

*Using ILO Standards to Promote
Environmentally Sustainable
Development*

Booklet 6

EQUALITY OF OPPORTUNITY AND TREATMENT

*Workers' Education and Environment
Project INT93/M12/NOR*

*Bureau for Workers' Activities
International Labour Office Geneva*

Introduction

This booklet looks at those ILO standards that deal with the employment rights and opportunities for different sectors of the working community, for environmentally sustainable development can only come about when every individual can have an active role to play.

The discussion booklets on *“Trade Unions and Environmentally Sustainable Development”* recognize the importance of promoting opportunities for groups with special needs in the overall drive for development. They identify several groups in this area, including:

- ◆ women workers
- ◆ indigenous and tribal peoples
- ◆ children and younger workers
- ◆ older workers
- ◆ workers with disabilities
- ◆ ethnic minorities
- ◆ migrant workers

In many countries, some of these groups — women, indigenous peoples, older people, for example — are often the protectors and managers of natural resources. At the same time, they are those, along with others such as children, migrant workers, displaced persons, etc., who are most vulnerable to environmental hazards, degradation and waste. In many areas they have direct contact with the natural environment through collection of fuel, food and fodder required for everyday needs.

Through their management and use of natural resources, and through their traditional wisdom and experience, all of these groups have an important role to play in promoting environmentally sustainable development. Therefore, putting an end to discrimination, promoting tolerance and mutual respect for the value of diversity, and recognising and enhancing the participation role of these groups are the themes that run through this booklet.

To this end, the ILO places great importance on equality of opportunity and treatment in respect of employment and occupation, and there are several Conventions and Recommendations that are designed to secure equal rights and treatment for disadvantaged women workers, indigenous peoples, migrant workers, etc. (Conventions that deal with the special needs of workers with disabilities are covered in the booklet on "*Education and Training*".)

There are other Conventions that seek to give special protection for certain groups (mainly women and younger workers) against abuses in working conditions, such as limitations in working hours, lifting heavy weights, etc. As this booklet points out, such Conventions have become controversial in recent years as they could be taken to restrict access to certain jobs, and thus be discriminatory. This is a particular debate that will have to be resolved in your union with the participation of the members concerned.

Hopefully, the following pages will help you:

- ◆ understand what is available in the way of ILO standards to help your union promote its policies on equality of opportunity and treatment of its disadvantaged members;
- ◆ understand some of the more relevant standards;
- ◆ use the standards to back up your case for change.

EQUALITY OF OPPORTUNITY AND TREATMENT

One of the aims of environmentally sustainable development is to create a society where every individual, each with rights and responsibilities, has an active role to play. To this end, governments should promote and protect all human rights and fundamental freedoms and make society more responsive to people's needs and abilities. Putting an end to discrimination and promoting tolerance and mutual respect for the value of diversity should therefore be one of the most important aims of governments.

Groups which may have special needs in this area include women workers, indigenous peoples, children and younger workers, workers with disabilities, older workers, ethnic minorities and migrant workers.

Many of the ILO instruments contain clauses to the effect that workers cannot be discriminated against because of such reasons as race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. But in 1958 the International Labour Conference adopted a very important and specific Convention on discrimination in employment and occupation.

Convention No. 111 on Discrimination (Employment and Occupation)

Supplemented by Recommendation No. 111 and adopted in 1958, this Convention has been ratified by 120 countries.

AIM

To promote equality of opportunity and treatment in respect of employment and occupation.

SUMMARY

Any State which ratifies this Convention has to promote equality of opportunity and treatment by declaring and pursuing a national policy aimed at eliminating all forms of discrimination in employment and occupation.

Discrimination, as defined by the Convention, refers to any distinction or exclusion or preference in employment of workers made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin (or any other motive determined by the State in consultation with workers' organizations) and which has the effect of impairing equality of opportunity and treatment.

The Convention covers all sectors of employment and occupation, both public and private, vocational training, access to employment, and conditions of work in general.

States ratifying the Convention undertake to modify their legislation and administrative practices which are inconsistent with a policy on equality.

They also have to enact legislation and promote educational programmes to favour elimination of discrimination in employment.

Interestingly, the Convention allows that special measures of protection or assistance designed to meet the particular needs of some groups of workers which are provided for in other Conventions or Recommendations shall not be deemed discriminatory. For instance, there are Conventions giving special protection, such as limitations on working hours for women and young children, and such provisions should not be thought of as discriminatory. (See later for a discussion of protection versus discrimination.)

Women Workers

The adoption in 1951 of a Convention concerning equal remuneration for men and women workers for work of equal value proved to be one of the landmarks in the ILO's standard-setting activities and led to action in a great many countries.

Convention No. 100 on Equal Remuneration

Supplemented by Recommendation No. 90 and adopted in 1951, this Convention has been ratified by 124 countries.

AIM

Equal remuneration for men and women for work of equal value.

SUMMARY

This Convention provides that ratifying States must promote and, in so far as it is consistent with the methods in operation for determining wages, ensure the application of this principle of equality.

It shall apply to basic wages or salaries and to additional payments, in cash or kind, arising out of the worker's employment.

This should be done by means of legislation, collective agreements and/or wage-fixing machinery. In this respect, stress is laid on the importance of objective appraisal of jobs on the basis of the work to be performed and not on sex*

(The text of this Convention, and of others that have clauses to the effect that workers cannot be discriminated against, refers to discrimination for reasons of "sex", meaning the biological difference between men and women. However, it is becoming more common, especially in development and trade union circles, to refer to "gender" as a term that refers to differences between men and women that are social and learned and which condition the activities, tasks and responsibilities that are only perceived as male and female.)

Convention No. 156 on Workers with Family Responsibilities

Supplemented by Recommendation No. 165 and adopted in 1981, this Convention has been ratified by 25 countries.

AIM

To enable men and women to exercise their right to employment without being subject to discrimination and without conflict between their family and work responsibilities.

SUMMARY

This Convention applies to men and women workers with responsibilities for their dependent children or other members of their immediate family where such responsibilities may restrict them being able to participate in economic activity.

To be able to create effective equality of opportunity and treatment for men and women, ratifying States must pursue a national policy to enable all to engage in employment without discrimination and conflict between employment and family responsibilities.

Likewise all measures should be taken to ensure that such persons can exercise their right to free choice of employment. They should also take account of such workers' needs in terms and conditions of employment and social security, in community planning and in the development of community services such as child care, family services and facilities

Moreover, the Convention provides for information and education to promote broader understanding of the principle of equality for men and women workers and of the problems of workers with family responsibilities.

It also lays the basis for specific measures in the field of vocational guidance and training to allow workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

The Convention states that family responsibilities, as such, are not a valid reason for termination of employment.

Protection and discrimination

While there are Conventions designed to secure the same rights and treatment for women workers as for men, there are also several ILO standards on the employment of women aimed at protecting them against abuses in working conditions. Examples include Convention No. 103 on Maternity Protection, Convention No. 45 on Underground Work for Women, and three different Conventions on Night Work for Women — Convention No. 3 adopted in 1919 and revised in 1934 (Convention No. 41) and again in 1948 (Convention No. 89). These Conventions ban night work for women in industry (allowing for a certain flexibility). Such Conventions have, however, become controversial in more recent years as they could be taken to restrict women's access to certain jobs and thus be discriminatory. The recent trend has been to try to extend such provisions to all workers rather than suggesting, for example, that men should lift heavy weights, or work longer hours. The most recent Convention on night work shows how these concerns have been taken into account by covering all workers.

Convention No. 171 concerning Night Work

This Convention was adopted in 1990. So far it has received four ratifications. (Earlier versions relating to night work for women have received many ratifications — for example, the revised 1948 Convention No. 89 has been ratified by 65 member States.)

AIM

Protection of night workers, taking account of their special health needs, family and social responsibilities, appropriate compensation and maternity protection.

SUMMARY

This Convention defines night workers as all workers, not just women, whose employment requires work at night (defined as a period of not less than seven hours, including the time between midnight and 5 a.m.) It does not apply to workers in agriculture, stock-raising, fishing, maritime transport and inland navigation.

Any State that ratifies this Convention must undertake special measures to offset the negative nature of night work. These include measures to protect night workers' health, assist them to meet family and social responsi-

bilities, provide opportunities for occupational advancement, and appropriate compensation.

Concerning women workers, the Convention provides for an alternative to night work before and after childbirth, and during pregnancy or beyond the specified time allowed after childbirth if the mother can produce a medical certificate to show that her or the child's health is at risk. Alternatives may include transfer to day work, provision of social security benefits or an extension of maternity leave.

The Convention says that a woman worker cannot be dismissed because of pregnancy or childbirth. It provides for maintenance of her income at a sufficient level for the upkeep of herself and her child. It also says that she shall not lose benefits regarding status, seniority and access to promotion attached to her regular night work position.

DISCUSSION POINTS

The protection afforded women in some Conventions is seen in many countries as being necessary and beneficial. Others see it as being discriminatory and against women's best interests.

- ◆ What do you think about this — does it protect women or is it discriminatory? Give reasons for your answers.
- ◆ What is your union's policy?
- ◆ What is the situation concerning access of women to certain jobs and night work in your country?

Indigenous and tribal peoples

A certain number of standards have been adopted to protect indigenous and tribal workers against exploitation and domination. Earlier texts cover aspects of work that were particularly relevant to conditions in dependent territories or colonies.

In 1957 the International Labour Conference adopted Convention No. 107 and Recommendation No. 104 which apply to indigenous and tribal populations in independent countries and are aimed at protecting these peoples against abuses, securing their basic rights and generally improving their living and working conditions. This Convention was revised in 1989 in the light of changes in the position of indigenous and tribal populations and of greater understanding of their position by governments, employers and workers alike.

Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries

Adopted in 1989, this Convention has been ratified by 6 countries.

AIM

To protect the rights of indigenous and tribal peoples in independent countries and to guarantee respect for their integrity

SUMMARY

This Convention defines tribal peoples as those whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated by their own customs, traditions or special laws.

Indigenous peoples are those who are regarded as having descended from the populations which inhabited the country or geographic region at the time of conquest or colonisation or the establishment of present state boundaries, and who retain their own social, economic, cultural and political institutions.

Governments ratifying this Convention must develop — with the participation of the peoples concerned —

systematic action to protect the rights of these people and guarantee respect for their integrity.

This means ensuring that they benefit from the same rights and opportunities granted to other members of the population, with respect for their identity, customs and institutions. They shall enjoy the same fundamental human rights and freedoms without discrimination.

Provisions are also given for safeguarding the persons, institutions, property, labour, cultures and environment of indigenous and tribal populations.

The Convention deals in detail with the social, cultural, religious and spiritual values and practices of these peoples. They have the right to decide their own development and they should participate in plans and programmes for national and regional development which may affect them directly.

The Convention also takes account of the special relationship of indigenous and tribal peoples to the lands and territories (meaning the total environment of the areas which they occupy or use). It safeguards their right to natural resources and lays down provisions to prevent other people from taking advantage of their customs to secure possession or use of their lands.

Other parts of the Convention deal with recruitment and conditions of employment, vocational training, handicrafts and rural industries, social security and health, education and means of communication (preserving and promoting indigenous languages), contacts and cooperation across borders, and administration.

Children and younger workers

The constant concern of the ILO is for the protection of children. In this respect many Conventions and Recommendations have been adopted over the years on such issues as minimum age for employment, night work of young persons, medical examination of young persons, and underground work.

Convention No. 138 on Minimum Age for Admission to Employment

Supplemented by Recommendation No. 146, this Convention was adopted in 1973. It has been ratified by 49 countries. It is to gradually take over from ten earlier ones concerning minimum age.

AIM

The abolition of child labour

SUMMARY

Each State which ratifies this Convention must pursue a national policy designed to effectively abolish child labour, by raising the minimum age for admission to employment.

The minimum age is to be specified by each State when ratifying the Convention. This shall not be less than the age of completion of compulsory schooling, and in any case not less than 15 years.

Developing countries may start off with a minimum age of 14 years.

The Convention also says that the minimum age must not be less than 18 years in dangerous occupations.

Young persons of 13-15 years of age (or at least 15 years for those who have not finished compulsory schooling) may carry out light work of certain types and under certain conditions.

The prescribed minimum age is normally to be observed in all branches of activity, but the Convention provides for the possibility, after consultation with workers' and employers' organizations, of excluding limited categories of employment or work in any country, or of limiting the extent of its obligations in developing countries. It must be applied even in these countries, how-

ever, to the following occupations: mining and quarrying, manufacturing, construction, electricity, gas and water, sanitary services, transport, storage, plantations and other agricultural undertakings producing for commercial purposes, but excluding family and small-scale holdings for local consumption.

The issue of child labour and the urgent need to prevent exploitation of children is as important now as it was in 1973 when Convention No. 138 was adopted. The issue is up for discussion at the Annual Labour Conference in 1998, and may form an ideal subject for a faster-track single discussion procedure in 1999. This could be towards either revising existing Conventions such as No. 138 or No. 29 on Forced Labour, or having a supplementary provision to No. 138. It is important that your union follows this discussion closely and makes full use of its rights to participate in the procedures leading up to adoption of a new or revised Convention in this area. For details of how unions can participate in the formulation and adoption of ILO standards see the booklet on *"The International Labour Organization and its Standards"*.

Older workers

Recommendation No. 162 concerning Older Workers was adopted in 1980 to prevent discrimination against workers because of older age. It basically says that measures should be taken to promote equality of opportunity and treatment for workers — whatever their age — in employment and occupation. They should also ensure that services provide older workers with the facilities, advice and assistance they may need to let them take full advantage of equality of opportunity.

These measures should enable older workers to continue in employment under satisfactory conditions. This may include determining which types of activity are likely to hasten the aging process or in which older workers encounter difficulties in the demands of their jobs, and righting these situations.

The Recommendation also aims at helping older workers prepare for retirement on a voluntary basis.

Migrant workers

The ILO has long been concerned with the special problems of migrant workers. Convention No. 97 and Recommendation No. 86 on Migration for Employment, adopted in 1949, contain a series of provisions designed to assist migrants for employment on the one hand, and, on the other, to secure equality of treatment in various fields. These were supplemented in 1975 by Convention No. 143 which contains further provisions aimed at eliminating abusive conditions of migrant workers.

Convention No. 143 on Migrant Workers (Supplementary Provisions)

This Convention, along with Recommendation No. 151, was adopted in 1975. It has 17 ratifications. (Convention No. 97 has been ratified by 40 countries.)

AIM

Elimination of abusive conditions and promotion of equality of opportunity and treatment of migrant workers.

SUMMARY

This Convention is in two parts. Part I deals with migrations in abusive conditions, and obliges a ratifying State to respect the basic human rights of all migrant workers. States must determine if there are illegally employed migrants in their territories, and clandestine movements across their borders.

All necessary measures at national and international level shall be taken to suppress clandestine movements and employment of migrant workers, especially against the organizers and those who employ such workers. One of the purposes of such measures is that traffickers in migrant labour can be prosecuted whatever the country they operate from. The Convention gives certain protective rights to workers who have lost their employment or in respect of those who are in an irregular situation. Part II of the Convention calls on ratifying States to pursue a policy to secure equality of treatment in respect of employment, occupation, social security, trade union and cultural rights, and individual and collective freedoms for migrants and their families who are lawfully within a country.

Workers with disabilities

ILO Conventions that deal with workers with disabilities concern mainly vocational rehabilitation and training to promote full participation and equality of these in employment and society.

Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) was adopted in 1983. This Convention and its accompanying Recommendation, No. 168, are discussed in detail in the booklet on *“Education and Training”*, but it is worthwhile pointing out here that the Convention calls on ratifying States to develop a national policy that is based on the principle of equality of opportunity, both between “disabled”* workers and workers generally, and between “disabled”* men and women workers.

DISCUSSION POINTS

- ◆ Does your union have any policies concerning the special needs and rights of:
 - . women workers?
 - . indigenous peoples?
 - . migrant workers?
 - . ethnic minorities?
 - . young and older workers?
 - . workers with disabilities?
- ◆ Do these policies take account of and refer to the provisions of ILO standards?
- ◆ If not, do you think some of the standards could help your union promote such policies?
- ◆ Give examples with your answers.

(The text of the Convention refers throughout to “disabled” persons and workers. However, it is becoming more usual in trade union circles to refer to “workers, or people, with disabilities”. This takes account of the fact that such workers are not entirely “disabled” and can contribute to work and the community in spite of a disability, and even offer much because of a disability.)*



Activity



USING ILO CONVENTIONS

- ◆ Decide on an issue concerning the rights and needs of any disadvantaged groups of workers that particularly concerns you and your union at the moment.
- ◆ Look at some of the ILO Conventions and Recommendations to see if there is one that is particularly relevant to the problem.
- ◆ Use the Worksheet found in these materials to help you record your findings.

Some International Labour Standards concerning equality of opportunity and treatment

(Those Conventions that have been summarised in the text are highlighted)

General	<ul style="list-style-type: none"> ◆ Discrimination (Employment and Occupation) C111 and R111 (1958)
Women workers	<ul style="list-style-type: none"> ◆ Workers with Family Responsibilities, C156 and R165 (1981) ◆ Equal Remuneration for Men and Women for Work of Equal Value, C100 and R90 (1951) ◆ Night Work (Women) C4 (1919) ◆ Night Work (Women) (Revised) C41 (1934) ◆ Night Work (Women) (Revised) C89 (1948) ◆ Night Work, C171 (1990) ◆ Maternity Protection, C3 (1919) ◆ Maternity Protection (revised) C103 and R95 (1952) ◆ Underground Work (Women) C45 (1935)
Indigenous and Tribal Peoples	<ul style="list-style-type: none"> ◆ Recruiting of Indigenous Workers, C50 (1936) ◆ Elimination of Recruiting, R46 (1936) ◆ Contracts of Employment (Indigenous Workers) C64 (1939) and C86 (1947) ◆ Penal Sanctions (Indigenous Workers) C65 (1939) ◆ Abolition of Penal Sanctions (Indigenous Workers) C104 (1955) ◆ Indigenous and Tribal Populations, C107 and R104 (1957) ◆ Indigenous and Tribal Populations (Revised) C169 (1989)

Children and younger workers

- ◆ **Minimum Age, C138 and R146 (1973)**
- ◆ Minimum Age (Industry) (Revised) C59 (1937)
- ◆ Minimum Age (Non-industrial Employment) C60 (1937)
- ◆ Minimum Age (Agriculture) C10 (1921)
- ◆ Minimum Age (Underground Work) C123 and R124 (1965)
- ◆ Night Work of Young persons (Industry) (Revised) C90 (1948)
- ◆ Night Work of Young Persons (Non-industrial Occupations) C79 and R80 (1946)
- ◆ Medical Examination of Young Persons, R79 (1946)
- ◆ Medical Examination of Young Persons (Underground work) C124 (1965)
- ◆ Employment of Young Persons (Underground Work) C125 (1965)

Older workers

- ◆ **Older Workers, R162 (1980)**

Migrant workers

- ◆ Migration for Employment (Revised), C97 and R86 (1949)
- ◆ **Migrant Workers (Supplementary Provisions) C143 and R151 (1975)**
- ◆ Protection of Migrant Workers (Underdeveloped Countries) R100 (1955)

Workers with disabilities

- ◆ Vocational Rehabilitation of the Disabled, R99 (1955)
- ◆ **Vocational Rehabilitation and Employment (Disabled Persons), C159 and R168 (1983).**

