



International
Labour
Office
Geneva

Second
edition

**ABC
of women workers'
rights and
gender equality**



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and gender equality***

Second edition

International Labour Office Geneva

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Preface

This publication expands on previous versions of the *ABC of women workers' rights and gender equality* and incorporates important International Labour Organization (ILO) instruments that have emerged since its last revision, such as the Resolution on gender equality, pay equity and maternity protection adopted at the 92nd Session of the International Labour Conference in 2004.

Non-discrimination and the promotion of equality have been fundamental principles underpinning the work of the ILO since its creation in 1919. These principles are an integral component of the ILO's Decent Work Agenda – promoting decent and productive work in conditions of freedom, equity, security and human dignity – and are also inherent to the Millennium Development Goals. All workers have the right to decent work, not only those working in the formal economy, but also the self-employed, casual and informal economy workers, as well as those, predominantly women, working in the care economy and private households.

International labour standards are one of the ILO's primary means of action to improve the working and living conditions of women and men, and promote equality in the workplace for all workers. All ILO standards, with some exceptions, in particular those addressing issues relating to maternity and women's reproductive role, apply equally to men and women. However, there continues to be a gap between the rights set out in national and international standards and the real situation of workers. These rights must be made effective in practice. A major obstacle preventing workers from exercising their rights is a lack of awareness of their existence. Dissemination of information about these rights is, therefore, a vital instrument for improving gender equality. This publication is one element in that dissemination process.

The ILO hopes that the information provided in this second *ABC of women workers' rights and gender equality* will contribute further to maintaining commitment to gender equality in the world of work and enhancing knowledge of the issues concerned with it, and will encourage and empower those who feel discriminated against to defend their rights.

The *ABC of women workers' rights and gender equality* owes its existence to a large number of dedicated colleagues whose insight has been invaluable in finalizing the preceding and current editions. The previous versions took shape under the supervision of Eugenia Date-Bah and Jane Zhang with technical input and support from Ingeborg Heide, Simonetta Cavazza, Mara Steccazzini and Petra

Ulshoefer. This second and expanded edition was expertly and patiently produced by Mandy Macdonald. Acknowledgement goes to the many technical departments and units in the ILO who contributed to the various entries. Particular thanks go to Jane Hodges, Shauna Olney, Karin Klotzbuecher, Naomi Cassirer and Anne Trebilcock for their overall comments and input. Geir Tonstol took the initiative for the revision and coordinated the process.

This publication aims to be an accessible guide to international labour standards relevant to women workers' rights and the promotion of gender equality in the world of work, based on a wide reading of ILO documentation and consultation with numerous experts on the topics. However, it does not necessarily reflect the agreed definitions or the official views of the Organization.

This revision has been undertaken with support from the Governments of Sweden and Denmark.

Evy Messell
Director, Bureau for Gender Equality
International Labour Office

Introduction: Labour standards promoting women workers' rights and gender equality

1. How to use this guide

The ILO considers it extremely important to increase knowledge of the legal aspects of gender equality in the world of work. While legal instruments for promoting gender equality and protecting women workers' rights are steadily expanding in number and being improved at both national and international levels, there is still a gap between the rights set out in national and international standards and their implementation in real situations. Even the best legal provisions cannot be of much use if they are not known and not put into practice. People need knowledge about legal rights and the machinery to enforce them if they are to combat discrimination and fight for a fair balance of opportunity, treatment, pay and representation between men and women in all areas of paid and unpaid employment and in work-related decision-making. However, many workers around the world are only hazily aware or even unaware of their rights, and this is perhaps the greatest obstacle to their exercising those rights.

This practical guide is intended to bridge that knowledge gap. Arranged alphabetically by topic, it focuses primarily on States' and employers' obligations and workers' rights as regards equality between men and women, enshrined in the ILO's body of international labour standards (Conventions and Recommendations). It also refers to other relevant developments and trends in international law (for example, United Nations instruments), supranational law (for instance, European Community directives), and national legislation and practice.

In addition, the guide includes explanations of a number of political, legal and socio-economic terms in common use and especially relevant to women workers and gender equality. These include, for instance, *Affirmative action*, *Export processing zones*, *Female-headed households*, the *Informal economy*, the *Glass ceiling*, and *Work-family balance*. There are also entries on law enforcement mechanisms and procedural rules, such as *Burden of proof*, and *Remedies and sanctions*. Terms and concepts relating to gender equality and its promotion, such as *Gender analysis and planning* and *Gender mainstreaming*, are explained with specific reference to the world of work. This new edition also contains a number of new entries

that reflect recent issues of concern to the ILO, some of which are the subject of new and revised standards since the publication of the previous edition of the *ABC*; these include *Forced labour*, *Human resources development*, the *Employment relationship*, and *Trafficking in persons*.

For each topic in the book, the relevant provisions of the principal instruments that apply to that topic are described. These instruments are listed at the end of each entry, together with cross-references to related topics included in this guide. The list of instruments included at the end of each entry is not exhaustive, and by referring to certain standards in a particular entry we are not excluding the applicability of other standards to that subject, or limiting the application of the standards mentioned to that subject exclusively.

In particular, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is so wide in its application that it has not been cited under every topic to which it applies. Note that Conventions are referred to in abbreviated form: for example, “*C. 88: Employment Service, 1948*” means “the Employment Service Convention, 1948 (No. 88)”, while “*R. 150: Human Resources Development, 1975*” means “the Human Resources Development Recommendation, 1975 (No. 150)”.

In one or two cases, standards jointly developed and adopted by the ILO together with other UN agencies, such as the ILO/UNESCO Recommendation concerning the Status of Teachers (1966), have been cited; but instruments adopted more broadly by the United Nations, such as the Universal Declaration of Human Rights or the Convention on the Elimination of All Forms of Discrimination against Women, have not been cited because their applicability is overarching.

Status of ILO standards

The ILO's Governing Body has decided that some 70 Conventions and 76 Recommendations are considered to be up-to-date. These are the principal instruments promoted. Some other standards remain on the books and, in the case of Conventions, remain binding on ratifying States. In this book, therefore, we refer for the most part only to ILO standards that are categorized as up to date. Exceptions include the Maternity Protection (Revised) Convention, 1952 (No. 103) and the Indigenous and Tribal Populations Convention, 1957 (No. 107), which remain important in countries which have not yet ratified the newer standards on these issues.

Terminology

Specific words and phrases are used in the texts of international labour standards to reflect the binding character of a provision. Wording using

formulations such as “each Member shall...” or “each worker shall receive...” creates a legal obligation and/or a legal right. Such legal effect generally arises only from ratification, although there are certain fundamental principles which may be regarded as entering the domain of law irrespective of ratification.

For States which are not bound because they have not ratified an instrument, the aims and content of the instruments should nevertheless serve as policy guidance. Expressions such as “ought to” or “should” have been used regularly throughout this guide to show that the provisions described may be binding for ratifying countries and not binding for others. Exemptions are made for fundamental principles and rights at work, which must be respected and promoted in all ILO member States (see section 4, p. 6).

Many labour standards still in force predate the relatively recent concern with gender-neutral language, that is, terminology that does not assume that the typical worker is a man. In some cases the language has been updated in revised standards, but some standards still refer to “workmen” and use “he” as the generic pronoun. Where a male pronoun is used in a non-gender-specific way, this should on the whole be interpreted to include workers of both sexes. The *Manual for drafting ILO instruments*, elaborated by the ILO’s Office of the Legal Adviser (JUR), gives guidance on the use of gender-inclusive language when drafting standards (ILO, 2005a, paras 254 ff.) and there is further guidance on using gender-inclusive drafting in national legislation in the *Labour legislation guidelines* (see *Further resources*).

2. Gender equality in the ILO’s mandate

Universal and lasting peace can develop only on the basis of social justice. This is declared in the preamble to the ILO’s Constitution of 1919. Even at that time, immediately after the First World War, the protection of women and the principle of equal remuneration for work of equal value were highlighted as areas calling for immediate action. At Philadelphia, in 1944, the International Labour Conference adopted a Declaration, now an annex to the Constitution, which proclaims that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. The Declaration also states that “poverty anywhere constitutes a danger to prosperity everywhere”.

Women workers’ rights constitute an integral part of the values, principles and objectives that are at the core of the ILO’s mandate to promote social justice and decent work – fairly paid, productive work carried out in conditions of freedom, equity, security and dignity. While constantly adhering to this goal,

the approach has changed considerably, in response to the evolving roles of women and men in society. Perceptions of the “traditional” share of paid labour and unpaid family or care work have been, and are still, undergoing profound changes. The ILO has not only reacted to those societal changes but has also taken a leading role in shaping a more equal future in the world of work. It does this by:

- promoting gender equality through international labour standards;
- advocating for measurable progress toward gender equality with its constituents (governments, employers and workers’ organizations) and in its own structures and processes;
- promoting gender equality through technical cooperation around the world; and
- promoting gender equality through the management, dissemination and sharing of relevant knowledge.

The ILO has adopted two important instruments for ensuring accountability on gender equality in recent years. They are the most recent Resolution on gender equality, pay equity and maternity protection, adopted at the 2004 International Labour Conference and calling for more active contribution to eliminating gender discrimination and promoting gender equality,¹ and a Decision, taken by the ILO’s Governing Body in March 2005, making gender mainstreaming (see p. 92) obligatory in all the ILO’s technical cooperation activities. Emphasis on gender equality in technical cooperation was reinforced in the 2006 ILC Resolution and Conclusions on technical cooperation, which says that the ILO should “actively promote mainstreaming of gender equality in donor partnership agreements” (ILO, 2006d, para. 22).

Social dialogue, typifying the ILO’s inclusive approach to all its work, also underpins gender equality by recognizing the need for women and men to have an equal voice in the world of work.

3. *International labour Conventions and Recommendations*

International labour standards are primarily tools for governments which are seeking to draft and implement labour law and social policy, in consultation with employers’ and workers’ organizations, to acceptable international norms. They prescribe, among other things, minimum working conditions and the principle of non-discrimination in its many aspects, and are usually designed

¹ Earlier Resolutions on gender equality were adopted by the ILC in 1975, 1985 and 1991.

for all workers irrespective of their sex, ethnicity, physical ability, or other attributes.

Conventions are international treaties open to ratification by ILO member States. Ratification means that a country undertakes to apply the provisions of the ratified Convention in law and practice, and to submit to regular international supervision on the extent of application. Ratifying countries must provide regular reports to the ILO on the measures taken to implement the Convention, and must accept the ILO's supervision of compliance. If a Convention is not yet ratified by a member State, it represents a goal to be reached. In fact, millions of workers benefit from national laws that are influenced by ILO Conventions even when the country has not (yet) ratified them.

Recommendations set non-binding guidelines to orient national policy and practice which may be used as a source of inspiration or interpretation. They may supplement the provisions contained in a parallel Convention on the same issue.

ILO Conventions and Recommendations are adopted by the annual International Labour Conference. National delegations of government, workers' and employers' representatives meet annually in Geneva to discuss, adopt and supervise standards governing the world of labour.

Countries which have ratified a Convention must implement it. They should repeal any statutory provisions and modify any administrative instructions or procedures that are inconsistent with the Convention. The governments of States which have ratified a Convention report regularly to the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on its application in law and in practice. Workers' and employers' organizations have the right to submit information as well. In countries which have ratified the Tripartite Consultation Convention, 1976 (No. 144), the social partners should all be consulted before government replies, proposals or reports are sent to the CEACR. The report of the CEACR, an independent body, is discussed in the tripartite Committee on the Application of Standards at the International Labour Conference. Shortcomings are pointed out and governments are offered technical assistance to correct them.

Promoting the ratification and proper application of the Conventions and Recommendations is a key activity of the ILO. In particular, the promotion of the key standards for gender equality is a central responsibility of the ILO's Bureau for Gender Equality.

Gender equality in labour standards

Labour standards address gender equality in different ways. Some are gender-explicit, referring specifically to gender equality or non-discrimination, women, or men, e.g. the Conventions on equal remuneration between women and men,

1951 (No. 100), maternity protection, 2000 (No. 183), termination of employment, 1982 (No. 158), and employment policy, 1964 (No. 122). Others are gender-sensitive – standards whose provisions by their nature take into account women's and men's needs but do not mention men and women explicitly, e.g. the Conventions on workers with family responsibilities, 1981 (No. 156), elimination of the worst forms of child labour, 1999 (No. 182), part-time workers, 1994 (No. 175) and home workers, 1996 (No. 177), and a range of standards dealing with working conditions such as safety, security and transport. The fundamental Convention No. 111 spans these two groups, since it addresses discrimination and therefore gender equality but is not exclusively about gender-based discrimination. A third group of Conventions comprises technical standards whose texts are fairly neutral but which may have gender specificities in their application, for instance in the collection and use of statistics. They include areas such as payment of wages, occupational accidents and injuries, hours of work, and social security.

Four ILO Conventions have been designated as key instruments for achieving gender equality in the world of work:

- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Workers with Family Responsibilities Convention, 1981 (No. 156);
- Maternity Protection Convention, 2000 (No. 183).

An important strategy used by the ILO to achieve the global goal of decent work is to promote the ratification and application of the labour standards relevant to equality. The four key equality Conventions are of particular importance, but other Conventions and Recommendations relevant to gender equality, such as those related to employment promotion, working conditions, and migrant workers, are also promoted. It is also important to note that the promotion of standards with obvious gender equality aspects in no way precludes the promotion of equality in the application of standards which are not specifically gender-related.

The Declaration on Fundamental Principles and Rights at Work is also a very important element in the framework for promoting women workers' rights and gender equality (see *Fundamental principles and rights at work*, p. 87).

4. Gender equality, a fundamental human right

Since the 1990s, the concept of a human-rights-based approach to development has gained in importance and offers a normative framework which is very relevant to standards and standard setting. The rights-based approach naturally includes eliminating all forms of discrimination.

The Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference in 1998, sets out the following areas in which fundamental rights and principles are to be promoted and realized:

- (a) freedom of association and the effective recognition of the right to collective bargaining;
- (b) the elimination of all forms of forced or compulsory labour;
- (c) the abolition of child labour;
- (d) the elimination of discrimination in respect of employment and occupation.

This means that all ILO member States have an obligation, arising from the very fact of their membership, to respect, promote and realize the principles concerning these fundamental rights.

The ILO has designated eight Conventions as embodying these fundamental principles and rights. Two of these have the specific aim of promoting gender equality: Conventions No. 100 and No. 111.

The protection and promotion of equality between women and men are recognized as fundamental concepts in the major international human rights instruments, including the Universal Declaration of Human Rights (1948); the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) (1966); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979) and its Optional Protocol of 1999; the Convention on the Rights of the Child (1989); the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990); the UN Declaration on the Elimination of Violence against Women (1993); the Beijing Declaration and Platform for Action (1995) and its follow-up; the Millennium Development Goals; and, most recently, the UN Convention on the Rights of Persons with Disabilities, adopted by the Plenary of the General Assembly on 13 December 2006. Such provisions are also binding on States which have not ratified specific ILO instruments but have ratified these more general international standards. Many of the treaty bodies established to monitor compliance with the UN instruments have in their regular reporting paid special attention to gender issues, and indeed have mainstreamed gender equality in their questions to States Parties.

As well as international instruments, national human rights machineries, including commissions for equality and equal opportunities, are valuable instruments for winning and protecting equal rights in the world of work. They exist in many countries. In South Africa, for example, the South African Human Rights Commission (SAHRC), created under section 189 of the Constitution, has

successfully taken a high profile especially on discrimination issues. The SAHRC exists alongside a national Commission on Gender Equality, also established by the Constitution (section 187). Some have argued that the parallel existence of these two bodies could result in women's rights being marginalized, and accordingly there have been several efforts to coordinate their work. Carrying that trend further, the United Kingdom's Equality Act of 2006 – the precursor to a promised Single Equality Act aimed at combining all the existing equality enactments (on race, gender, disability, etc.) within Great Britain – has established an overarching Commission for Equality and Human Rights.

5. History of standard setting to promote women workers' rights and gender equality

Discrimination on the grounds of sex is a major form of discrimination, and has been a focus of attention for the international community since the Second World War.

The protection and promotion of women workers' rights have always been integral to the ILO's mandate. The employment of women before and after childbirth was the subject of one of the ILO's first Conventions, dating from 1919, the very first year of the Organization's life. Maternity protection remains a key issue in the promotion of gender equality, as the third Convention on this theme, Convention No. 183, shows. Convention No. 100, by guaranteeing equal pay for work of equal value, opened the door to the examination of structural gender biases in the labour market. Since then there has been a gradual shift in emphasis from protecting women to promoting equality and improving the living and working conditions of workers of either sex on an equal basis, as can be seen, for instance, in the replacement of the Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123) by the Convention No. 156. In the new millennium, new and revised labour standards reflect the overarching goal of decent work, which now underpins all the ILO's activity. Gender equality is central to this goal.

In the early decades of the twentieth century, women were perceived as more fragile than men, both physically and socially, and therefore as not suited to certain forms of work, particularly any activity which might endanger their health and especially their childbearing function. Minimum standards regarding maternity leave and benefits were consequently among the first instruments adopted by the ILO. In the early 1950s, the emphasis shifted to the promotion of equality between men and women in employment and remuneration. In 1951, Convention No. 100 and its accompanying Recommendation on equal remuneration (No. 90) laid down the guiding principles of equal remuneration