service is ensured because the systems of remuneration are based on post classifications which do not mention the sex of the incumbents. However, as the Committee observed in paragraph 78 of its general survey of 1975, most of the classifications have been drawn up not for the purpose of applying the principle of equal pay but to establish the grading system which is indispensable in any public administration. This does not prevent indirect discrimination, some examples of which will be given in paragraphs 206 et seq. When the general provisions on equality of treatment do not apply to the public sector, the principle of equality of treatment or pay should be included in legislation specifically applicable to this sector, with a view to its systematic application to post classifications and the various components of remuneration.

(Footnote continued from previous page)

workers employed in the private and public sectors under a contract of employment but not civil servants, who, however, enjoy the constitutional guarantees mentioned in paras. 39 and 202 above.

[1] Argentina, section 2 of the Consolidated texts of the rules governing contracts of employment (LS 1976 - Arg. 1); Brazil, section 7(c) of the Codification of Labour Laws (LS 1985 - Bra. 1); Comoros, section 1 of the Labour Code; United Arab Emirates, section 3 of the 1980 Federal Law to regulate employment relationships (LS 1980 - UAE. 1); Spain, section 3(a) of the Worker's Charter (LS 1980 - Spa. 1); Ethiopia, section 2, para. 27(e) of Labour Proclamation No. 64 of 1975 (LS 1975 - Eth. 1); Iran, section 1 of the Labour Code (LS 1959 - Iran 1); Libyan Arab Jamahiriya, section 1(e) of the Labour Code (LS 1970 - Libya 1). In Costa Rica, section 14 of the Labour Code (LS 1943 - C.R. 1), and in Equatorial Guinea, section 4 of the Labour Code of 1984 exclude public servants but specifically include workers in public undertakings.

205. The wording of the principle in legislation specific to the public sector. Increasingly, legislation concerning the public sector explicitly refers to the principle of equal pay or contains a general prohibition of discriminatory treatment. The formulas and criteria already reviewed in Chapter III regarding generally applicable legislation are found here, too. Some laws on the public service[1] or on state corporations and undertakings[2] provide that no distinction shall be made between the sexes in the application of the Act, but do not give statutory effect to the principle of equal treatment or equal pay. Other laws guarantee equal remuneration for the same[3] or for equal[4] or similar[5] work or for work of equal value[6] or comparable worth.[7] The scope of these formulas

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[1] For example ("subject to the general provisions arising from the nature of the functions and which may be taken in this connection"), Comoros, section 8 of Act No. 80-22 of 10 January 1980 and Tunisia, section 11 of Act No. 83-112 of 12 December 1983 governing staff employed by the State, by local authorities and public establishments of an administrative nature.

[2] For instance Mali, section 1 of Act 81-10/AN-RM of 3 March 1981 governing staff employed by the State, by local authorities and by public establishments of an administrative nature.

[3] Luxembourg, section 2, para. 3 of the Act of 22 June 1963 fixing the salary system of state officials.

[4] Guatemala, section 5, para. 5 of the Public Service Act (which does not explicitly refer to equality of the sexes); New Zealand, section 3 of the Government Service Equal Pay Act, 1960.

[5] Sudan, section 9 of the 1973 Public Service Act.

[6] Australia (Tasmania), section 3(1) of the Public Service (Equal Pay Act, No. 60 of 1966).

[7] Canada, section 1 of the Manitoba Pay Equity Act of 1985, which is to apply to the civil service, Crown corporations and major funded external agencies, such as universities and hospitals, and which defines pay equity as a compensation practice which is based primarily on the relative value of the work performed, irrespective of the gender of the employee; United States, laws of California and Minnesota (see para. 61 above).

is often elucidated by further criteria or by provisions concerning job evaluation.[1] Where concepts of more limited scope had been included in legislation applicable to the public service (which had often broken new ground in the area of equal treatment and equal remuneration) solutions have generally been found to extend to public sector workers the wider protection provided by legislation applicable to the private sector which was adopted at a later date.[2] In more recent public service

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[1] In Guatemala, for example, section 5, paragraph 5 of the Public Service Act refers to equality of conditions, efficiency and seniority, in harmony with the criteria used in section 89, paragraph 2 of the Labour Code (LS 1981, Gua. 1) considered in paragraphs 51, 55 and 56 above. In Australia (Tasmania), section 3, paragraphs 1 and 4 of the Public Service (Equal Pay) Act, 1966, extended the principle of equal pay for work of equal value only to cases where the work is of the same or of a like nature and also takes account of whether the range and volume of work are the same and whether the work is performed under the same, or substantially the same conditions (see, however, the next note). By contrast, in New Zealand, section 3, paragraph 1 of the Government Service Equal Pay Act, 1960, not only provides that the principle of equal pay for equal work shall apply where women as government employees do equal work under conditions equal to those of men, but also that in cases where women as government employees perform work of a kind which is exclusively or principally performed by women and there are no corresponding scales of pay for men to which they can fairly be related, regard shall be had to scales of pay for women in other sections of employment where the above-mentioned principle applies.

[2] Thus, in Australia (Tasmania) under the 1984 Industrial Relations Act an Industrial Commission was set up to make awards in respect of both public and private sector employment, and all awards in Tasmania provide for the principle of equal pay; the Public Service (Equal Pay) Act 1966 mentioned above will be repealed on entry into force of the Tasmanian State Service Act No. 25 of 1984, which no longer contains any reference to the principle of equal pay, limitative or otherwise, but in section 3(6) gives pre-eminence to awards in force and in section 4(2) provides that all employees shall receive fair and equitable treatment. In New Zealand, where the 1972 Equal Pay Act (LS 1972 - N.Z. 1) (see paragraph 69 above) and the Act (No. 49) of 1977 to establish a Human Rights Commission are wider in scope than the 1960 Government Service (Equal Pay) Act mentioned in the preceding note, the 1977 Act to establish a Human Rights Commission provides in section 15, paragraph 12, that complaints relating to equal pay shall be receivable by the Commission when directed against the Crown (see also paragraph 209 below concerning the various elements of remuneration covered by the principle of equality).

legislation there is a general prohibition on discrimination, inter alia, in remuneration.[1]

C. Some examples of problems encountered and progress achieved in the public sector

206. To the extent that pay scales in the public sector are generally established by legislation and are based on post classifications that do not mention the incumbent's sex, direct discrimination between men and women has vanished from basic remuneration. Inequalities that may nevertheless subsist have been brought to light, particularly in countries that have already adopted provisions to eliminate discrimination based on sex, through active policies pursued by governments in co-operation with occupational organisations. A determined investigation of the problems which stand in the way of implementing the principle of equality of remuneration indeed leads to wider disclosure of existing discrimination and, consequently, to the identification of the necessary solutions.

207. There are various explanations for the different types of discrimination observed. They can result from the criteria chosen for post classification and the establishment of pay scales, either because they do not make room for the concept of work of equal value or because difficulties in understanding this concept - which are related to the de facto inequality of access to various jobs - have not been solved. Inequalities in the payment of certain additional emoluments (such as marriage or family allowances, housing, pensions) stem from an inequality of men and women in marriage which is instituted by civil or family law. Lastly, in so far as remuneration in the public sector is fixed by reference to the post, equality of opportunity and treatment, particularly with respect to the granting of permanent status, can have a direct effect on remuneration.

208. Job classification. In Canada, the Canadian Human Rights Commission has had to consider some cases of inequality in certain sectors of the public services employing a significant proportion of women (libraries, health services and general service in the federal public service). Consideration of these questions gave rise to decisions granting equality of remuneration on the basis of

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[1] For example, Netherlands, section 1 of the Act of 2 July 1980 concerning Equal Treatment of Men and Women in the Civil Service, and Finland, the Bill on the public service currently being discussed by Parliament.

job evaluation. The 1985 Pay Equity Act of Manitoba, mentioned in paragraph 205, provides in article 9 that the Civil Service Commission and bargaining agents should endeavour to conclude, no later than 30 June 1986, an agreement respecting the development or selection and application of a single gender-neutral job evaluation system to all female-dominated and male-dominated classes in the civil service and apply this system to determine and compare the value of the work performed by female-dominated and male-dominated classes. Judicial decisions made in the United States concerning the evaluation of, inter alia, the jobs of prison wardresses and women employees in hospitals were considered in paragraphs 120 and 148 above. The revision, in Australia (Tasmania) of legislation that limits the scope of comparative evaluation in the public service to work of the same or a like nature performed by men and women, is mentioned in paragraph 205. Lastly, several governments[1] have mentioned the fact, already referred to in paragraph 201 above, that in the public sector, as elsewhere, the majority of women are employed in certain categories of jobs that are classified and remunerated at the lowest levels, and often considered as typical women's jobs. This state of affairs, which is more directly a matter for Convention No. 111, suggests a discriminatory situation which may at least to some extent correspond to an underevaluation of jobs considered as typical women's jobs, and which thus deserves consideration in the elaboration of procedures to ensure the effective application of the principle of equality of remuneration.

209. Miscellaneous allowances. In New Zealand the 1960 Government Service Equal Pay Act refers, in article 3(a), to the elimination of differentiations based on sex from salary or wage scales only, and this was an obstacle to the Government's ratification[2] of the Convention, which also applies to "any additional emoluments" payable. At present, the wider definition of remuneration contained in the 1972 Equal Pay Act[3] has been extended in practice to the government sector. As from 1 January 1978 the Government, after consultation with the workers' organisations concerned, approved the implementation of a package of revised administrative rules designed to eliminate discrimination against women with respect to transfer expenses, housing corporation loans,

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[1] For instance, Iceland, Lebanon.

[2] See paragraph 80 of the general survey of 1975. Ratification by New Zealand was recorded on 3 June 1983.

[3] LS 1972 - N.Z. 1.

pool housing allocations, remote allowance, dependants' allowances, allowances paid to overseas recruits and study awards and bursaries. The eligibility criteria for these benefits are the same for men and women of the same marital status.

210. Benefits linked to marital status. In the public sector, the largest number of divergencies from the Convention as well as of progress cases registered since 1975, concern benefits linked to marital status, and in particular, equality of treatment for married women and married men with respect to salaries, family allowances, housing and pensions. These are examined in the following paragraphs.

211. Salaries for married officials and marriage and family allowances. In Mali, married women are classified in the same category as unmarried childless male officials for the purpose of fixing minimum monthly salaries in public sector medical and health services.[1] Likewise in Ireland, the Irish Congress of Trade Unions in 1976 denounced the maintenance of different pay scales according to the marital status of the official, for teachers and certain public officials. In 1980 the Committee noted with satisfaction that those types of discrimination had been eliminated.[2] Often it is additional emoluments connected with marriage that are granted taking into account sex or a "head of family" concept that favours men. In Jamaica, a marriage allowance of $200 a year is granted to male teachers in secondary schools.[3] In Greece, under the staff rules and regulations of the Bank of Greece, the marriage allowance payable to married men could previously be higher than that payable to married women (10 per cent as against 5 per cent of the salary), since according to sections 1398 and 1399 of the Civil Code, it was the man who normally bore the expenses of the household and his liability was therefore greater than that of a married woman. In 1983, these sections of the Civil Code were repealed by Act No. 1329, and the staff rules and regulations of the Bank of Greece now make provision for a marriage allowance of 10 per cent of the salary irrespective of the sex of the worker.

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[1] Information provided by the Government in preparation for the Joint Meeting on Employment and Conditions of Work in Health and Medical Services, Geneva, 1983.

[2] RCE 1977, p. 196 and 1980, p. 143.

[3] Information received from the Government on the working conditions of teachers being prepared by the Salaried Employees and Professional Workers Branch (TRAVINT) of the ILO.

More generally, in Greece, Act No. 1505 of 1984 restructuring the salary scales for public service staff provides that the family allowance payable to married officials shall be paid to men and women irrespective of sex.[1] In Luxembourg the Act of 20 May 1983 modifying the system of salaries for civil servants has established equal treatment between men and women in respect of the family allowance granted to civil servants and equivalent staff.[2]

212. Housing. In Kenya, the Government reports that married women employed in the public service do not receive a housing allowance. In Belgium the Royal Order of 30 January 1967 granting an accomodation or residence allowance to the staff of ministries, which laid down different conditions for granting the accomodation allowance to male and female staff, has been repealed by the Royal Order of 10 September 1981, and the accommodation allowance is now paid to married staff without any distinction based on sex.[3] In France, an order dated 2 May 1979 by the Ministers of Industry and the Budget removed the discrimination on the grounds of sex in the granting of housing allowances in the semi-public sector, which was contained in a text dating from 1946 on the staff regulations of mining and similar concerns. The discrimination resulted from the "head of family" concept applied in granting this allowance.[4]

213. Pensions. In the Netherlands, the Commission on the Equal Treatment of Male and Female Public Servants and the trade unions have raised the question of equality of men and women in the pensions and survivors' benefit scheme in operation in the public service. At present the scheme provides unequal treatment for the income of husband and wife in calculating premiums, which determine the amount of benefits.[5] In Tunisia, article 1 of Act No. 85-12 of 5 March 1985 on civil and military retirement pensions in the public service provides that the system is to apply to all officials of either sex in the public sector.

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[1] RCE 1984, p. 195, and report under article 22 of the Constitution for 1983-85.

[2] RCE 1985, p. 250.

[3] RCE 1982, p. 149.

[4] See Chapter IV, para. 126.

[5] RCE 1984, pp. 197-198.

214. Equality of opportunity and treatment in employment. An example of the direct effect that equality of opportunity and treatment in employment, particularly with regard to permanent status, can have on equality of remuneration, is the case mentioned in paragraph 100 of the railway workers in India where, according to allegations by the Centre of Indian Trade Unions, equal pay legislation was bypassed through changing the type of contract. Even when discrimination is not intentional, the sometimes disproportionate share of women in categories without tenure in the public service, mentioned in paragraph 201, indicates a de facto inequality which is primarily a matter for Convention No. 111 but has direct effects on equality of remuneration in so far as public servants with permanent tenure - mainly men - and those without - mainly women - perform work that is equal or of equal value.

D. Supervisory machinery for the application of the principle in the public sector

215. The supervisory machinery for the application of the principle of equal remuneration, examined in Chapter IV, section 1, applies largely to the public sector, particularly where the principle is enshrined in the Constitution and can be directly invoked by the man or woman concerned before the courts,[1] and where legislation respecting equality of remuneration which is applicable to workers in the public sector or to part of them is enforceable in court or provides for specific bodies and procedures to ensure or promote observance of the principle. In a number of countries, bodies responsible for promoting the principle of equality of remuneration have been especially set up for the public sector,[2] and can be asked to give opinions at the request of courts seized of complaints in this field. Various governments referred in their reports to the courts and bodies more generally

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[1] See also paragraphs 36 to 39 above. In Switzerland, on the basis of the constitutional guarantee of equal remuneration for work of equal value, the Federal Tribunal has accepted a public law action and has redressed a case of inequality of treatment and remuneration affecting women staff in primary education in a Canton of the Confederation.

[2] Belgium: Specialised Joint Committee for the public sector, set up by Royal Order of 24 March 1984; Netherlands: Committee on equal treatment of men and women with regard to work in the public service, set up in 1981, in accordance with the Act of 2 July 1980 respecting equality of treatment in the public service (see, however, paragraph 118 above).

responsible for supervising the observance of the law in the public sector.[1] As a rule, government reports refer to few cases of violation of the principle of equality of remuneration in the civil service.

Section 2. Application of the principle in the private sector

216. Various forms of fixing remuneration in the private sector. Unlike the public sector, the remuneration of workers in the private sector is not fixed according to a wage scale applicable to all employees that is known by each of them. Theoretically and according to traditional legal theory, remuneration is one of the elements of an employment contract to be negotiated between the two parties: the employer and the employee. In reality, however, the situation is fairly different and as a general rule, the employment contract and its principal conditions, including remuneration, do not depend only upon an agreement between two individuals, an employer and an employee, but involve other collective bodies such as employers' associations, workers' trade unions and the State. Since the beginning of the century, in industrialised countries and increasingly in other countries, a system has developed of collective agreements which are negotiated by the organisations of workers with the employers or their organisations, which set precise standards for the conditions of employment and remuneration of all the workers in an enterprise, or a sector of activity, or even a country. The State also frequently intervenes, in the role of employer and party to an agreement, or to facilitate bargaining, to extend the scope of the collective agreements that have been concluded to enterprises and workers other than those represented by the bargaining partners and, finally, to ensure observance of the law and, in particular, of the principle of equality of remuneration, where this is enshrined in a generally applicable Act.

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[1] For example, in Peru, a public service tribunal is competent in the last instance for receiving individual complaints from public servants with regard to the application of administrative laws and regulations. In Guatemala, the National Public Service Bureau is to see to the application of the principle of equality set forth in section 3, paragraph 5, of the Act respecting the Civil Service. The Government of the Libyan Arab Jamahiriya states that supervision of the application of the principle is to be carried out by the Secretariat of the General Civil Service Committee and by the Secretariats of the People's Civil Service Committees in local administration.

In certain countries, such as Australia and New Zealand, the state conciliation and arbitration system, in addition to its role of settling disputes, has taken on the function of the principal wage-fixing mechanism. Furthermore, the absence in a number of industries or sections of industry of an effective system of wage-fixing by collective agreement, or the existence of groups of employees whose conditions of employment are such that it is necessary to protect them, have led an ever-increasing number of States to institute, in accordance with the relevant ILO Convention,[1] minimum wage-fixing machinery, either by setting up bodies, which are often tripartite, called upon in case of need to fix minimum wage rates, as a rule by branch of activity or, increasingly, by directly establishing a guaranteed national minimum wage, or a network of minimum wages differentiated according to occupations and regions, fixed at a national scale by the State in consultation with occupational organisations. In the following paragraphs, the problems and progress noted in the application of the principle of equality will not be examined in the historical order of the various forms of fixing remuneration sketched out here, but in inverse order, starting with the forms of wage fixing in which the State plays a determining role, before dealing with those which depend primarily on the social partners.[2]

A. The principle of equality of remuneration within the framework of minimum wages

217. In very few countries is the principle of equality of remuneration between men and women included expressly in legal

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[1] Convention No. 26, 1928 (Minimum Wage-Fixing Machinery), ratified by 98 States; Convention No. 99, 1951 (Minimum Wage-Fixing Machinery (Agriculture)), ratified by 49 States; Convention No. 131, 1970 (Minimum Wage Fixing), ratified by 32 States.

[2] No further mention will be made of clauses concerning equality of remuneration in public contracts, a means of state control envisaged in Paragraph 2(c) of the Recommendation and applied in a number of countries referred to in paragraphs 159 to 166 above.

texts respecting minimum wages.[1] However, the progress made in enshrining the principle in legislation of general application has doubtless contributed to the increasing rarity of minimum wages being overtly differentiated according to the sex of the worker. Although complete data have been supplied by a few countries only - while the evaluation of typical women's jobs in formally neutral wage scales eludes the Committee's analysis in most cases - it seems possible to conclude that problems nowadays concern rather the observance in practice of minimum rates established, as well as the equality of remuneration for wages that are above the legal minimum. However, a number of countries still report differences existing in the level of the rates established.

I. Women's wages: Remaining differentials and progress made towards equal rates

218. Detailed information on progress made towards the application of the principle of equal remuneration and on the remaining wage differentials under wage regulations and wages boards decisions has been supplied by Mauritius and Sri Lanka. In Mauritius, the principle of equal remuneration for men and women workers for work of equal value is reported to apply in 20 different private sectors under regulations adopted or amended over the last decade;[2] differentials remain in the animal farm industry, the export enterprise, the salt manufacturing industry, the sugar industry (agricultural workers), the tea industry and the tobacco and vegetables cultivating industry.[3] In Sri Lanka, wages and

[1] This is the case in Malta, where section 5 of the Minimum Weekly Wage National Standard Order, 1976, provides that "in no case shall the wage payable to a female employee be less than that payable to a male employee in respect of equal work or of work of equal value". In Indonesia, Decision No. kep/49/BW/83 respecting minimum wages explicitly provides that it shall be applied to workers paid according to output, to women, to children and to workers during their trial period.

[2] As well as throughout the public sector, para-statal bodies and local authorities.

[3] However, an increase of 5 per cent has been granted to female workers (while the wages for male workers have been liberalised) in the export-processing zone as from 15 December 1984 with a view to decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value, and the Government has also granted an increase of 4 per cent to female workers employed in the agricultural section of the sugar industry as from 1 October 1983.

salaries in the private sector are regulated in nearly 45 trades by Wages Boards established under the Wages Boards Ordinance and Remuneration Tribunals established under the Shop and Office Employees (Regulation of Employment and Remuneration) Act.[1] According to the Government's report, discrimination based on sex in the rates of remuneration of men and women workers was completely removed in the major plantation sectors (in the tea-growing and manufacturing trade and the rubber-growing and manufacturing trade with effect from 1 April 1984, and in the coconut trade with effect from 1 March 1985) resulting in benefits to nearly 300,000 female workers in these sectors, and triggering a trend towards the equalisation of wages of male and female workers in the remaining 12 trades for which wages boards have fixed different rates of minimum wages for time-work for adult male and female workers (cinnamon; coconut growing; coir, mattress and bristle fibre export; dock, harbour and port transport; brick and tile manufacturing; cocoa, cardamom and pepper growing and manufacturing; match manufacturing; paddy hulling; plumbing; rubber export; tea export; tyre and tube manufacturing, tyre rebuilding; rubber and plastic goods manufacturing).[2]

219. Agriculture. Examples given in the preceding paragraph show that progress is being made, inter alia, in the primary sector. In Morocco, section 4 of the decree of 24 April 1973, made under the Dahir of the same date to determine the conditions of employment and remuneration of agricultural workers,[3] established a women's minimum wage rate which was 80 per cent of the guaranteed minimum wage. With a view to ratification of the Convention, this provision was repealed by decree of the Minister of Labour and Social Affairs of 4 September 1975. Likewise, and more generally, the Dahir of 18 June 1936 respecting the minimum remuneration of wage-earning and salaried employees[4] which provided that the minimum remuneration

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[1] LS 1954 - Cey. 1 and 1957 - Cey. 2.

[2] According to the Government's report, employers' organisations are of the view that if the salaries of males and females in certain trades (e.g. bristle fibre trade, cinnamon trade) are equated, there is likely to be a tendency for employers to engage male workers as their output is much higher and also as they are capable of longer periods of work. In this connection, the Committee wishes to point out that wage differentiation according to output, and the payment of an overtime bonus are not contrary to the Convention provided that the conditions for these payments are the same for men and women (e.g. that is not only women who have to prove that they meet certain requirements).

[3] LS 1973 - Mor. 1.

[4] LS 1936 - Mor. 3; 1937 - Mor. 3A, 3D; 1938 - Mor. 1 (published in the French edition only).

(for non-agricultural and for agricultural activities) was not to be lower than the rate established by decree according to the age and sex of the worker, was amended by a Dahir of 30 August 1975, deleting the reference to sex, so as to establish the principle of equal remuneration for men and women workers and permit ratification of the Convention. Similarly, in paragraph 92 of its 1975 general survey, the Committee noted that in Venezuela, separate minimum wage rates, lower for women, were fixed in the agricultural sector;[1] at present, a single compulsory minimum wage is established for rural workers in section 1 of Decree No. 328 of 31 October 1984.[2]

220. Sugar industry. In Barbados, the Sugar Workers (Minimum Wage) Order, 1982 (S.I. 1982 No. 21) made under section 3 of the Sugar Workers (Minimum Wage and Guaranteed Employment) Act, still provided for different wage rates for men and women on plantations and estates and for male and female general workers in factories for the years 1982 and 1983. In its report on the Convention for the period ending 30 June 1985 the Government had indicated that the Sugar Workers (Minimum Wage) Order, 1982, for all practical purposes is no longer in effect since it has been superseded by a collective agreement fixing wage rates for 1984-85 which has removed the reference to sex in the nomenclature of posts and, which according to the Barbados Workers' Union, appraises jobs without regard to sex, on the basis of the work to be performed.

221. Commerce. In Guyana, Minimum Wages Orders Nos. 3, 4, 5 and 6 of 1966, which provided for different rates of pay for men and women have been replaced by Minimum Wages Orders Nos. 5, 6, 7 and 8 of 1984, which apply to employees in dry goods stores, drug stores, hardware stores and groceries and which do not distinguish between male and female workers.

222. Differentiation by output. In Peru, section 15(d) of Legislative Decree No. 14222 of 1962, empowering the National Minimum Wage Commission to fix lower rates than the general minimum for women employed in activities where their output would notably be less than that of men, has been repealed by Legislative Decree No. 21208 of 8 July 1975. As the Committee pointed out in

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[1] Section 137 of Decree No. 1563 of 31 December 1973 to make regulations under the Labour Act (LA 1973 - Ven. 1), which deals with compulsory minimum wages, provides that "where the work performed by persons of either sex is identical", the wages fixed for both sexes shall also be identical.

[2] Section 1 fixes the compulsory minimum cash wage; under sections 2 and 3, entitlement to benefits received in kind, such as food, housing, clothing and other similar benefits, and conditions of work, remain unchanged.

paragraph 23, the criterion of output, although legitimate in itself, becomes unacceptable if only women are required to show proof of their output or if different wage groups are established on the basis of the average output of each sex.

223. Light work. In Jamaica, the Printing Trade Order of 1973 provides for classes of employment and minimum wage rates, differentiated on the basis of sex, particularly for unskilled workers. Upon the Government's indication in its report on the Convention for 1977-79 that these differences must remain as the males are required to perform heavy manual chores while the females are required to perform light manual chores, the Committee noted that this did not appear clearly in the 1973 Order; moreover, even in the absence of any direct and explicit reference to sex, to consider "light work" paid at a lower rate to be typically feminine, leads to a systematic underestimation of female labour and to the maintenance, or the re-establishment, of indirect discrimination. In paragraph 95 of its 1975 general survey, the Committee noted that in Rwanda a difference was made in the minimum rates applicable to common labourers according to whether the work was classed as "heavy" or "light", and the possible detrimental effects of this for women workers remained to be evaluated. At present, Ministerial Decree No. 887/06 of 21 October 1980 establishes a single daily minimum wage which no longer differentiates between heavy and light work and which applies without distinction based on sex.

II. Payment of the minimum wage in practice

224. In paragraph 99 of its general survey of 1975 on equality of remuneration, the Committee referred to indications that there were great gaps between minimum wage standards and actual practice, particularly in industries, trades and occupations employing women in developing countries. The effects of this situation on the level of remuneration of women are all the more serious in so far as they work in sectors which tend to employ unqualified labour and where wages are fixed around the legal minimum. Among the causes of the non-payment of minimum wages the Committee cited inadequacies in the means of supervision, workers not knowing their rights and their fear of reprisals, in view of the current unemployment rates. In the reports supplied in 1985, many governments referred to the role of the labour inspection, particularly with regard to supervising the application of rules on minimum wages. Clearly, the payment of minimum wages at uniform rates is more easily supervised in practice than observance of the principle of equality of remuneration for work of equal value (see paragraph 103 et seq.). Nevertheless, it appears that many of the difficulties encountered by the

labour inspection services, particularly in developing countries[1] - insufficient human and material resources, overburdened labour inspectors, infrequency of inspections and ineffectiveness of sanctions - continue to hamper the action needed to ensure observance of the fixed rates.

B. The principle of equal remuneration in industrial awards

225. In Australia, minimum rates of pay in the private sector are determined by way of industrial awards and agreements made in the federal jurisdiction pursuant to the Conciliation and Arbitration Act[2] and in state jurisdictions under corresponding legislation. In the federal jurisdiction, the Full Bench of the Conciliation and Arbitration Commission ruled in 1972 that the concept of "equal pay for work of equal value", defined as "the fixation of award rates irrespective of the sex of the workers", should be applied for female workers employed under its awards. This decision was phased in over a three-year period in June 1975. Similarly, equal pay for work of equal value has been established as a clear principle in most state jurisdictions. In Victoria, as at 28 February 1985, 194 conciliation and arbitration boards out of 204 had prescribed wage rates without reference to sex, and the few boards which have not fully implemented equal pay provisions are virtually inactive. In Western Australia, equal pay for women has been gradually phased into most awards; one of the few awards which still has different rates of pay is the Nurserymen's Award. In South Australia, almost all awards now contain provisions for equal pay; of 175 state awards, only five were found in 1984 to have references to the sex of the worker and/or to differential rates of pay on the grounds of gender. (These were: Photographers and Photographic Dealers Award; Rubber Workshops and Tyre Retreading Award; Salt, Gypsum and Plaster Industries Award; Printing and Packaging (County) Award; Hospital etc., Auxiliary Employees Award.) As a result of the adoption of the principle of "equal pay for work of equal value", the female-to-male ratio of minimum hourly wage rates went

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[1] See ILC, 71st Session, 1985, Report III (Part 4B), Labour Inspection, General Survey by the Committee of Experts, para. 325 et seq.

[2] LS 1956 - Aust. 1; 1958 - Aust. 1; 1970 - Aust. 1; 1972 - Aust. 1.

up from 78.8 in 1972 to 93.0 in 1975 and has since fluctuated between 94.0 (in 1977) and 91.3 (in 1982). In 1984, it was 92.1. These fluctuations most likely reflect different rates of award growth between industries rather than changes in relativities between female and male award rates of pay. In New Zealand, where the system of wage fixing is similar to that of Australia, the process of implementation of the Equal Pay Act 1972[1] through the removal of discrimination based on sex in the rates of remuneration in awards and collective agreements was completed by 1 April 1977 with certain minor exceptions. A 1979 report of a committee appointed by the Minister of Labour on Equal Pay Implementation in New Zealand, appended to the Government's reports on the Convention and Recommendation, lists nine awards dated between 1977 and 1978 not fully complying with the Equal Pay Act (these concern licensed hotels' employees; jewellers, watch-makers, engravers and die-sinkers; hospital domestic workers; butchers; clerical workers; dairy farms; furniture trade and flock, felt and feather employees; tea-room and restaurant employees; and caretakers, cleaners and lift attendants).

C. The principle of equal remuneration in collective agreements

226. Reference has been made in paragraphs 75 and 175 to the legal provisions existing in several countries which render null and void any provisions in contracts or agreements that are contrary to the principle of equal remuneration. Similarly, attention was drawn to the role of the authorities in supervising the legality of the clauses in collective agreements, particularly at the time of their registration (paragraph 153) and when collective agreements are extended to enterprises and workers that are not represented by the contracting parties (paragraphs 156 and 157). The following paragraphs will provide indications on collective agreements dealing mainly with the principle of equality of remuneration, and those which, inter alia, make provision either for observance of the principle or, more generally, for the elimination of discrimination based on sex, a review will then be made of some of the difficulties still encountered in practice and of the progress achieved in some countries in the elimination of discriminatory rates of pay in collective agreements.

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[1] See para. 69 above.

I. Inclusion of the principle in collective agreements

(a) Agreements devoted to the principle of equal remuneration or equal treatment

227. In Belgium, Collective Agreement No. 25 respecting equal remuneration for male and female employees, concluded on 15 October 1975 at the national level, provides in section 3 that "equality of remuneration between male and female employees shall be ensured in respect of all the components and conditions of remuneration, including, when they are used, job evaluation systems". In Norway, following proposals made by the Equal Status Council, the Confederation of Trade Unions in Norway (LO) and the Norwegian Employers' Confederation (NAF) adopted in 1981 a framework agreement concerning equal status for men and women in working life, in which special reference is made to Convention No. 100. In Sweden, agreements respecting equal opportunities were concluded in 1977 between the Swedish Employers' Confederation (SAF), the Swedish Trade Union Confederation (LO) and the Federation of Salaried Employees in Industry and Services (PTK). These agreements were revised and consolidated in 1983 in a single agreement respecting equality of opportunities which takes into account the Act of 1979 respecting equality between men and women at work.[1] This agreement covers the whole of the private sector in Sweden and envisages among its objectives, equal opportunities for men and women in employment and equal remuneration for men and women for equal work.

(b) Conventions referring to the principle of equal remuneration or equal treatment

228. In its general survey of 1975, the Committee noted that a number of collective agreements set forth the principle of equal remuneration as it was stated in the labour codes[2] or which referred

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[1] LS 1979 - Sweden 2.

[2] In para. 117 the Committee pointed out the existence of such provisions in collective agreements in Latin America (Guatemala: for the liquor industries, Colombia: for the dressmaking industry, Honduras: for all agreements) and in Africa (Benin: collective agreements for the railways and the hotel industries, Central African Republic, Ivory Coast, Burkina Faso and Madagascar).

explicitly to ILO Convention No. 100 and to equality of remuneration for work of equal value.[1] At the present time the legislation in a number of countries requires the inclusion of the principle of equal remuneration in all collective agreements (Haiti)[2] or requires that collective agreements contain provisions in this respect if they are to be extended to enterprises and workers not represented at the negotiations (France),[3] Luxembourg.[4]

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[1] France, codicil to the collective agreement for metalworking in Paris.

[2] The Labour Code updated in 1984 provides in section 65(c) and (e) that "any collective labour contract shall contain the following provisions: ... the wages applicable per category of employees, increases due, bonuses and other advantages concerning wages; ... the inclusion of the principle of equal wages for equal work, whether the employee in question is foreign or national, man or woman"; while the expression "equal wages for equal work" may be open to various interpretations, section 317 provides that "for work of equal value, a woman shall receive wages equal to those paid to a male employee".

[3] Under section L.133-5, para. 4(d) of the Labour Code, inserted by section 31g, para. 2(d) of the Act of 11 February 1950 (LS 1950 - Fr. 6A), "Every national collective agreement, in order to be extended, shall contain provisions regarding: ... modes of applying the principle "equal pay for equal work"; paragraph 9 of the same section, inserted by the Act of 1983 (LS 1983 - Fr. 2), added among the provisions that must be included in agreements, "equality in employment between women and men and measures to make good any inequalities that may be found to exist. Such measures shall more particularly apply to access to employment, training, promotion, working conditions and conditions of employment". It will be seen that the language and concepts evolved from paragraph 4(d) of section L.133-5, inserted in 1950 ("equal pay for equal work"), to section L.140-4, inserted in 1972 (section 3 of LS 1972 - Fr.3), rendering null and void provisions of collective agreements, etc., involving "a lower rate of remuneration for employees of either sex in relation to the other for the same work or work of equal value", and, finally, to paragraph 9 of section L.133-5, inserted in 1983, which requires matters of Convention No. 111 to be written into collective agreements if these are to be extended".

[4] Under section 4, paragraph 3(iii) of the Act of 12 June 1965, respecting collective labour agreements (LS 1965 - Lux. 1), "Every collective labour agreement shall contain provisions respecting ... the method of applying the principle of equal remuneration without discrimination on grounds of sex"; under section 9, paragraph 1, "any collective labour agreement conforming to the provisions of this Act may be declared to be generally binding on all employers and all staff in the occupation for which it has been concluded".

229. Agreements referring to equal remuneration. In France, the principle of equal remuneration was expressly referred to in 31 of the 304 collective agreements in force on 31 December 1983. In the majority of cases this consisted of a simple reference to the principle[1] for example, the collective agreement concerning leather and skins set out in section 27 bis (added by agreement of 27 November 1972) the principle of equality in real wages for men and women in jobs of equal value and under the same conditions. In Luxembourg, the principle of equal remuneration appears in the texts of several collective agreements. In Portugal, seven agreements concluded in 1974 contained provision on the principle of equal remuneration (representing 3.6 per cent of the total); in 1980 only one agreement referred to the principle (0.4 per cent of the total), while in 1981 the percentage rose to 1.4 per cent.[2] In Benin, section 31, paragraph 1 of the General Collective Labour Agreement, of 17 May 1974, which is applicable to undertakings in the private sector,[3] provides that where their work, length of service and skills are equal, workers shall receive equal remuneration regardless of their sex. Section 45, paragraph 2 of the common basic provisions of collective agreements in Gabon, and the inter-occupational collective agreement of 1982 which is currently in force in Senegal repeat, according to the Governments' reports, the provisions of the Labour Codes respecting equal remuneration (referred to in paragraph 53 above). In Ecuador, the collective agreement signed in 1985 between the industrial enterprise "Lagarto Cia Ltda" and the workers' committee of the enterprise provides in section 12 that the enterprise shall bring workers' wages into conformity with the principle of equal remuneration for equal work, as laid down in section 78 of the Labour Code.[4]

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[1] Report transmitted in 1984 to the National Collective Bargaining Commission, examining the application of the principle of equal remuneration in sectoral collective agreements sent by the Government with the report on the Convention for 1983-85.

[2] Committee on Equalty in Work and Employment (CITE): Women's Labour and Employment in Portugal, February 1982, Lisbon, p. 103 (report transmitted by the Government).

[3] LS 1974 - Dahomey 2.

[4] LS 1978 - Ecuador 1.

230. Agreements referring to equality of treatment. In Tunisia, the General Collective Agreement of 1973[1] provides in section 11 that "This agreement shall apply equally to workers of both sexes. Girls and women who fulfil the requirements may engage in all occupations on an equal footing with youths and men, without discrimination as to classification or remuneration." In Mali, the new collective agreement for mining societies and enterprises, concluded on 24 May 1985, re-affirms the principle of non-discrimination between workers of both sexes in respect of access to employment, working conditions and remuneration.[2] In Canada, collective agreements such as those in force between INCO Metals CO (Manitoba Division) and USWA Local from 14 December 1981 to 15 September 1984, and the Agreement of 4 December 1978 concluded between the "Associated Clothing Manufacturers of the Province of Quebec, Inc." and "Montreal Clothing Contractors Association, Inc." prohibit discrimination, inter alia, on grounds of sex. Similarly in the United States, collective agreements such as the National Agreement for 1979-82 between the General Electric Company and the International Union of Electrical, Radio and Machine Workers (AFL-CIO) and its local affiliates GE-IUE (AFL-CIO) and the agreement in force between Munsingwear, Inc. and the Amalgamated Clothing and Textile Workers' Union from 23 May 1981 to 22 May 1983 forbid discrimination on the grounds, inter alia, of sex.

231. Asymmetric conditions for equal remuneration. Some collective agreements concluded during the last decade still provide that women shall receive the same wage rates as men when they carry out the same work as that done by men,[3] or that female employees shall receive equal wages for work that is equal to that of men when they are engaged in comparable activities and produce a product of comparable quantity and quality.[4] When the result of such formulae is that only

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[1] LS 1973 - Tun. 1.

[2] The Government's report supplied under article 22 for 1983-1985.

[3] Agreement concluded in the United States, on 16 April 1976, between Berkshire Hathaway, Inc. and Textile Workers' Union of America (AFL-CIO), section III.J.

[4] Agreement concluded in the United States on 21 June 1976 between Dan River, Inc. Danville Division and the United Textile Workers of America (AFL-CIO); section VI.D. However, section 20 of the same Agreement expressly provides that its implementation shall comply with all laws, regulations and executive orders respecting equal opportunities in employment without regard to sex except when sex is a bona fide occupational qualification.

women are obliged to prove their output or the nature of the work they are performing in order to be able to receive the wages corresponding to the job, while men automatically receive these wages (considered as male wages), equality for the purposes of the Convention is not ensured.[1]

II. Some problems and progress observed in the application of the principle in collective agreements

(a) Direct forms of discrimination: wage scales differentiated on grounds of sex

232. Collective agreements in the past frequently provided for differentiated wage rates for men and women. But following the adoption of the Convention, there has been a progressive movement in all countries towards single scales applicable to workers without distinction as to their sex. At present, the majority of collective agreements no longer contain wage rates that are differentiated by sex, although certain discrimination still persists. The following paragraphs provide some examples.

233. The Committee has referred in its comments with regard to Argentina[2] to Agreement No. 25/75 for the dressmaking industry, which, although it stipulates that female employees shall receive wages equal to those received by male employees when they carry out tasks in the various sectors of production, contains two wage scales for the same activities, a higher one for male employees and a lower one for female employees. According to these scales, female employees earn from 4 to 8 per cent less than male employees for the same type of employment. In Switzerland, a survey carried out in October 1977 showed that there were many collective agreements which still provided, on no obvious grounds, for minimum wages that differed between men and women, in particular in the pasta, cocoa, chocolate, cotton, linen, ready-made clothing, tailoring, lingerie, fancy leather goods industries, in the graphic arts and book-binding, the chemical industry, retail trade in footwear and textiles, and in cleaning.[3] In this country, the

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[1] See para. 23 above and para. 117 of the general survey of 1975.

[2] RCE 1977, p. 191, 1980, p. 138, 1984, p. 189.

[3] RCE 1984, p. 200.

authorities refuse to extend to enterprises and workers not represented at the negotiations, the binding force of collective agreements which provide for different minimum wages for men and women if they carry out work of equal value. However, the great majority of collective agreements are not meant to be extended. The Swiss Federation of Trade Unions, in its comments with regard to the application of the Convention for 1983-85, states that as from 1 January 1984 there have been no further wage differences for work of equal value in the chemical industry in Basel-City, Basel-Country and Fricktal. This progress has been achieved as a consequence of the adoption in 1982 of a plan to bring about wage equality for men and women by raising women's wages in four stages. According to the same organisation, major progress has been achieved in the food industry and in consumer co-operatives, but negotiations have failed in the watch-making industry.

234. In Portugal, the Committee on Equality in Work and Employment (CITE) states, in pages 105-106 of its 1982 report (already referred to in paragraph 229), that among the most common types of discrimination found in collective labour agreements, the inclusion of occupations and occupational categories specifically and exclusively meant for women stand out. "The relatively small number of collective labour agreements which contain explicit wage discrimination does not attenuate its importance. In this type of agreement there are cases where different wages are attributed to identical occupations or occupational categories and others presenting discrimination with respect to occupations or professional categories that are nominally different, but where the content is exactly the same. Explicit wage discrimination values are very significant in reported cases in 1981; the differences are in the order of 10 per cent, 23 per cent, 28 per cent and 50 per cent." In its report on the Convention for 1981-83, the Government of Portugal stated that there are less and less collective agreements containing directly discriminatory provisions: 8 (4.1 per cent) in 1979, 3 (1.8 per cent) in 1981, 2 (0.7 per cent) in 1982 and none in 1983. Furthermore, the Government refused the extension of seven collective agreements concluded in 1980 which provided for discrimination in wages.[1] In India, according to the comments of the Centre of Indian Trade Unions with regard to the application of the Convention for 1983-85, many collective agreements continue to provide for differentiated wages between men and women, even after the adoption in 1976 of the Act respecting equal remuneration.[2] An agreement

[1] See para. 154.

[2] LS 1976 - Ind. 1

concluded in January 1985 in the beedi industry (Indian cigarettes) in Bihar (where this industry employs more than 80,000 workers, the majority of whom are women) provides that women shall receive Rs.6.10 for the rolling of 1,000 beedis, while men shall receive Rs.9.50. Similarly, in Gujarat, Uttar Pradesh and Madhya Pradesh, where women constitute 80 per cent of the workforce in the beedi industry, they earn between Rs.3 and 4 less than men for work of the same nature, which, according to the Centre of Indian Trade Unions, is the reason for the employment of a female labour force and for the transfer of work from the factory to homes. The persistence of wage differentials has also been noted in plantations, by the Simla employment bureau in 1980, and in Assam, where the wage differentials between men and women are due, according to the Centre of Indian Trade Unions, to an understanding between a number of trade-union leaders and the managements of the plantations. In Karnataka, inequalities in remuneration existing in plantations in 1983 (jobs were classified into two categories, with women always being classified in the second, less well paid, category) were, however, abolished by the last collective agreement, which was concluded in 1985. According to the same comments, one very important section of women, i.e. those employed in agriculture, earn lower wages than men even for work of the same nature, including harvesting, except in West Bengal and Tripura, where the State Governments try to enforce equal wages.

235. In Jordan, the collective agreement concluded between the Jordan Felt Manufacturing Company and the General Union of Textile Workers provided for wage differentials based on sex. According to the Government's report supplied under article 22 for 1979-81, the Government obtained from the Management Board of the Company a decision (of 19 February 1980) which, according to the Government, grants important rights to men and women for equal work. The Government of Jordan also referred[1] to inequalities of remuneration between male and female employees which can still be found in a number of enterprises. It considers, however, that collective agreements are an important means of abolishing such inequalities. The Government of Belgium points out in its report on the Recommendation that an administrative unit set up within the Collective Labour Relations Service of the Department of Employment and Labour analysed the collective agreements in force in 1976 and drew up a report bringing to light a number of cases of direct discrimination, which, however, were not numerous. This report was transmitted to all the joint committees, with the request that they should examine all the collective labour agreements within their competence and bring them into conformity with Collective Agreement No. 25 respecting equal remuneration (see paragraph 227). Since

[1] Report supplied under article 19 concerning the application of the Recommendation.

then, the social partners have shown their intention to eliminate from newly concluded texts all traces of direct discrimination and any continuing anomalies in the determination of wage conditions have progressively disappeared. For example, the differentiated wages for men and women drawn up at each level of the occupational classification in four subsectors of the food industry disappeared in 1978, and the occupational classification of the Sub-Commission of the Port of Antwerp, where the two lowest categories were reserved for women, has also been amended in order to abolish discrimination. According to the Government, the obligation to append National Collective Agreement No. 25 to the works rules of the enterprise has had a positive effect on the negotiated element of wages.[1]

236. The Government of Austria stated in its reports for 1981-85 on the Convention that the discriminatory provisions found by the experts to whom it had given the task of analysing around 500 collective agreements that were in force in March 1978, have to a large extent been abolished within the framework of new collective agreements concluded after the adoption of the 1979 Act respecting equality of treatment.[2] Thus, the distinct wage categories for men and women and the wage differentials prejudicing women, which still persisted in the collective agreement of agricultural workers in the provinces of Vienna, Lower Austria and Burgenland, were abolished in the collective agreement of 1 March 1985, which introduced a uniform wage scale for the agricultural workers concerned. According to the report by the Government of Iceland concerning the Convention for 1983-85, all collective agreements are based upon the principle of equal remuneration, but there are many indications that there is a distinction between the sexes as regards the payment for overtime and other additional emoluments.

(b) Indirect forms of discrimination

237. Although discrimination in respect of the wage rates paid to women have to a large extent been eliminated in collective agreements concluded during the last decade in many countries, several governments and trade-union organisations have drawn attention to less evident forms of discrimination that can still persist, with regard to the choice of methods of remuneration, the criteria for the classification or evaluation of jobs or the granting of benefits that are linked to the marital and family situation of the beneficiary.

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[1] RCE 1984, p. 191.

[2] LS 1979 - Aus. 1.

238. Classification and assessment of jobs. Reference has already been made in paragraph 234 to the comments of the Committee on Equality in Work and Employment (CITE), of Portugal, in its report of 1982, that a number of collective agreements provide for wage differentials for nominally different occupational categories, whose job contents, are, however, exactly the same. According to the comments of the General Union of Workers (UGT) concerning the application of the Recommendation, which were transmitted in April 1985, such collective agreements are to be found particularly in the agricultural sector; for example, the Beja collective labour agreement (BIE No. 40 of 29 October 1984), provides for two wage levels for agricultural workers, level A for men, and level B which is applicable to women although the work done is in practice the same. The elimination of a similar practice in the plantations in Karnataka (India) in 1985 has been mentioned in paragraph 234. In the Federal Republic of Germany, a report submitted by the Government to Parliament in 1980 stated that it had not yet been possible to entirely abolish "light wage groups" which originated from the former "women's wage groups".[1] In its report concerning the Convention for 1981-83, the Government transmitted the comments of the German Trade Union Federation (DGB) that the number of collective agreements referring to "light wage groups" (in which a distinction was made between physically heavy and light work in the lower wage groups), had fallen from around 90 a few years before to 30 in 1982 and 15 in 1983, which applied to a limited number of wage groups concerning relatively few workers. The Government of Belgium states in its report on the Recommendation that forms of indirect discrimination could persist in job evaluation criteria and that a number of classifications were defined in sufficiently broad terms to permit varying interpretations. The Collective Labour Relations Service of the Ministry of Employment and Labour is carrying out a systematic examination of collective labour agreements in order to bring to light the few remaining indirect forms of discrimination with a view to their elimination. The Government of Austria considers in its report on the Convention for 1983-85 that once specific references to gender in the designation of activities are eliminated, it is no longer possible to demonstrate directly, in the absence of appropriate objective assessment criteria, the extent to which the social value judgements contained in evaluation methods are implicitly influenced by the fact that certain activities are principally (or exclusively) performed by women or by men. According to the Government, the value of a specific activity is primarily a question of social policy, which simply cannot be replaced by "objective" methods of evaluation. It would appear to the Committee that, in so far as the implementation of the Convention depends on a

[1] RCE 1982, p. 156.

question of social policy, the Government's responsibility is directly involved. However, the social policy of a number of countries where measurable progress has been made in the elimination of wage discrimination, is concretely based inter alia, on the elaboration of criteria aimed at identifying and correcting sex bias in the evaluation of jobs.

239. Method of remuneration. In its report on the Recommendation, the Government of Canada transmits the comments of the Quebec Department of Labour that the project established with the Research Department of the Ministry of Labour for examining collective agreements with a view to identifying discriminatory clauses could not be continued following the intention expressed by the trade unions and the employers' side to intervene themselves in this case. The analysis of the content of a number of collective agreements had then illustrated that women were relegated to the less well paid jobs. In other agreements, different wage lists were found for the same jobs or the method of payment was different: men were paid by the hour while women were paid at piece-work rates.

240. Benefits linked to marital status. In Belgium, forms of indirect discrimination have been found in collective agreements for food shop chains following an examination carried out in 1983 by the Committee on Women's Work. These forms of discrimination consist of non-statutory bonuses, such as non-statutory family allowances automatically granted to male employees with children but only granted to women when they prove their status as head of the family. In France, according to a report examining the application of the principle of equal remuneration in national collective agreements transmitted in 1984 to the National Collective Bargaining Commission and communicated by the Government in its report on the Convention for 1983-85, collective agreements do not expressly depart from the principle of equal remuneration but nevertheless certain rights are still not open in an equal manner to men and women, particularly rights linked to the family situation. In Ghana, the collective agreement concluded between the Industrial and Commercial Workers' Union and the Restaurant Hong-Kong provides that references made to male employees include female employees except where male employees are specified. According to section 20 of the same agreement, the employer shall pay the medical and pharmaceutical expenses of his employees and their families, that is to say a wife and three children. In Sierra Leone, the Collective Agreement concluded between employers in the services trade group and the Artisans', Ministry of Works Employees' and General Workers' Union, the Municipal and Local Government Employees' Union, the Provincial and General Workers' Union and the Transport and Agricultural Workers' Union in July 1985, provides in section 9(e)

that the provision of medical services, where they exist, shall be extended to the families of workers, stipulating that by family is meant the spouse and three children of less than 18 years of age. Also in Sierra Leone, in accordance with a number of collective agreements (the hotel, restaurant and show business industries) in the event of transferral of the employee, the employer shall pay all the expenses incurred by the employee, his wife and three of his children. At the request of the Committee, the Government of Sierra Leone stated that, in practice, "this provision applies to any female employee who submits her claims to the employer". The Committee considers that, consequently, the terms of the provisions should be explicitly brought into conformity with practice. It recommends in such cases the use of the expression "spouse" in order to avoid discrimination that may arise from strict application of the provisions. In Zaire, according to the Government's report on the Convention for 1983-85, section 30 of the National Inter-Occupational Collective Labour Agreement, revised in 1980, limits the equality of benefits to men and unmarried women or women whose husbands have no known employment. The Committee refers to the indications made in paragraph 15 in this respect. To avoid discrimination under the Convention in the payment by the employer of benefits based on the marital status or the children of a worker not to constitute discrimination contrary to the provisions of the Convention, such payments must be made without applying conditions on grounds of sex.

D. The principle of equal remuneration in individual labour contracts and effective wages

241. Several governments have reported on difficulties and progress in applying the principle of equal remuneration to effective wages. As recalled in paragraph 216 above, employment in the private sector differs from public service in that remuneration is not fixed according to a uniform wage scale which applies to all employees and is known by each of them; it is composed of various elements which may include, besides an amount fixed by minimum wage legislation, industrial award or collective agreement, additional elements agreed upon by individual contract or otherwise granted by the employer to individual employees or groups of employees. If in various countries the principle of equal remuneration is found difficult to enforce even in the effective payment of minimum wages fixed by authority, or in the establishment of an equal wage structure by collective agreement, both enforcement agencies and the victims of discrimination face an additional difficulty when it comes to individual wage rates.

242. As pointed out by the Government of Australia, in information supplied for Western Australia with respect to employees who are not employed subject to the conditions of any particular award, the fact that the contract of service is determined through negotiations between the employer and employee and that the rates of pay are not published nor necessarily known by fellow award-free employees engaged in the same company or industry, makes it difficult for employees to take action or substantiate claims of not receiving equal pay for equal work. Even where men and women are employed under an industrial award, according to the Australian Confederation of Trade Unions,[1] over-award,[2] bonus etc. payments made to female employees are generally less than those made to male employees. The ACTU is collecting data on areas where male and female employees are doing the same or similar work and receiving different over-award payments, and discussions are being held with the Federal Government's Human Rights Commission to see whether the question of discrimination against female employees in over-award payments can be tested as a breach of the Federal Sex Discrimination Act of 1984 (see paragraph 70 above). Chapter IV provides a number of examples showing how the principle of equal remuneration laid down in legislation of general application (reviewed in Chapter III) is enforced in respect of various benefits through specialised bodies and the courts.

243. Several governments have supplied statistical data on the relation between average earnings of women and men. Differences in average earnings may have other causes than unequal remuneration for work of equal value: for instance, the Government of Australia has pointed, inter alia, to the younger age structure of the female labour force, career interruptions through child bearing and rearing responsibilities and a lower average educational attainment of women in the labour force. Nevertheless, after the concept of equal pay for work of equal value was adopted in Australia by the Conciliation and Arbitration Commission (see paragraph 215 above), the female to male ratio of average hourly ordinary time earnings (which include agreed or award base rate of pay, payment of measured result and over-award and other pay) went up from 76.0 in 1972 to 88.2 in 1977 and was

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[1] ACTU, Working Women's Charter Implementation Manual No. 2, Equal Pay, February 1985, pp. 30 to 32.

[2] Over-award payments are regular payments to an employee in excess of the award rate (other than extra payments set out in an award such as overtime payments, disability allowances, shift allowances, penalty rates, fares and travelling allowances); loc. cit., p. 32.

at 85.0 in 1983. In Finland, the average earnings of women among the office personnel in the insurance branch is 72.1 per cent of the men's earnings, but a more detailed analysis by years of service shows that after two, five, nine and twelve years of service respectively the ratio of women's to men's wages is 89.6 per cent, 92.2 per cent, 89.5 per cent and 92.7 per cent respectively. According to comments by the Central Organisation of Finnish Trade Unions (SAK) and the Confederation of Salaried Employees (TVK) on the application of the Convention for 1983-85, the remuneration statistics indicate that female-dominated fields of employment are as a rule characterised by lower earnings than male-dominated fields, although the proportional earnings of women in female-dominated fields are considerably closer to the earnings of men than in male-dominated fields. The difficulty of changing existing patterns is illustrated by a problem concerning pay inequality as well as wage statistics, mentioned by the Government of Norway in its report on the Convention for 1983-85: the Equal Status Ombud has received a number of approaches from women whose pay has probably been fixed with reference to the Norwegian Employers' Confederation's wage statistics which incorporate a division into women's pay and men's pay, and which show women's pay to be lower than men's pay. Upon inquiry, the Confederation itself stated that the sex-specific statistics are not intended to be a guide-line for wage fixing, but are simply a report of existing conditions. This view coincides with that of the Ombud.

CHAPTER VI
CONCLUSIONS

244. Thirty-five years after its adoption by the Conference in 1951, the Equal Remuneration Convention (No. 100) regularly continues to receive new ratifications by member States. Since the previous general survey, 24 new ratifications have been registered both from developing countries which have recently gained their independence and from industrialised countries, taking the total number of ratifications to 107. The Convention is thus one of the ILO instruments that has received the greatest adherence, with the above total placing it among the five Conventions with the greatest number of ratifications. This high number of ratifications indicates the almost universal acceptance of the principle of equal remuneration without discrimination based on sex. Ratifications come from all regions of the world, from developing and industrialised countries, countries with a planned economy and those with a market economy, countries where wages are fixed by statutory instrument and those where they are fixed through collective bargaining, as well as mixed economy countries with various combinations of these wage-fixing systems.

245. Nevertheless, nearly one-third of the member States of the ILO have not yet ratified the Convention. In this connection, it may be hoped that the Forward-Looking Strategies for the Advancement of Women, adopted by the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace (Nairobi, 15 to 26 July 1965), and Resolution 40/108 of 13 December 1985 adopted by the General Assembly of the United Nations, will induce member States which have not yet done so to ratify the Convention and to do so with the firm intention of making its principle a reality in shaping social conditions. Paragraph 72 of the Forward-Looking Strategies of actions indeed recommends that special measures be taken in particular to encourage ratification of the Equal Remuneration Convention.

246. That the principle written into the Convention has been accepted by countries with such a diversity of economic and social conditions attests to the flexibility of the standards laid down in 1951. The Committee recalls the approach adopted with regard to promotional Conventions which, rather than laying down rigid standards

which a State is obliged to apply on ratification, set objectives to be pursued by a continuing programme of action.[1] As indicated in this survey, there is an obligation to encourage or to ensure observance of the principle of equal remuneration according to whether or not the authorities are in a position to control, either directly or indirectly, the fixing of wage rates without discrimination based on sex. The aim is defined: the application to all workers of the principle of equal remuneration for men and women for work of equal value, but countries are to choose the means of achieving that objective.

247. It is therefore particularly interesting to note that the trend to make provision by legal enactment for the application of the principle has continued and spread over the last decade. While the Convention requires the principle of equal remuneration to be observed by the national authorities in their field of competence, including in legislation, there is in fact no requirement for it to be written into national law with a view to ensuring its general application. This is, however, called for by the Recommendation "where appropriate in the light of the methods in operation for the determination of rates of remuneration". Previously, the Committee had noted that the avoidance of interference by the public authorities in wage fixing in the private sector was a main obstacle to ratification for certain countries. It now appears to be accepted in most countries that the public authorities must take a more active part in the implementation of the principle; experience has shown that implementation remains only partial when it is sought solely through encouragement and general recommendations to the parties concerned, without precise methods and objectives being laid down for the purpose. Thus more and more governments have considered it necessary to undertake to ensure the strict application of the principle, generally by adopting legislation. When the principle is made the subject of national legislation, it is frequently accompanied by the establishment of machinery intended to ensure its application, which assists its observance by organisations of employers and workers and by other appropriate bodies. Certainly, the absence of discrimination based on sex in the fixing of rates of remuneration, depends upon the introduction of formal regulations and statutory provisions, but it also depends on the practical effect given to them. Employers' and workers' organisations have a primary responsibility in ensuring the implementation of the principle of equal pay for work of equal value. It is they who have the most intimate knowledge of the specific issues to be addressed in applying the principle within the context of particular enterprises and industries. Measures they may take in this regard encompass co-operating with labour inspection services and other official bodies, using grievance procedures to resolve equal pay disputes and including the principle in collective agreements.

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[1] RCE 1981, para. 36

248. The Committee noted in its General Observation of 1984 that, in studying the law and practice of States which had ratified the Convention, it had been materially assisted by the detailed reports furnished by a number of governments. Indeed these reports illustrate clearly the various forms that pay discrimination in violation of the Convention may take and, consequently, they contribute to determining more appropriate and more explicit means of preventing and remedying the problems. These reports also illustrate that, while there is a single goal, the means of achieving it are many and varied. Furthermore, the Committee stressed the importance of the comments of employers' and workers' organisations in identifying the difficulties encountered in giving practical effect to the principle. In its 1975 general survey (paragraph 166), the Committee had already indicated that an initial difficulty in devising methods to give effect to the principle of equal remuneration arose from a lack of knowledge of the true situation because inequalities in remuneration, in all countries, are nearly always poorly researched and identified statistically. In addition, in cases where inequalities of remuneration are noted between men and women, information regarding the nature of these inequalities is either insufficient or totally lacking. The available data generally refer to average net earnings and take into account, without however precisely distinguishing the effect they have on the inequalities noted, such factors as working hours, length of service, skills and the occupational structure of the workforce. Such data do not in themselves make it possible to indicate the size, scope and nature of inequalities, nor to assess the impact of measures taken to ensure the application of the principle of equal remuneration for work of equal value. Nonetheless, even in those circumstances, they may be able to show the concrete existence of an inequality and thus provide the basis for assumptions about the nature of the inequalities, to be verified by further research work. Studies of this kind have in fact been undertaken in many countries by governments, by workers' organisations or, more frequently, by bodies set up to ensure the application of the principle, and they have made it possible to identify for each branch of activity and geographic sector, the respective importance of factors influencing equal remuneration. Even though the scope of such surveys may often be restricted to a given industrial or geographic sector, they have nevertheless confirmed that equal remuneration was only one element of a larger problem. Consequently, action to remedy wage inequality must also be taken in a broader context.

249. In many countries the measures taken to apply the principle are integrated into a gamut of measures intended to ensure equality of opportunity and treatment for workers of both sexes and constitute part of a complex structure that is being built upon progressively. Better still the measures can form one of the foundations of the structure, since the effective realisation of the principle leads to

consideration of the factors causing inequality and their interaction. For these reasons, a number of countries, which were first to adopt specific legislation respecting equal remuneration, have subsequently enacted legislation of wider scope respecting the equal status of men and women.

250. Many difficulties encountered in achieving equal remuneration are closely linked to the general status of women and men in employment and society. The Equal Remuneration Recommendation (Paragraph 6) traces the outline of a policy intended to ensure the application of the principle by stressing its links with equality of opportunity and treatment in the fields of occupational training and in access to employment and occupation and to certain social services. In paragraph 38 of its General Report of 1980, the Committee noted that the law and practice in a growing number of countries tended to recognise that the objective of the elimination of discrimination between male and female workers with regard to remuneration for equal work "cannot be reached in a satisfactory way unless national policy also aims at eliminating discrimination on the basis of sex in respect of access to the various levels of employment, as provided by Convention No. 111". In 1985, the International Labour Conference adopted a resolution[1] concerning equality of opportunity and treatment between male and female workers with regard to employment, stressing that the implementation of the principle should take place within the broader framework of the equality of opportunity and treatment of male and female workers, of which one of the obstacles is the family responsibilities which more frequently lie upon women. Consequently, all necessary measures should be taken to ratify the Workers with Family Responsibilities Convention, 1981 (No. 156), and to implement its provisions and those of the corresponding Recommendation, with regard to the measures required, particularly concerning the conditions and methods of employment of workers.

251. A comparison of the ratifications of the three Conventions confirms the desire of governments to consider the question of equal remuneration in a broad perspective. The seven States[2] which up to the present time have ratified Convention No. 156, which came into force in 1983, have all ratified Convention No. 111 and Convention No. 100. Of the 107 States which have ratified Convention No. 100,

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[1] International Labour Conference, 71st Session, Geneva 1985, Record of Proceedings, p. 36/12 et seq.

[2] Finland, Niger, Norway, Portugal, Spain, Sweden and Venezuela.

only 12[1] have not ratified Convention No. 111, the scope of which is not restricted to the equality of opportunity and treatment between men and women. Finally, 12 States out of the 107 which have ratified Convention No. 111 have not ratified Convention No. 100; while several of these States do not envisage ratifying this Convention, even though its principle is applied in their national legislation, one country[2] states in its reports due under article 19 of the ILO Constitution that it envisages ratifying Convention No. 100 in the near future.

252. The Committee considers that this comprehensive approach is of particular importance for the application of the Convention: equal evaluation of work and equal rights to all the components of remuneration cannot be achieved in a general context of inequality. Experience shows that the bona fide application of the provisions of the Convention alone would not be sufficient to ensure equal remuneration as long as conditions remained unequal in all other respects. To overcome the obstacles faced in applying the Convention, measures must be taken under other Conventions concerning equality of opportunity and treatment in employment and occupation and for workers with family responsibilities.

253. Viewing the principle of equal remuneration in a broader context (accompanied or not by the establishment of machinery to ensure application of the principles) may not have eliminated difficulties, even though it has contributed to identifying them and consequently to making it possible to resolve them. This confirms a paradoxical observation made by the Committee over the years in supervising the application of the Convention: often, a relative scarcity of legal instruments for the application of the principle, corresponds to a situation in which its implementation in practice is not considered to call for more rigorous action; once such action gets under way, however, and the further legal tools for implementing the principle are developed, the more the existence of problems in practice may be brought to the surface, thus initiating further progress. The application of the principle therefore occurs in successive stages, with each step giving rise to the discovery of new difficulties or problems and consequently leading to the adoption of new remedial provisions to solve them. In this sense, the resolve to give effect to the Convention permits the perception from a different angle, of further fields of discrimination which hitherto may have been difficult to see. It is therefore hard to accept statements suggesting that the application of the Convention has not given rise to difficulties or that full effect is given to the Convention, without further details being provided. By its nature, by the way in

[1] Albania, Cameroon, Comoros, Djibouti, Equatorial Guinea, Ireland, Japan, Luxembourg, Nigeria, San Marino, United Kingdom and Zaire.

[2] Kuwait.

which it develops, and as a result of the equivocal character of discrimination with regard to remuneration, the application of the principle will necessarily unearth difficulties.

254. Although the reports submitted by governments show that the principle of equal remuneration is generally accepted as a matter of public policy, whether or not the States concerned have ratified the Convention, there are still a number of hesitations and shortcomings in the implementation of the principle. In the first place, the diversity of definitions used in national legislation for comparing work, as previously noted by the Committee, remains. The concepts employed often still refer to "the same work" undertaken in the same workplace or in identical conditions, to "work that is substantially identical", to "similar work" or more generally to equal work without the conditions of this equality being defined. In many countries, it has been found that these definitions can lead to narrow and restrictive interpretations by the courts. For this reason, a number of countries have amended their legislation to enshrine the formula of "work of equal value". This phrase, which is the one to be found in Article 2(1) of the Convention, appears best suited to achieve the objective of the removal of discrimination.

255. The reference to "work of equal value" inevitably broadens the field of comparison since jobs of a different nature have to be compared in terms of equal value. To compare the value of different jobs, it is important that there exist methods and procedures of easy use and ready access, capable of ensuring that the criterion of sex is not directly or indirectly taken into account in the comparison. The Committee notes with satisfaction this tendency to refer in legislative provisions to criteria for comparing jobs or, more comprehensively, to methods for the objective evaluation of jobs in order to ensure the fixing of wage rates without discrimination on the basis of sex. However, it is clearly important that the technical process of evaluation must itself be carefully examined in order to eliminate elements of discrimination related to sex which may be indirectly introduced if the points selected for comparison are not themselves free of sexual discrimination, e.g. height, strength. Particular care has to be taken in ensuring that adequate comparisons are available. If the net is cast too widely, there will be understandable resistance but the differences in wages (resulting probably from traditional stereotypes with regard to the value of "women's work") have been effectively reduced in a certain number of countries following the adoption or revision of legislation on equality of remuneration or treatment which has addressed the problem of sex discrimination in all areas, including job evaluation.

256. Particular difficulties for job evaluation are experienced in areas where men and women are in practice segregated into different occupations, industries and specific jobs within enterprises. This is the result of strongly entrenched historical and social attitudes. For

the most part, the jobs in which women are predominantly employed tend to pay less than those held primarily by men. By adopting non-discriminatory evaluation criteria and applying them in a uniform manner, differences in wages resulting from traditional stereotypes with regard to the value of "women's work" are likely to also be reduced. In these cases, it is essential to ensure equal remuneration in an industry employing mostly women by having reference to a basis of comparison outside the limits of the establishment or enterprise concerned. The fact that the jobs in question may be done by few men, amongst many women, by no means indicates that the remuneration is, viewed objectively, without discrimination.

257. It appears from the review that access to occupations and posts, which is dealt with in Paragraph 6(d) of the Recommendation, is of central importance. As discrimination is eliminated between jobs, it becomes necessary to ensure that a woman has a fair opportunity to progress, if her skill and preferences so merit, to higher level jobs. Here, historic patterns may be difficult to change and an affirmative action programme may be necessary to achieve progress. Failure to achieve this will, as time passes, become obvious, and will lead to justifiable dissatisfaction. While active measures for the promotion of equality will assist some women to diversify into jobs traditionally held by men, these programmes may come too late for those women who have already acquired years of training and experience in jobs customarily held by women. Many women may also go on preferring to work in areas which have been dominated by women and which have been undervalued and underpaid.

258. It is clear from the survey that the application of the Convention is greatly enchanced by effective labour inspection. Most governments have stated that labour inspectorates, organised in various ways, are responsible for seeing to the observance of standards respecting equal remuneration. It appears clearly that the role played by labour inspectorates in ensuring compliance with the Conventtion is fairly limited, when comparing the number of interventions made by labour inspectors in the field of equal remuneration with interventions in other fields. The lack of resources noted by the Committee in its general survey of 1985 on labour inspection explains, to a certain extent, the modest role played in practice by inspectorates. A number of initiatives have been taken or are envisaged in order to strengthen their role: training inspectors with regard to questions concerning equal remuneration, recruiting specialised staff which includes women inspectors, and increasing the participation of workers' representatives in the inspection process. Another type of measure involves promoting the co-ordination between specialised agencies dealing with questions of equality of treatment and the labour inspection services. In some countries, the labour inspection service may - or in other cases, must - refer cases of discrimination to such agencies. In view of the available information, which indicates modest results,

it is impossible to assess the effect of the recommended measures. The solution would appear to lie rather in a combination of the measures mentioned above with others intended to remedy the general inadequacies of labour inspection. The Committee considers, however, that wherever there are specialised agencies dealing with questions concerning equality of treatment, methods of co-ordination between these agencies and labour inspectorates should be studied and put into practice. Indeed, it appears indispensable to ensure co-ordination between such agencies acting at national or regional level and labour inspectorates which may take action within the enterprise itself.

259. Given the multiple causes of inequality in remuneration between men and women workers for work of equal value, effective results may be achieved by specially constituted bodies with powers broad enough to fulfil all the functions necessary. Thus a number of countries have created special agencies or bodies to deal with discrimination issues generally, including the task of ensuring observance of the principle of equal remuneration for work of equal value. The functions of these bodies reflect the panoply of strategies which are needed to combat discrimination: educational campaigns, especially for employers and workers, promotional work, co-ordination of the activities of government agencies in relation to equality questions, examination of legislative and regulatory drafts, handling complaints of discrimination, and other measures adapted to the national situation. In addition, the last decade has witnessed the proliferation of bodies with a consultative and advisory role on matters of relevance to the application of the principle.

260. A way of supporting the functioning of these specialised bodies is to organise the participation of the organisations of employers and workers in their activities, on a tripartite basis. A number of governments have instituted such participation and others have reported that promotional activities are often undertaken in collaboration with the industrial organisations. Some governments have initiated such co-operation on the occasion of an in-depth examination of collective agreements in force, undertaken with the organisations of employers and workers to detect indirect forms of discrimination that may exist therein. The reasons which led to the establishment of such specialised bodies would also indicate that the employers' and workers' organisations should be regularly associated with all or some of the activities in ways that are adapted to the national situation. In this connection, the Committee notes with interest the efforts made by some governments for the representatives of the staff of enterprises to be associated with the work of the specialised bodies or to have easy access to them.

261. One of the most effective and practical methods of ensuring that the objectives of the Convention are achieved is the elimination

of discrimination in collective agreements. Although the government has an overall responsibility, the onus of ensuring this lies primarily with the employers and trade unions who strike the bargain. It is essential that both the social partners are fully committed to the objectives of the Convention and ensure as far as possible and as speedily as they can that discrimination is removed from their agreements. A great deal depends upon their determination on these matters, especially when the economic climate is adverse and there is a temptation to give priority to other issues.

262. Finally, on a more general note, the Committee considers that the Convention (No. 100) and the Recommendation (No. 90) concerning equal remuneration, 1951, have played and continue to play an essential role in the promotion of equality. By giving concrete expression to a principle enshrined in the ILO Constitution since 1919, they have first of all been the basis for an undeniably just claim. They have thus contributed to a greater acceptance of the principle that there must be no discrimination between women and men in remuneration for work of equal value. Although a great deal of progress has been made, it is by no means the case that discrimination has been eliminated or that changes have been permanently established. Social and economic factors such as the world recession, the move to informal sectors and to part-time employment can all lead to renewed problems. These pressures have to be resisted. Last but not least, by raising questions about the application of the principle of equal remuneration, the instruments have highlighted and still continue to bring to light the many facets of discrimination; through the answers found, they have contributed to spreading awareness and promoting the acceptance of the principle of equality between women and men in its entirety.

APPENDIX I

TEXT OF THE SUBSTANTIVE PROVISIONS OF THE EQUAL REMUNERATION CONVENTION, 1951 (No. 100) AND RECOMMENDATION, 1951 (No. 90)

Convention No. 100

Article 1

For the purpose of this Convention -

(a) the term "remuneration" includes the ordinary, basic or minimum wage or salary and any additional emoluments 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;

(b) the term "equal remuneration for men and women workers for work of equal value" refers to rates of remuneration **established without discrimination based on sex.**

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. The principle may be applied by means of -

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Recommendation No. 90

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned -

(a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central government departments or agencies; and

(b) to encourage the application of the principle to employees of state, provincial or local government departments or agencies, where these have jurisdiction over rates of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in Paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards -

(a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;

(b) industries and undertakings operated under public ownership or control; and

(c) where appropriate, work executed under the terms of public contracts.

3. (1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women workers for work of equal value.

(2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as -

(a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;

(b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates or remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as -

(a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

APPENDIX II

INFORMATION AVAILABLE

Countries	Date of ratif.	Convention No. 100		Recommendation No. 90
		Art. 22	Art. 19	Art. 19
Afghanistan	1969	X	R	X
Albania	1957			
Algeria	1962	X	R	X
Angola	1976	X	R	X
Antigua and Barbuda			-	X
Argentina	1956	X	R	X
Australia	1974	X	R	X
Austria	1953	X	R	X
Bahamas			X	X
Bahrain			X	X
Bangladesh			X	X
Barbados	1974	X	R	X
Belgium	1952	X	R	X
Belize			X	X
Benin	1968	X	R	X
Bolivia	1973	X	R	X
Botswana			X	X
Brazil	1957	X	R	X
Bulgaria	1955	X	R	X
Burkina Faso	1969	-	R	-
Burma			X	-
Burundi			X	X
Byelorussian SSR	1956	X	R	X
Cameroon	1970	X	R	X
Canada	1972	X	R	X
Cape Verde	1979	X	R	X
Central African Republic	1964	-	R	X
Chad	1966	X	R	X
Chile	1971	X	R	X
China	1958		X	X
Colombia	1963	X	R	X
Comoros	1978	X	R	X

Countries	Date of ratif.	Convention No. 100		Recommendation No. 90
		Art. 22	Art. 19	Art. 19
Congo			-	-
Costa Rica	1960	X	R	X
Côte d'Ivoire, Republic of	1961	-	R	X
Cuba	1954	X	R	X
Cyprus			X	X
Czechoslovakia	1957	X	R	X
Democratic Yemen			X	X
Denmark	1960	X	R	X
Djibouti	1978	-	R	-
Dominica	1983	-	R	X
Dominican Rep.	1953	X	R	-
Ecuador	1957	X	R	-
Egypt	1960	X	R	X
El Salvador			X	X
Equatorial Guinea	1985	-	X	X
Ethiopia			-	X
Fiji			-	-
Finland	1963	X	R	X
France	1953	X	R	X
Gabon	1961	X	R	X
German Democratic Republic	1975	X	R	X
Germany, Federal Republic of	1956	X	R	X
Ghana	1968	X	R	-
Greece	1975	X	R	X
Grenada			-	-
Guatemala	1961	X	R	X
Guinea	1967	X	R	-
Guinea-Bissau	1977	-	R	-
Guyana	1975	X	R	X
Haiti	1958	X	R	-
Honduras	1956	-	R	X
Hungary	1956	X	R	X
Iceland	1958	X	R	X
India	1958	X	R	X
Indonesia	1958	X	R	X
Iran, Islamic Republic of	1972	X	R	X
Iraq	1963	X	R	-
Ireland	1974	X	R	X
Israel	1965	X	R	-
Italy	1956	X	R	X
Jamaica	1975	-	R	-

Countries	Date of ratif.	Convention No. 100		Recommendation No. 90
		Art. 22	Art. 19	Art. 19
Japan	1967	X	R	X
Jordan	1966	-	R	X
Democratic Kampuchea			-	-
Kenya			X	X
Kuwait			X	X
Lao People's Democratic Rep.			X	X
Lebanon	1977	-	R	-
Lesotho			-	X
Liberia			X	X
Libyan Arab Jamahiriya	1962	X	R	X
Luxembourg	1967	X	R	X
Madagascar	1962	-	R	X
Malawi	1965	X	R	-
Malaysia			X	X
Mali	1968	X	R	X
Malta			X	X
Mauritania			-	-
Mauritius			X	X
Mexico	1952	-	R	X
Mongolia	1969	X	R	X
Morocco	1979	X	R	X
Mozambique	1977	-	R	X
Nepal	1976	X	R	-
Netherlands	1971	X	R	X
New Zealand	1983	X	R	X
Nicaragua	1967	X	R	X
Niger	1966	-	R	X
Nigeria	1974	X	R	X
Norway	1959	X	R	X
Pakistan			X	X
Panama	1958	X	R	X
Papua New Guinea			X	X
Paraguay	1964	X	R	-
Peru	1960	X	R	X
Philippines	1953	X	R	X
Poland	1954	X	R	X
Portugal	1967	X	R	X
Qatar			X	X
Romania	1957	X	R	X
Rwanda	1980	X	R	X
St. Lucia	1983	-	R	-
San Marino	1985	-	R	-

Countries	Date of ratif.	Convention No. 100		Recommendation No. 90
		Art. 22	Art. 19	Art. 19
Sao Tomé and Principe	1982	X	R	-
Saudi Arabia	1978	X	R	X
Senegal	1962	X	R	-
Seychelles			-	-
Sierra Leone	1968	X	R	X
Singapore			X	X
Solomon Islands			-	-
Somalia			-	-
Spain	1967	X	R	X
Sri Lanka			X	X
Sudan	1970	X	R	X
Suriname			X	X
Swaziland	1981	X	R	-
Sweden	1962	-	R	X
Switzerland	1972	X	R	X
Syrian Arab Rep.	1957	-	R	-
Tanzania, United Republic of			X	X
Thailand			-	-
Togo	1983	X	R	X
Trinidad and Tobago			-	-
Tunisia	1968	X	R	X
Turkey	1967	X	R	X
Uganda			-	-
Ukrainian SSR	1956	X	R	X
USSR	1956	X	R	X
United Arab Emirates			X	X
United Kingdom	1971	X	R	X
United States			X	X
Uruguay			X	X
Venezuela	1982	X	R	-
Yemen	1976	X	R	-
Yugoslavia	1952	X	R	X
Zaire	1969	X	R	-
Zambia	1972	-	R	X
Zimbabwe			-	-

Note: The Convention is also applicable without modification to the following non-metropolitan territories: France (Guadeloupe, French Guyana, Martinique, Reunion, St. Pierre and Miquelon, French Polynesia, New Caledonia), New Zealand (Tokelau Islands), United Kingdom (Gibraltar).

Information is also available, under articles 22 and 35 of the Constitution for the following non-metropolitan territories: France (Guadeloupe, French Guyana, Martinique, Reunion, St. Pierre and Miquelon, French Polynesia, New Caledonia), New Zealand (Tokelau Islands), United Kingdom (Gibraltar).

In addition, a total of six reports have been received, under article 19 of the Constitution, in respect of the following non-metropolitan territories: United Kingdom (Bermuda, British Virgin Islands, Gibraltar, Hong Kong, Montserrat, St. Helena).

R = Ratified Convention X = Report received - = Report not received