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Labour Conference

60th Session 1975

Equal remuneration

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



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Report III
(Part 4B)

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

General Survey of the Reports
relating to 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)/volume B



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INTRODUCTION

1. In accordance with article 19 of the Constitution of the ILO, the Governing Body requested governments to report in 1974 on the position of their law and practice respecting equal pay for men and women workers. An examination of these reports forms the subject of this survey, prepared on the occasion of the International Women's Year.

2. This survey is the second of its type since the relevant instruments were adopted by the International Labour Conference in 1951. The first was carried out in 1956 *¹ shortly after the Equal Pay Convention (No. 100) came into force (23 May 1952). It should be noted, however, that in 1969 the Governing Body requested governments to report on the ratification prospects and the difficulties encountered in respect of seventeen of the most important ILO Conventions, including No. 100.² The present general survey endeavours to make as complete an assessment as possible of the changes which have occurred over the past twenty years almost—a period which has seen the principle of equal pay come to receive almost universal recognition, an increase and consolidation of national action and a growing number of ratifications.

RATIFICATIONS—PROSPECTS AND DIFFICULTIES

3. Since the appeal launched by the Conference in 1964 to member States to ratify the Equal Pay Convention (No. 100)³, there have been 36 further ratifications. At present a total of 84 countries have ratified it.⁴ These include developing countries as well as highly industrialised ones, countries with market economies or those with planned economies and countries with voluntary systems or those with more or less authoritarian systems of wage fixing.

4. According to the information received, there could be a further increase in the number of ratifications in the near future. In Greece, a national general collective agreement establishing the principle of equal pay was concluded on 26 February 1975 and the Government decided to ratify the Convention, whose ratification had been called for, in particular, by the workers' organisations. In the German Democratic Republic, a new member State of the ILO (1974), the Government indicates that there is no obstacle standing in the way of ratification. The Government of Lebanon notes that it submitted the Convention to the competent authorities for ratification in 1967 and the Government of the Republic of Viet-Nam reports its intention of doing the same. Furthermore, in the course of the above-mentioned examination of the 17 key Conventions in 1968, a number of countries had announced that they had ratification in mind although the relevant formal decisions had not yet been taken.⁵

5. Among the non-ratifying States, a number of governments have not indicated what obstacles or difficulties are preventing them from doing so. The obstacles mentioned in some reports refer to the fact that the laws and regulations governing the

* The footnotes will be found at the end of the Introduction and at the end of each chapter.

public service do not conform with the provisions of the Convention, although in the particular cases they do not seem to be determining factors.⁶ Other reports refer to *de facto* inequalities and barriers in the private sector.⁷ Some of the reasons given⁸ (somewhat negative attitudes on the part of employers and even women themselves, prejudice, socio-economic conditions) would appear rather to be so many reasons in favour of ratification in order that the situation might be changed bearing in mind the flexible and gradual nature of the obligations laid down by the Convention. As will be recalled in the later paragraphs dealing with the substance of the standards and as the Committee has already remarked in 1956⁹ the Convention does not require a ratifying country to guarantee the immediate implementation of the principle to all women workers of the country, but limits such a requirement to those areas of the economy where the government is in a position to exert direct or indirect influence on the fixing of wage rates; furthermore, the obligation is to promote implementation of the principle and the Recommendation indicates, in particular, what action is most appropriate for this purpose.

6. Before describing the substance of the 1951 instrument devoted to the principle of equal pay for men and women workers, it seems appropriate to discuss recognition and promotion of the principle in the wider context of international standards and activities.

THE PRINCIPLE OF EQUAL PAY IN THE BASIC TEXTS AND OTHER STANDARDS OF THE ILO

7. Respect for the principle has been one of the objectives of the ILO since its foundation. The original text of the Constitution already recognised in its article 41, among the general principle "of special and urgent importance", the principle that men and women should receive "equal remuneration for work of equal value". The principle is again recognised in the preamble to the present Constitution. Prior to the adoption of the relevant instruments in 1951, a number of Conventions and Recommendations adopted by the International Labour Conference contained specific reference to the principle.¹⁰ Of those adopted after the entry into force of these earlier instruments, mention must first be made, both in chronological order and in order of interest, of those dealing with discrimination in employment. Convention No. 111 (1958) established the principle of non-discrimination in employment and occupation on grounds, *inter alia*, of sex and Recommendation No. 111 (1958) points out that the national policy of each Member to prevent discrimination should take fully into account a number of principles including that of equal pay for work of equal value.¹¹ The Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)¹², stipulates 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".

INTERNATIONAL AND REGIONAL STANDARDS AND ACTIVITIES—INTERNATIONAL WOMEN'S YEAR

8. On a general and universal level the right to equal pay was solemnly recognised in the Universal Declaration of Human Rights (article 23, paragraph 3), and subsequently reaffirmed and defined in the International Covenant on Economic, Social and Cultural Rights in 1966 (article 7 (a) (i)). After its adoption in 1967 of a declaration stipulating that all appropriate measures should be taken to ensure to women the right to equal remuneration with men and equality of treatment in respect of work of equal value¹³, the General Assembly of the United Nations proclaimed the year 1975 International Women's Year.¹⁴ Under the heading "Equality, development and

peace", one of the aims of the programmes and activities will be to promote equality of economic rights and, in particular, the right to equal pay. As the Secretary-General of the United Nations declared, "International Women's Year 1975 offers the international community a unique opportunity to promote genuine equality between men and women . . .".¹⁵ This survey is one of the ways in which the ILO is contributing to action within its fields of competence.¹⁶ The Committee hopes that by presenting the broadest possible picture of the problems encountered and the action taken at the international level, this study could give rise to comparisons, reflections and actions. At a time when there exist some 560 million women workers in the world, representing more than a third of the economically active population, the Committee hopes that the present survey will help to promote equality of treatment for the ever growing number of women wage earners who form part of this population.¹⁷

9. The principle of equal remuneration has also been respected at the regional level, for example, by the European Social Charter of 1961 (article 4, paragraph 3) and by the 1957 Treaty of Rome establishing the "European Economic Community. Article 119 of this treaty stipulates that "each Member shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work". Although the motives which inspire the inclusion of this article were perhaps originally dictated largely by economic considerations, its application, actively supervised by the Commission of the European Communities¹⁸, assuredly fulfils the objective of equality and demonstrates in any event that these two objectives are not incompatible but bolster each other up. Some provisions, although less specific in nature, exist in other regional charters or declarations, which refer, for example, in general terms to equality of rights without distinction as to sex (among other grounds) and to the right to fair remuneration (American Declaration of the Rights and Duties of Man, Articles II and XIV), or to examination of problems concerning the terms and conditions of work of women (constitution of the Arab Labour Organisation, article 3 (3) (b)). It appears that the development of effective regional co-operation should be able to contribute usefully to the promotion of equal remuneration as well as other aspects of basic rights.

CONVENTION (No. 100) AND RECOMMENDATION (No. 90)
CONCERNING EQUAL REMUNERATION FOR MEN AND WOMEN WORKERS
FOR WORK OF EQUAL VALUE

10. The scope of the principle set forth by the 1951 instruments is defined in Articles 1 and 3 (3) 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 (Article 1 (b)). It follows then that differential rates between workers which correspond, without regard to sex, to differences, as determined by objective appraisal, in the work to be performed, shall not be considered as being contrary to the principle (Article 3 (3)).

11. Equality must be applied not only to the basic or the minimum wage, but also to "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" (Article 1 (a)).

12. The obligations of governments are defined in flexible terms in Article 2 of the Convention. Member States should "promote" the application of the principle by means appropriate to the methods in operation for determining rates of remuneration, that is to say, national laws or regulations; legally established or recognised machinery

for wage determination; collective agreements; or a combination of these various means. In so far as this is consistent with their methods for fixing remuneration, Members should "ensure" the application of the principle. In this respect, the Recommendation advocates that appropriate action should be taken to ensure the application of the principle (i) to employees of central government departments and (ii) "as rapidly as possible" in all occupations in which rates of remuneration are subject to statutory regulation or public control. The Recommendation suggests that provision should be made for the application of the principle by legal enactment "where appropriate in the light of the methods in operation for the determination of rates of remuneration" (Paragraph 3). According to Paragraph 4 of the Recommendation, appropriate provision should be made for its progressive application of the principle when it is not deemed feasible to implement it immediately.

13. Article 3 of the Convention advocates measures to promote objective appraisal of jobs on the basis of the work performed "where such action will assist in giving effect to the provisions of this Convention". The methods to be followed may be decided by the authorities responsible for the determination of rates of remuneration or where such methods are determined by collective agreements, by the parties thereto. Paragraph 5 of the Recommendation indicates that recourse can be had either to *job analysis* or *other procedures*, the main point being to establish a classification of jobs without regard to sex.

14. The Convention invites each Member to co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to its provisions. The Recommendation repeatedly emphasises the need for consultation (Paragraphs 1, 2 and 4), or the agreement of (Paragraph 5), employers' and workers' organisations.

15. In addition the Recommendation lists (Paragraph 6) a number of measures to facilitate the application of the principle, such as (i) ensuring equal or equivalent facilities for vocational guidance, vocational training and placement and encourages the use of these facilities; (ii) providing welfare and social services which meet the needs of women workers; (iii) promoting equality of access to occupations and posts. It is also important to note that the Recommendation advises Members to make every effort to promote "public understanding of the grounds" on which it is considered the principle should be implemented¹⁹ and to undertake such investigations as may be desirable.

AVAILABLE INFORMATION AND ARRANGEMENT OF THE SURVEY

16. This survey is based on the information supplied by governments. Taking into account the reports on the Convention submitted under article 22 of the Constitution (by ratifying countries), as well as the reports on the Convention (by non-ratifying countries) and on the Recommendation submitted under article 19, information has been made available concerning 111 States. The Committee regrets that at the time of its meeting no report under article 19 has been received from the following countries for the period requested: Bolivia, Khmer Republic, Laos, Liberia, Mauritania, Nepal, Qatar, Somalia, Tanzania, Togo and the United Arab Emirates. Nor has any report been received from Barbados which recently ratified the Convention and which was not yet obliged to report under article 22 at the moment the request to do so was submitted to it. Finally, a number of non-ratifying countries did not send in reports on the Recommendation. A table summarising reports requested and reports received is given in the appendix to this survey.²⁰

17. The Committee has also been able to study the comments submitted by some occupational organisations on their government's report, a copy of which is supplied to them under article 23 of the Constitution.²¹ Finally, following its usual practice the Committee has sought to supplement the information contained in the report with research into legislation, official documents and other appropriate sources.

18. This body of information will be analysed following the order laid down in the Convention respecting the means available to a country for implementing the principle of equal remuneration. The survey is therefore divided into four chapters. Legal provisions aimed at the general application of the principle will be examined in the first chapter. Following this, discussion will centre on the application of the principle in rates of remuneration subject to statutory regulation of public control (Chapter II), and in collective agreements (Chapter III). The fourth chapter will deal with other measures to facilitate the application of the principle.

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

² RCE 1969, Report III (Part 4), Part Three, pp. 205-208.

³ See the resolution concerning women workers in a changing world, adopted by the Conference at its 48th Session.

⁴ These are (the date of ratification is given in brackets): Afghanistan (1969), Albania (1957), Algeria (1962), Argentina (1956), Australia (1974), Austria (1953), Barbados (1974), Belgium (1952), Byelorussian SSR (1956), Bolivia (1973), Brazil (1957), Bulgaria (1955), Cameroon (1970), Canada (1972), Central African Republic (1964), Chad (1966), Chile (1971), China (1958) (ratification communicated in the name of China by the authority which represented it at the ILO at that date, prior to the decision by the Governing Body to recognise the Government of the People's Republic of China as the representative government of China), Colombia (1963), Costa Rica (1960), Cuba (1954), Czechoslovakia (1957), Dahomey (1968), Denmark (1960), Dominican Republic (1953), Ecuador (1957), Egypt (1960), Finland (1963), France (1953), Gabon (1961), Federal Republic of Germany (1956), Ghana (1968), Guatemala (1961), Guinea (1967), Haiti (1958), Honduras (1956), Hungary (1956), Iceland (1958), India (1958), Indonesia (1958), Iran (1972), Iraq (1963), Ireland (1974), Israel (1965), Italy (1956), Ivory Coast (1961), Jamaica (1975), Japan (1967), Jordan (1966), Libyan Arab Republic (1962), Luxembourg (1967), Madagascar (1962), Malawi (1965), Mali (1968), Mexico (1952), Mongolia (1969), Netherlands (1971), Nicaragua (1967), Niger (1966), Nigeria (1974), Norway (1959), Panama (1958), Paraguay (1964), Peru (1960), Philippines (1953), Poland (1954), Portugal (1957), Romania (1957), Senegal (1962), Sierra Leone (1968), Spain (1967), Sudan (1970), Sweden (1962), Switzerland (1972), Syrian Arab Republic (1957), Tunisia (1968), Turkey (1967), Ukrainian SSR (1956), USSR (1956), United Kingdom (1971), Upper Volta (1969), Yugoslavia (1952), Zaire (1969) and Zambia (1972).

⁵ For example, it was indicated at that time that amendments being made to the labour legislation would enable the Convention to be ratified (Morocco), that this was being studied (Burma, Tanzania, Uruguay), that law and practice conformed with the Convention and that its adoption could be envisaged more or less shortly (Congo) and that the ratification procedure had been set in motion (Venezuela). RCE, 1969, op. cit., p. 208.

⁶ Kuwait, for example, gives as a reason the fact that there is no specific text concerning equal pay in the government services. A specific text exists in New Zealand, but the reported difficulty lies in the interpretation of the definition of remuneration (see para. 80).

⁷ This is the case, for example, in Malta and Sri Lanka, the Government of this latter country stressing the consequences the application of the principle would have on plantation industries faced with outside competition. Conversely and paradoxically it is the absence of inequalities which is put forward by the Government of Pakistan as the reason for non-ratification.

⁸ Cyprus.

⁹ RCE 1956, op. cit., p. 149.

¹⁰ These are: 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).

¹¹ Equal remuneration without distinction on the basis of sex is also covered by the 1958 instruments, as the Committee remarked in its 1963 general survey of the instruments concerned. The Committee pointed out that the obligations stemming from Conventions No. 100 and No. 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 for a greater degree of flexibility as regards timing and choice of methods than under Convention No. 100. The Committee drew the attention of the governments concerned 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, Part Three, para. 34, p. 187. Convention No. 111 has been ratified to date by 85 countries.

¹² This Convention revised the above-mentioned Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82).

¹³ Article 10 of the United Nations Declaration on the Elimination of Discrimination Against Women, unanimously adopted in November 1967.

¹⁴ General Assembly Resolution 3010 (XXVII) of 18 December 1972.

¹⁵ Declaration of 10 December 1974 (United Nations press communiqué of 11 December 1974).

¹⁶ It should be added that in November 1973 the Governing Body decided to include the question of equality of opportunity and treatment for women workers on the agenda of the 60th (1975) Session of the Conference for general discussion. A report was prepared to serve as a basis for discussion: Report VIII, *Equality of opportunity and treatment for women workers*.

¹⁷ According to the statistics quoted in Report VIII, *Equality of opportunity and treatment for women workers*, op. cit., Chapter I.

¹⁸ On 10 February 1975 the Council of the European Communities adopted a directive on the approximation of the laws of the member States concerning the application of the principle of equal pay for men and women workers. The directive aims to ensure a harmonious and effective implementation of the principle by giving certain standards of minimum protection (legal protection in particular) general application.

¹⁹ As regards the importance of this educational action, particularly for developing societies, see paragraphs 67, 99, 171-172.

²⁰ When consulting this table it should be borne in mind that, since the request for a report under article 19 was made, four countries have ratified the Convention: Australia, Barbados, Ireland and Jamaica.

²¹ Comments, were received from the following countries: Austria, Brazil, Colombia, Finland, Greece, Italy, Japan and Norway.

CHAPTER I

LEGAL PROVISIONS GIVING GENERAL EFFECT TO THE PRINCIPLE

SECTION 1: CONSTITUTIONAL PROVISIONS

19. Very often countries refer in the information they supply to constitutional provisions as forming the basis for national policy in this respect. However, there are wide divergencies from one country to another. Divergencies as to the terms used and the extent to which they are generally applicable. Divergencies as to the weight carried by these constitutional provisions and the extent to which they are directly enforceable, and as to whether the standards they set are applicable to the public authorities or directly to private individuals.

20. The constitutions of some countries proclaim in general terms the principle that all citizens are equal, using a formula so all-embracing that it may be interpreted as calling for equality between men and women in every respect. Other provisions of this type are supplemented or accompanied by a list of the grounds on account of which equality may not be impaired; one of these grounds may be sex¹, or sex may not be mentioned.² As regards the fields in which constitutional provisions demand respect for the principle of equality, in some cases specific mention is made of matters pertaining to employment and occupation.³ As the Committee of Experts pointed out in its general survey of 1963 on the Discrimination (Employment and Occupation) Convention (No. 111), "when the principle is only stated in general terms, this would not in itself be sufficient to constitute a declaration of a national policy on the specific subject . . ." ⁴, and this is all the more true in the case of equality of remuneration. And in practice most of the countries mentioned have, as will be seen, embodied the principle of equal remuneration in their labour codes (as have many countries in Africa, for instance), or in special laws (as have France and the United States), or have striven to ensure its promotion by the parties to collective agreements (as have Finland, Norway and Switzerland).

21. In many countries, however, the principle of equal remuneration is explicitly stated in the constitution or fundamental law. In Asia, for example, this is the case with India, whose Constitution guarantees "equal pay for equal work". ⁵ The wording of these definitions of the principle varies considerably, diverging to a greater or lesser degree from the definition given in the Convention.

22. In Africa the Constitution of the Congo, recently adopted, uses the same wording as that of India (extending the right to cover equality in respect of social insurance⁶), while that of Somalia embodies the concept of "equal value". ⁷ It should be noted that neither of these two countries has ratified the Convention. In Latin America the principle of equal remuneration is likewise stated in most Constitutions (including those of El Salvador and Venezuela, which have not ratified the Convention). The wording used is fairly similar in most cases. Reference is made in spirit, if not exactly to the letter, to "equal pay for equal work performed under identical

conditions",⁸ though it may not always be specifically stated that equal pay should be understood to mean "without distinction based on sex".⁹ A more detailed analysis of the definitions adopted will be given in the review of the labour legislation or other special legislation, as practically all the countries mentioned have reproduced or enlarged upon the provisions of their constitutions in their legislation. Exceptions are Cuba and Nicaragua, where the constitutional guarantee stands alone. It is to be noted in this connection that while this guarantee is stated in general terms in both constitutions, in Cuba there are two enactments which are more specific as to its scope: one is the decree for the application of article 62 of the Constitution¹⁰, which declares this article to be immediately applicable and specifies that the only exceptions allowed shall be those based on seniority or special qualifications, and the other¹¹, which concerns the employment of women, recognises that women are entitled to equality under the labour law. It is therefore clear that the constitutional principle applies to female workers.

23. In a number of countries in both Western and Eastern Europe particular stress has been laid on the principle of equal remuneration as expressed in their Constitutions. In the USSR, the principle of equal remuneration, which had long been given expression in legislation (since 1917-20), was embodied in the Constitution of 1936. Attention is drawn to two provisions: article 118, which establishes the principle of variations in earnings based on the quality and quantity of work performed and the very comprehensive and fundamental article 122, which lays down the principle of equal rights in all respects and specifies the conditions to be observed in conferring these rights. These provisions, which define the broad lines of an over-all policy for achieving equality between men and women, are extremely detailed and are designed to guarantee to women "rights equal to those of men . . . in all spheres of economic, public, cultural, social and political life. The possibility of guaranteeing all these rights shall be assured through the granting to women of rights equal to those of men in respect of work, remuneration, rest, social insurance and education", etc.

24. The constitutions of most of the other socialist countries contain similar provisions establishing equality of rights in general as well as equal pay for equal work.¹² In some cases, however, they are less explicit, referring simply to equality of rights and conditions for women.¹³

25. In all these countries the provisions of the constitution are re-stated in the labour legislation, while the practical implementation of the principle is facilitated by the wage-fixing methods peculiar to those countries.¹⁴ A study of this legislation and of this method will show clearly how the principle is applied. It remains to be noted here that in these countries infringement of the rights established in their Constitutions is a criminal offence: penal codes such as those of Poland and the USSR prescribe heavy penalties for persons who hinder the exercise of recognised women's rights or who are convicted of discriminatory treatment based on the sex of a worker.

26. Lastly, in two Western European countries—the Federal Republic of Germany and Italy—the general principles embodied in their Constitutions have also had particularly far-reaching effects from a practical standpoint. In the Federal Republic of Germany, article 3 of the Constitution of 1949 merely establishes the principle of equal rights ("Men and women have equal rights. No one shall be prejudiced or favoured on account of his or her sex"), but as long ago as 1955 the Federal Labour Court made it clear that the fundamental principle applied, *inter alia*, to wage fixing. In Italy, article 37 of the Constitution of 1947 accords to "a working woman" the same countries the scope of the principle has been made clear not by laws¹⁵—whether rights and "for equal work, the same remuneration" as a male worker. In both these

labour laws or special laws—but by doctrine and jurisprudence. And this is so in two respects—the definition and interpretation of the principle, and the nature and enforceability of the constitutional provisions.

27. In both these countries there is a wealth of case law to which to refer in this connection. It is obvious from an analysis of this case law what a “broad” interpretation has been given by the German and Italian courts to the principle as worded in Article 119 of the Treaty of Rome. In the view of the German Federal Labour Court, the constitutional principle applies not only to minimum rates as fixed by collective agreement but also to wages above these rates and wages fixed other than by collective agreement. This same Labour Court has further indicated that it was desirable to accept the fact that the terms “equal work” and “work of equal value” had the same meaning and should be used as objective criteria for the purposes of job evaluation. On several occasions German and Italian courts have ruled that reference should be made to the rate of pay for the job, without taking into account criteria such as output, the financial return where a job is performed by a woman or the higher cost entailed for the employer.¹⁶ This interpretation is in line with the recommendation made by the Commission of the European Communities on 20 July 1960 (see further, para. 51).

28. Secondly, doctrine and case law recognised in both countries that the relevant constitutional provisions have binding force. They are deemed to be provisions of positive law. They are binding both on the public authorities and on the parties to collective agreements. They form the basis for a subjective right to equal pay to which a woman may lay claim in the courts. Any clause in a collective agreement which is contradictory to these provisions is void. The manner in which constitutional principles, thus interpreted, are applied will be examined in the part of the survey dealing with collective agreements.

SECTION 2: LEGISLATIVE PROVISIONS

29. Since its general survey of 1956 the Committee has watched with interest the emergence and development on an ever-increasing scale of the desire to legislate to ensure respect for the principle of equal remuneration. Perhaps the most remarkable feature of this trend is the change in the attitude of countries which had taken refuge behind the well-established principle of non-intervention by the public authorities in collective bargaining. For instance, in 1956 the United Kingdom was one of the States which pointed out that “under their system of industrial relations the terms and conditions of employment are primarily determined by voluntary collective agreements between employers and workers, without outside influence”, and that “it would not be appropriate for them to intervene in these negotiations in order to ensure the application of the principle of equal remuneration”.¹⁷ Fourteen years later, the United Kingdom passed an extremely detailed Act on equal remuneration, of which more will be said below.

30. More and more countries have come to consider that the law is one appropriate means of providing general protection. As long ago as 1950 the first report on the subject submitted to the Conference drew attention to the “difficulties” which arise where the principle is applied only to areas where public authorities are empowered to fix salary or wage rates or to intervene in the establishment of conditions of remuneration. Difficulties arising “not only in the form of obstacles to the full utilisation of the powers of public authorities to intervene in determining conditions of remuneration, but also from the confusion that springs from the application of divergent wage policies applied in the various fields of employment”.¹⁸ Similar

arguments were invoked by the commission of inquiry appointed in New Zealand in 1971 to consider how best to give effect to the principle, when it recommended the passing of an Act prohibiting discrimination in pay rates on the basis of sex, laying down the principles to be followed and establishing the rights and obligations of employers and employees. The commission took the view that without legislative direction progress would be "too slow, too uncertain and too disparate". It is also of interest to record the opinion of the said commission concerning the value as an example of the much vaunted implementation of the principle in the public sector: the special Act passed in 1960 to give effect to the principle in the state services, although in force for nearly a decade, had had but a "minimal" flow-on effect in the non-government sector.¹⁹ In accordance with the recommendations of this commission, a special Act was adopted in 1972 in New Zealand to cover the private sector.

31. Another significant example is that of France, whose Government indicated towards the end of the 1960s that the application of the Convention did not give rise to particular difficulty and that it considered the existing machinery to be adequate. Nevertheless, in the early 1970s it was deemed useful to pass a special Act to reinforce the application of the principle.

32. There are many countries with different wage-fixing systems which, like the United Kingdom, New Zealand and France, have thought fit, in accordance with the precept in Paragraph 3 (1) of the Recommendation, to bring about the general application of the principle of equal remuneration "by legal enactment". In some cases special laws have been passed for the purpose. In others provisions have been inserted in the labour legislation to meet the case. There can be no question of undertaking here an exhaustive study of comparative law, case by case, in view of the large number of enactments, the details of which vary widely although in substance they are often quite similar. An attempt may however be made to highlight the principal similarities and divergencies, together with the nature of the trend observed, as concerns three major problems: that of the definition of concepts, that of the scope of the laws, and that of the implementation and enforcement of these provisions—a matter of paramount importance once legislation has been selected as the main means of ensuring equality.

I. The Various Types of Legislation: the Definition of Work of Equal Value

33. The first problem the legislators had to tackle was of course the definition of the principle: what remuneration for what work? It is from this standpoint that the legislative measures taken almost everywhere in the world will be reviewed. Incidentally, use will be made, in the interests of simplification, of a classification based on geographical location, as it is frequent for several countries in the same region to adopt identical or very similar provisions.

34. In 1956 the Committee summed up in these terms the situation as concerns the application of Article 1 of the Convention: "The value of the work is related in the definitions quoted by some reports to its quantity and quality In other cases work of equal value means identical or similar work . . . , the same or comparable work . . . , or equal work taking into account function, hours of work and efficiency."²⁰ In fact the Committee was implicitly acknowledging the confusion which exists between the concepts of "equal work" and "work of equal value"—confusion which usually results in preference being given to the first of these concepts. Since then an attempt has been made in the laws of a number of countries to be clearer and more precise. While many countries still apply the concept of equal work—often under legislation of relatively long date—a trend towards a less restrictive interpretation is discernable in

others, whilst some laws passed more recently adopt the concept of "work of equal value" as stated in the Convention. This is the main point to be borne in mind when reviewing the variety of legislative provisions which have now been adopted by a fairly large number of countries.

Equal remuneration for the "same work" or "equal work"

35. Mention may be made first of all of the provisions which refer to "the same work" or to "equal work", without specifying the criteria to be used or offering any other explanations or guidelines. This is the case with the Labour Act of Iran, which stipulates that for "equal work" the wage must be the same.²¹ It is likewise the case with the Labour Code of Egypt which, without explicitly stating the principle of equal remuneration, provides that all the stipulations governing employment shall be applicable without discrimination to all workers "in the same job".²² The Labour Code of Libya forbids differentiation "if the conditions of work and nature of the work are the same".²³

36. This definition is close to that used in the French-speaking African countries, most of which have reproduced in the new labour codes they adopted in the 1960s upon achieving independence the provision embodied in section 91 of the French Overseas Labour Code: "In equal conditions as regards work, skill and output, the same wage shall be payable to all workers, irrespective of their origin, sex, age and status". This wording is to be found, inter alia, in the codes of the following countries which have ratified the Convention: Cameroon²⁴, Central African Republic²⁵, Chad²⁶, Dahomey²⁷, Gabon²⁸, Guinea²⁹, Ivory Coast³⁰, Madagascar³¹, Mali³², Niger³³, Senegal³⁴, Upper Volta³⁵, Zaire³⁶. In three other African countries³⁷ which have not ratified the Convention the same provision is in force. The Committee has no knowledge of any case law in these countries specifying exactly what is meant by this formula. The interpretation given by the Government of Guinea in one of its reports under article 22 of the Constitution was that "the work must be identical, the skills required must be the same and the output must be the same". This is a narrow interpretation of the principle, and it does seem that this is what the legislators had in mind, at least at the outset, in the countries which have adopted such a wording. The formula appears to have been borrowed from the text used by the French legislature in the orders for the regulation of wages issued in 1945-46.³⁸ And, as experience showed at that time, this insistence on "equal conditions as regards work, skill and output" can be taken as a pretext for paying women lower wages where it is maintained that these conditions are not equal—i.e. that they are doing special jobs which differ from those of men (even if the name is the same), that they are doing work regarded as being easier, or that their output is considered to be lower than that of men.³⁹ Arguments of this kind—conveniently seized upon in order to cut the cost of putting wages in order after the Second World War in a country where women workers represented approximately 30 per cent of the economically active population—do not appear appropriate to conditions in African countries today.

37. As already indicated, many Latin American and Caribbean countries have incorporated in their labour legislation the principle of equal remuneration already proclaimed in their constitutions.⁴⁰ Other countries which have not embodied this principle in their constitutions have included it in their labour codes.⁴¹ As with the constitutional provisions, the terms used in the labour codes are somewhat similar. The standard formula is more or less as follows: for equal work, performed under equal conditions as regards position, output and length of service, there should be equal pay.⁴² Two further details are often added. The first is that no distinction should

be made on the basis of sex (for example, Brazil, Costa Rica, Ecuador, El Salvador, Haiti, Honduras, Mexico, Paraguay and Venezuela). The second is that the work in question is work performed for the same employer or in the same undertaking (Brazil, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico and Panama), and in the case of Brazil in the same locality as well.

38. A definition comparable to those cited above is to be found in Turkey whose Labour Act prohibits distinctions where women perform the same work, in the same undertaking, with equal output.⁴³ In definitions less narrow than those examined up to now this reference to the "same undertaking" or the "same employer" is still to be found. The intention of the legislators appears to have been to set clearly defined bounds for the application of the principle so as to avoid the difficulties associated with a broader comparison of jobs. This desire is undoubtedly perfectly legitimate in itself, but it seems difficult to narrow the framework for the application of the principle without narrowing its scope at the same time. It is a fact that women workers are more heavily concentrated in certain jobs and in certain sectors of activity. If the application of the principle is lowered to the level of the establishment there is a risk that the possibilities for comparison may be limited and that in extreme cases the application of the principle may be confined to jobs performed by both sexes. The Committee has had occasion to draw directly the attention of certain governments to this point. Equal remuneration as understood by the Convention does not relate only to cases where similar work is performed in the same establishment.⁴⁴ Furthermore, in the case of both Turkey and the Latin American countries, the restrictive nature of the definition is heightened by the requirement that output be equal, which is often found in other countries as well. The Committee must emphasise, however, that the criterion of output, while equally legitimate in itself, becomes unacceptable if it results in only women workers being required to show proof of their output or in different age groups being established on the basis of the average output of each sex within a given context.

39. Referring in 1956 to the reports of countries which related the value of work to its quantity and quality, the Committee cited the socialist countries. The provisions in force in those countries at that time have not been modified but merely reproduced in recent enactments. An example is the new Code of the RSFSR, section 77 of which is worded as follows: "The work of . . . workers shall be remunerated according to quantity. It is illegal to pay reduced rates on account of sex . . .".⁴⁵ The same wording is to be found in the codes of the Republics of the Union and of Mongolia.⁴⁶ In the German Democratic Republic⁴⁷ and Romania⁴⁸ the wording is of the type "equal pay for equal work". In the same group of countries other codes are even less explicit, referring for instance simply to equal conditions or the prohibition of discrimination based on sex in employment relationships.⁴⁹ The Labour Code of Poland, however, contains no provisions on the subject. Nevertheless, in that country, as in the other planned-economy socialist countries, it is mainly the centralised wage-fixing machinery which gives full effect to the principle (attention is accordingly drawn to the description of this method, paras. 86 to 89). In Yugoslavia the legal situation is of a special nature. The Basic Act respecting employment relationships of 25 January 1970 has been repealed by the Act of 13 April 1973 respecting the relationships between workers in associative work⁵⁰ "with the exception of certain provisions". The 1973 Act makes no reference to the principle of equal remuneration. In section 42 it merely stipulates that a worker's personal income shall be fixed in conformity with principles and criteria to be laid down in the basic organisation concerned. It is in the legislation of the constituent republics of the federation that the criteria governing the distribution of personal income are laid down, but their practical application may vary according to the

production units and branches of activity concerned. This situation would thus appear to present analogies with the cases where wages are fixed by collective agreements.⁵¹

40. Lastly, it is to be noted that other countries also refer to equal work in terms of quantity and quality. Such countries are Iraq⁵², Republic of Viet-Nam⁵³ and Thailand⁵⁴. In the case of these countries, however, further information is needed concerning the interpretation and application of the provisions in question, and concerning the wage-fixing methods, in order to be clear as to the meaning given to the principle.

The trend towards more flexible definitions

41. In Australia, the question of equal remuneration is dealt with mainly through a system whereby wages are fixed by means of arbitration awards at both the federal and state levels. It will therefore be gone into in detail in the section dealing with this method of wage fixing (see further, paras. 102–106). The legislation does also have a role to play in the application of the principle of equality, but not at the federal level, the Commonwealth Government having always considered that wage fixing was primarily a matter for the Commonwealth Conciliation and Arbitration Commission. At the level of the states, however, with the exception of Victoria (whose government maintains, like the Federal Government, that the question should be resolved by the appropriate tribunals rather than by legislation), the principle of equal remuneration is embodied in legislation—since 1916 in the State of Queensland, since 1958 in New South Wales and since 1968 in South Australia, Western Australia and Tasmania.⁵⁵ In the last four states the principle is formulated and interpreted in a similar manner. It is the concept of equal pay for equal work that has been adopted. The conditions under which it is to be applied are restrictive. It is applicable to work performed under the terms of the same determination or award, but work essentially or usually performed by females is specifically excluded. The laws stipulate that the authority responsible for fixing wages must consider whether women are performing work of the same or a like nature as men. The same work should also be of equal value in the sense that women should be doing the same range and volume of work as men and under the same conditions. The much older Act of Queensland refers to the same work or work producing the same return of profit to the employer.

42. However, a very positive trend has emerged in recent years at state level, parallel to that to be noted in two important decisions handed down by the Federal Conciliation Commission in 1969 and 1972, although not going quite so far.⁵⁶ In Western Australia, for instance, the relevant Act was amended twice to make it more liberal by deleting restrictive interpretative provisions.⁵⁷ And the governments of Queensland and New South Wales have recently expressed their intention of amending their legislation to bring it into line with the definition in the Convention.

43. A further example of a definition of equal work that has been made more flexible is provided by the United States.⁵⁸ At the federal level, the first specific enactment on the subject adopted was the Equal Pay Act of 1963.⁵⁹ Under this Act an employer having employees of both sexes must pay equal wages for equal work. The Act specifies four criteria for equality. Equal skill, effort and responsibility must be required for jobs performed under similar working conditions in the same establishment. Exceptions are permitted; thus, wage differentials based on “any factor other than sex”, such as a seniority system, a merit system or a piece-work system, are not illegal. This restrictive conception of equal work has been given a judicial interpretation which has significantly broadened its scope. The Supreme Court has in fact ruled in a judgement which now forms part of case law that jobs do not have

to be "identical" to be considered as equal, as claimed in the case in question by a glass manufacturing company, but only "substantially equal".⁶⁰ After more than 25 concurring decisions by courts of law (including the Supreme Court), it is now clearly established that differences in job requirements are to be ignored unless the employer can show that they call for substantially greater effort, skill, responsibility or consumption of time, and are of an economic value commensurate with the pay differential. In measuring "effort", in particular, it has been held that account should be taken of the mental effort and nervous tension involved as well as the physical effort, and in consequence the Act has been applied to manufacturing and assembling jobs where the men, but not the women, have performed various handling duties.

44. Another interesting aspect of the American situation in this respect, which will be gone into in greater detail later, is the "duplication" of the Equal Pay Act by the Civil Rights Act of 1964—also a Federal Act. Title VII of the latter Act⁶¹ prohibits any form of discrimination based, inter alia, on sex, in respect of employment in the broadest sense: hiring, training, remuneration, hierarchical position and promotion, dismissal (see further, para. 154).

45. These provisions are duplicated again at the level of the federal states. Equal pay is the subject of specific legislation in 35 states. In 8 other states the matter is covered by fair employment practices Acts of the kind now in force in 40 states. Only 7 states have no legislative provision of either type.⁶² The State Acts on equal pay prohibit the payment of different wages for the same or similar work.

46. Other countries which have likewise had difficulties with the definition of equal work and the criteria for equality have adopted in their laws provisions worded similarly to those of United States law as it stands or as it has been interpreted judicially. This is the case, for instance, with Canada⁶³, where specific legislation on equal remuneration exists at the federal level and at the level of the constituent parts of the State (provinces and territories). These provisions have been incorporated either in human rights legislation (Alberta, British Columbia, Prince Edward Island, Newfoundland, Northwest Territories) or in labour standards legislation (federal jurisdiction and Nova Scotia, Ontario, Saskatchewan, Yukon Territory); two provinces (Manitoba and New Brunswick) have separate equal remuneration Acts, while in Quebec the guarantee is provided implicitly in the 1964 Act on discrimination in employment. The definitions used vary within narrow limits. They range from the same or similar work to substantially the same or similar work, performed in the same establishment or for the same employer. As in the United States, the criteria for equality relate to skill, effort, responsibility and working conditions. The laws are not applicable to work performed exclusively by individuals of the same sex. In a study made in 1970 of action required to bring Canadian legislation into conformity with the Convention, the Canadian Department of Labour acknowledges the non-concurrence between the international definition and the national definitions in these terms: "All jurisdictions appeared to have shied away from adopting the expression 'for work of equal value' used by the Convention. Probably they considered it likely to create difficulties in practical application. Inevitably, however, the more precise definition of the field of application like 'the same work' or 'substantially the same work' has led to a narrowing of the concept itself."⁶⁴ According to the same study, the terms "similar or substantially similar work" (as used in Alberta) or "work of comparable character" (as in the law of Saskatchewan) may come closer to complying with the intent of the Convention, which is approached more closely still by the judicial interpretation given to the Act of Ontario by the Court of Appeal for that state, which ruled in 1970 that to construe "the same work" as meaning "the identical work" was to render completely redundant the subsequent words "the performance

of which requires equal skill, effort and responsibility". "The same work" does not therefore mean "identical work".⁶⁵

47. Neither in Canada nor in the United States are there any provisions in the law concerning the evaluation of jobs. The situation is somewhat different in another case.

Towards the adoption of the Convention's concept of "work of equal value"

48. In the United Kingdom, the Act of 1970⁶⁶ provided for equal remuneration for men and women employed (i) on "like work", i.e. work "of the same or a broadly similar nature"⁶⁷, and (ii) on work rated as equivalent, having been given "an equal value" in a job evaluation study. The comparison is further limited to employees of "the same employer" (or any associated employer) at "the same establishment".⁶⁸ Lastly, where it has been established that a woman ought to be or to have been given equal treatment with a man, and he enjoys or has enjoyed any greater remuneration, the employer is required to show that this advantage "is genuinely due to a material difference (other than the difference of sex) between her case and his".

49. The definition in the British Act appears to be a compromise between a definition of the type given in Article 119 of the Treaty of Rome (meaning, if taken literally, equal remuneration for "the same work"), and a definition of the type given in Article 1 of the Convention. The concept of "work of equal value" presupposes recourse to a method of job evaluation, but in no case does the Act make such job evaluation compulsory.⁶⁹ Only the implementation of the Act⁷⁰ will enable it to be seen how far apart the definitions really are; this will depend in the final instance on the interpretation given by the courts to the expression "work of the same or a broadly similar nature", on the one hand, and on the development of job evaluation schemes on the other.⁷¹ An Act fairly comparable to that of the United Kingdom was passed on 25 June 1974 in Ireland. The definition in the Irish Act has recourse to the same criteria, except that it does not refer explicitly to job evaluation.⁷²

50. Examining the difficulties of applying definitions of the type mentioned above, and rejecting restrictive solutions excluding from the application of the principle work predominantly performed by women, the commission of inquiry set up in New Zealand in 1971 reached the following conclusion: the essential purpose in this respect was not to replace the existing complex basis of wage determination, in which many factors were brought into play, but more simply to ensure that sex was not taken into account in fixing rates of pay⁷³—a conclusion entirely consistent with the provisions of Article 1 of the Convention. The Act passed in 1972, on the recommendation of the commission inquiry, stipulates that "equal pay" means a rate of remuneration for work in which rate there is no element of differentiation . . . based on the sex of the employees".⁷⁴ The Act specifies the criteria to be applied in determining whether there exists an element of differentiation based on sex. In the case of work performed by workers of both sexes, account must be taken of the extent to which the work, performed under the same or substantially similar conditions, calls for the same, or substantially similar, degrees of skill, effort and responsibility. In the case of work which is exclusively or predominantly performed by women, the reference rate must be the rate that would be paid to men 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. The Act applies to rates of pay irrespective of the manner in which they are fixed, i.e. to minimum rates determined by arbitration awards just as much as

rates paid by virtue of individual or collective agreements. It is to be noted that the Act covers part-time and temporary work.⁷⁵

51. Much of the more recent legislation explicitly adopts the concept of work of equal value. Examples are to be found in Africa (Somalia⁷⁶), Asia (Philippines⁷⁷), Latin America (Argentina⁷⁸) and Europe (France⁷⁹, Luxembourg⁸⁰). Information is often still lacking on which to base an appraisal of the extent to which the formulae used are really consistent with the terms of the Convention. The laws of Argentina and the Philippines refer to "work of equal value" without being more explicit. Those of France and Luxembourg guarantee equal remuneration for "the same work or work of equal value", and stipulate in addition that categories and criteria for grading and for vocational training as well as all other bases for calculating remuneration (including job evaluation procedures) must be common to workers of both sexes. In the case of the countries in the European Community, Article 119 of the Treaty of Rome has obviously been taken as the basis for domestic provisions.⁸¹ It is of interest to draw attention to the interpretation given to this article by bodies in the Community. The principle laid down in the Treaty of Rome is that of equal remuneration for "equal work", which, according to the restrictive conception upheld at the outset by the Netherlands Government, limits its application "to occupations and undertakings where men and women have the same activities".⁸² In fact, the interpretation given by the recommendation of 20 July 1960⁸³ and by the resolution adopted by the member States on 30 December 1961⁸⁴ has brought Article 119 much closer to Convention No. 100 in this respect. In point 3 of the resolution the member States refute the restrictive conception in recognising that "any practices of systematic down-grading of women workers shall be incompatible with the principle of equal remuneration when different qualification rules are adopted for men and women or when criteria in job evaluation for the classification of workers are used which are not related to the objective conditions in which the work is done". Even more categorical is the opinion expressed by the Economic and Social Committee on 28 March 1974 with respect to a proposal for a Council Directive dated 14 November 1973.⁸⁵ The Committee proposes that the term "equal work", again used in the Directive, be replaced by "equivalent work", emphasising that Article 119 would be of hardly any importance in practice if it were only to be applied when identical work was done, and pointing out that Convention No. 100, ratified by eight member States⁸⁶, is concerned with equal pay for work of equal value.⁸⁷ It is to be noted that a Bill was tabled in 1974 by the Netherlands Minister of Social Affairs to introduce a general right to equal remuneration, and that this Bill refers to "work of equal or roughly equal value".⁸⁸

II. *Definition of Remuneration*

52. No such definition is given in some laws on equal pay. In Canada, for instance, the laws of Alberta, Quebec and the Northwest Territories are silent on the subject. The same is true of the United Kingdom Act, albeit so detailed in other respects. In the latter case, however, it is clear from the debates in Parliament that the intention of the legislators was to ensure equality of treatment not only in respect of basic wage rates but also in respect of all other benefits, including payments in kind and wage supplements.⁸⁹ The British Act explicitly excludes pensions from its scope, but it is clear from the preparatory discussions on the Act that in the eyes of the legislators pensions formed part of remuneration; they were excluded only because of the complexity of the issue, the Government's intention being to introduce prior to the coming into force of the Equal Pay Act an Act providing safeguards against discrimination based on sex in employer-operated pension schemes.⁹⁰ The Social Security Act of

1973 "goes some way" towards achieving equality, in the opinion of the Commission of the European Communities.⁹¹

53. As for the French-speaking African countries, as a rule no definition of a wage is to be found in their labour codes, taken in conjunction with the provisions on equal pay. However, a study of case law as established by African courts shows clearly that remuneration includes the basic wage and all other employment-related benefits; remuneration thus includes: overtime pay, tips, length-of-service bonuses, travel, transport and distance allowances, bonuses and gratuities if they are a permanent feature and are payable regularly to all employees.⁹² The definition covers benefits both in cash and in kind. In this connection note should be taken of the particular importance attached to payments in kind in African countries, where, while it is the rule that wages should be paid in cash, the law generally provides for board and lodging to be provided in certain circumstances. Benefits in kind do not form part of the wage in Chad. The proportion constituted by payments in kind and wage supplements may vary in size and some cases may even be out of proportion to the basic wage.⁹³ As regards other African countries, the labour codes of Egypt and the Libyan Arab Republic contain a definition of the wage which resembles that evolved by the law courts in the French-speaking African countries: the wage comprises whatever is given to the worker in cash or in kind which may be calculated in terms of the equivalent in money, plus all allowances of any kind (commissions, bonuses, gratuities), including family allowances. In the French-speaking African countries, however, social benefits do not form part of the wage.

54. In Latin American countries, the wage, as defined in their labour codes, comprises, in addition to the usual basic remuneration, all other components (bonuses, gratuities, allowances) paid in cash or in kind as remuneration for work "ordinarily" or "customarily" performed. Such a definition appears to exclude sums paid occasionally, and this is explicitly stated in the Labour Code of Colombia. It is comparable to the requirement in African countries that any system of bonuses or gratuities must be permanent and regular.

55. In the socialist countries with centrally planned economies the wage is composed of the basic remuneration plus various bonuses to take account of differences in output or working conditions. As will be seen from the study of their wage-fixing machinery, the application in these countries of uniform standards for each of these two components guarantees equality of treatment in principle on the whole.

56. As in many of the countries mentioned above, which deal with the question of equal remuneration in their labour codes, the legislation of the Philippines gives a general definition of the wage which comprises remuneration or earnings which may be calculated in terms of the equivalent in money plus a fair and reasonable estimate of the value of board, lodging and other facilities provided by the employer. In all such cases, it may happen that the concept of wages used for establishing equality as between men and women workers is that defined in other connections by the code or by case law or by custom. The definition applied may thus not be quite appropriate, or may be more restrictive, when, as is normally the case in dealing with matters other than the question of equal pay, the definition is based on the concept of a direct wage. That of the Convention concerns remuneration "payable directly or indirectly" by the employer "and arising out of employment". It covers fringe benefits, deriving from but not necessarily measured by the work.

57. In another Asian country—Thailand—on the other hand, a ministerial "announcement" gives a specific definition for use when implementing equal remuner-

ation: the equality must apply to wages in the form of money and commodities, overtime pay and holiday work pay.

58. Another country with a specific definition is New Zealand, whose 1972 Act applies to the basic wage, overtime, bonuses and other special payments, allowances, fees, commission and any other emoluments, whether paid in money or not. This is a broad definition as far as direct remuneration is concerned, but it is insufficiently precise as concerns indirect remuneration or fringe benefits.

59. In Canada, in some cases it is the equal pay legislation which explicitly excludes certain wage components from its scope. Examples are tips and other gratuities under the federal legislation and that of Ontario and the Yukon, or holiday pay under that of Nova Scotia.

60. In the United States the concept of remuneration has been the subject of special explanations and guidelines. The provisions on equal pay apply to wages in the sense of remuneration for work performed, inclusive of overtime pay and most fringe benefits provided by employers (sickness, accident, life insurance and retirement benefits, profit-sharing schemes).⁹⁴

61. In the countries of the European Economic Community, the laws passed recently in France and Luxembourg apply to the components specified in Article 119 of the Treaty of Rome, which are the same as those referred to in the Convention. According to the Commission of the European Communities, this definition, as interpreted by the Court of Justice of the European Communities, excludes statutory social security schemes but not complementary schemes, since these involve an "element of concerted action" with the undertaking of branch of activity which gives their benefits the status of fringe benefits or indirect remuneration.

62. In conclusion, there are two further remarks on this question of the concept on remuneration which appear to be called for. Firstly, it is important that equality of treatment should apply to all the components of direct remuneration which are complementary to or supplementary to the basic wage, whatever their nature. This appears all the more necessary in that such components seem to be assuming greater and greater relative importance in most countries and under most systems of remuneration, and also in that they are often heavily dependent upon the economic situation and upon unilateral decisions by the employer. Secondly, fringe benefits, and in particular pensions, should not give rise to discrimination on the pretext that they are not employment-related benefits paid directly by the employer and therefore analogous to wages. On this point it is worth noting that the Economic and Social Committee of the European Communities expressed its "regret" at the ruling handed down by the European Court of Justice on 25 May 1971 (*Dlle Defrenne v. the State of Belgium*), and recommended the deletion of the stipulation in the Directive on the approximation of the laws concerning the application of the principle of equal pay that social security systems regulated by law were to be excluded from the scope of the equal pay principle.⁹⁵

III. *Scope of Laws*

63. In a number of countries, such as France, Ireland, Israel and the United Kingdom, the laws apply to workers in both the public and private sectors. However, many of the laws examined provide for a certain number of exemptions from the principle, which should be applicable to all categories of workers. In the case of the labour codes of French-speaking African countries and Latin American countries, it may be said to be the rule that their provisions are applicable to all workers in a

position of subordination to persons or bodies corporate which employ them to perform work for remuneration. Exceptions to the rule are generally made in the case of "persons appointed to permanent posts on the establishment of a public administrative service"⁹⁶, employees of central or local government departments and of publicly owned undertakings.⁹⁷ Civil servants are also excluded from the scope of the laws of Ethiopia, Egypt and Libyan Arab Republic, Kuwait and Japan, and the Equal Pay Act of New Zealand. In the latter country there is a special Act to deal with equal pay for civil servants, but this is far from being the case with most other countries, whose civil service regulations give effect to the principle to a varying degree, as we shall see.

64. Other categories are often excluded from the application of the labour laws or of the laws on equal remuneration. They generally include workers in agriculture⁹⁸ or in the traditional sector: domestic servants⁹⁹, homeworkers, employees of small undertakings or family undertakings.¹⁰⁰ Unlike, in most cases, civil servants and employees in the public sector, workers in these sectors are rarely protected by specific provisions regulating their conditions of work. In some developing countries such activities provide the bulk of the employment. More rarely workers in highly skilled professions are excluded, as in Canada (Quebec) and Ecuador.¹⁰¹

65. All these exceptions restrict the scope of the principle as stated in the law, and sometimes to an unquestionably substantial degree. In the case of a principle such as this they are quite unwarranted and the countries concerned should endeavour to eliminate them. In this connection there is one example that is undoubtedly worth citing—that of the extension, in the United States, of the scope of the Federal Equal Pay Act of 1963. In its general survey of 1971 on Convention No. 111, the Committee of Experts referred to this Act, mentioning that it excluded from its coverage numerous jobs in state and local government and in domestic employment and in senior positions.¹⁰² Since then—and the Committee notes these facts with interest—the scope of the Act has been substantially broadened twice. On 1 July 1972 the Federal Act was extended to cover executive, administrative and professional employees, teachers and academic administrative personnel in schools and outside sales employees. The effect of this 1972 amendment was to make the Act applicable to some 15 million managerial employees. And since 1 May 1974 the Act has been applicable to most employees of the Federal and State Governments and in local administration.¹⁰³

IV. Entry into Force, Application and Means of Enforcement of Laws

The gradual application of the principle

66. The first question to be asked here is whether or not the application of the law, and hence the principle of equal remuneration, has been made progressive. Some countries, among which mention may be made of Argentina, France and Luxembourg, have opted for full and immediate application of the principle. Others have chosen to proceed by stages, in accordance with a timetable which varies from one year in Ireland to five years in New Zealand or the United Kingdom. The solution of a delayed, or rather progressive, entry into force is not inconsistent with the ILO instruments, and the Recommendation even explicitly provides for it, as already mentioned. Valid arguments may be put forward in favour of either method, such as clarity and rapidity in the one case and reduced costs and facilities for finding the solutions to problems of adaptation in the other. It is obviously a matter for governments alone to decide which choice is the wisest. It depends on numerous factors such as the size of the existing gap between the wages of men and women workers, the number of

women workers, the way they are distributed among the different sectors or branches, viewed from the standpoint either of their position in relation to any productivity changes that may be introduced or the degree to which they are affected by foreign competition, etc. It is even conceivable for application to be phased in, a few sectors of activity at a time. This solution—envisaged at one time by the New Zealand commission of inquiry—was finally rejected as likely to cause too many upheavals on the labour market. It does not appear to have been adopted elsewhere, at least to the Committee's knowledge. In the light of available information on such systems, it would appear that the progressive application over a period of time might be a realistic, if not the ideal, solution, provided that this period is as short as possible (three to five years seems to be the most generally acceptable period), and provided that deadlines are fixed for the attainment of specific and imperative objectives.¹⁰⁴

Publicity and information

67. While nobody can shelter behind ignorance of the law, it is necessary to give everyone the opportunity to become familiar with the provisions in force. Many countries take steps to give special publicity to the enactments adopted in addition to publishing them in their official gazettes or bulletins. In some countries, such as the United Kingdom and New Zealand, articles have been published in Ministry of Labour periodicals and information leaflets have been distributed. An alternative is to make it compulsory to post up copies of the legal provisions at workplaces and in premises where staff are recruited as provided in the French Act of 1972. Media of this kind are undoubtedly not of much use in developing countries where the bulk of the population is illiterate and in many parts of which it is difficult for a message to be carried further than a few kilometres. Use should be made of modern audio-visual techniques and "mass media". Efforts have certainly been made in this direction.

The report of the Government of Madagascar, for instance, states that programmes are broadcast by radio and information bureaux are at the disposal of workers to acquaint them with their rights in connection with their employment. In Iran, courses are organised by the Labour and Social Security Institute. Under the labour codes of French-speaking African countries, labour inspectors have educational functions to perform: they are expected to give advice and make recommendations to workers with respect to their rights and obligations. Any action by central or local government bodies in developing countries soon finds itself hamstrung by shortages of money and qualified personnel, and the absence or insufficiency of decentralisation. Such action needs to be backed up to a far greater extent than appears to be the case today by the efforts of trade unions or other organisations, or of people who, as members of working parties or local population groups, are permanently in contact with the workers. The extent to which people are ignorant of the law even in countries whose populations are educated and where all kinds of media exist to keep them informed is a gauge of the immensity of the task still facing these countries, not to speak of the developing countries, in this vital field.

Methods of supervision of the application of the principle

68. In the vast majority of countries, the enforcement of the laws on equal pay is a matter for the labour inspection services. In the French-speaking African countries, where the provisions on equal pay form an integral part of the labour codes, the inspectors enforce these provisions as part of their basic task of enforcing the labour legislation. As a rule certain powers are vested in them to enable them to carry out this task: right of access to undertaking, authority to draw up an official report on offences which will be transmitted to the competent judicial authorities with a

view to the imposing of penalties. In other countries where special laws have been passed, labour inspectors sometimes have additional powers vested in them in pursuance of these laws. The New Zealand Act, for instance, specifies the powers conferred upon inspectors in addition to those they have under the Industrial Conciliation and Arbitration Act of 1954: 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 person concerning any such records or concerning the employment of any person. In France, while, as noted in the report of the French Economic and Social Council, the powers conferred upon inspectors by the Act of 1972 appear to fall within the general framework of their competence, in fact this Act "vests in them additional powers inasmuch they extend also to an appreciation of the legality of wage scales".¹⁰⁵ The Decree for the administration of the Act specifies that officials responsible for supervision may insist on being informed of the various factors which enter into the determination of remuneration, and in particular the standards, categories, criteria and other bases for the calculation of remuneration.

69. The task of enforcement may be performed, not by officials, but by bodies appointed for the purpose, such as, in Canada, the "human rights commissions" (Alberta, British Columbia, Newfoundland) or the "women's bureau" (Saskatchewan). Responsibility for enforcement still lies, however, with each provincial Department of Labour, whether the bodies mentioned form part of it or have had their powers delegated to them by it. In socialist countries in Eastern Europe the task of enforcing the labour legislation is shared between governmental bodies and the trade unions.

70. It goes without saying that the role of the labour inspectorate (or any other supervisory body) is of fundamental importance. Experience in the United States has shown that the fact that there was already in existence a staff of compliance officers experienced in minimum wage investigations was a great advantage in quickly setting up procedures for the enforcement of the Federal Act of 1963; more than 95 per cent of equal pay cases are settled without the need for litigation.¹⁰⁶ It is generally acknowledged, however, that in most countries the law enforcement machinery has failings and shortcomings which may vary in seriousness but exist nevertheless. This gives particular cause for concern in the developing countries. But it is equally true of the industrialised countries, as witness the case of France, where the Economic and Social Council, expressing its opinion on the 1972 Act, thought it fitting to express once again "the hope that the strength of the corps of labour inspectors and similar corps will be appreciably increased as soon as possible...".¹⁰⁷ It would seem necessary for a large number of countries to consider the assignment of specially trained inspectors to the task of enforcing the equal pay laws, as is done in Canada in the provinces of Ontario and Saskatchewan, or in Ireland under the Act of 1974. In addition, serious efforts need to be made to ensure that this inspection staff is composed, as far as is possible and equitable, of women.¹⁰⁸

Sanctions

71. As is known, neither the problem of penalties nor that of appeals and enforcement machinery has been tackled in the international instruments. The laws of some countries prescribe penal sanctions (fines and/or imprisonment) for infringement of their provisions: examples are France, Canada, Ireland and New Zealand, as well as Iran, Japan and Turkey, while persons contravening the federal equal pay laws in the United States may be prosecuted. In socialist countries in Eastern Europe any breach of the labour legislation is treated as a criminal offence. In Latin America,

most labour codes prescribe penal sanctions for infringement of any provision (as in Colombia, the Dominican Republic, Ecuador, Nicaragua), without prejudice to any action taken in the civil courts. In Africa such sanctions are prescribed in Ghana, Egypt, Ethiopia and Libyan Arab Republic. In most of the French-speaking African countries, on the other hand, the penal sanctions prescribed by the codes are not directly applicable to the provisions making it compulsory to pay equal wages for equal work.¹⁰⁹ Some of the recent special laws on equal pay likewise pass over this question in silence, such as those of Argentina, Luxembourg or the United Kingdom. The existence of penal sanctions, or indeed of any penalty sufficiently severe to be regarded as a deterrent, should nevertheless be viewed as a particularly effective means of ensuring compliance with the equal pay laws.

Appeals procedures

72. The machinery for implementing these provisions and for the exercise of a right of appeal takes various forms, depending upon the country, its legal system, its customs, etc. In countries guaranteeing application of the principle of equal remuneration through their codified labour legislation, women workers can normally exercise their right of appeal through the general machinery provided for. In brief, the broad features of such machinery are as follows. In the English-speaking African countries these matters are handled on an "occupational" basis; disputes are settled by the trade union or through a grievance procedure established by the employers' and workers' organisations. Most of the French-speaking African countries, on the other hand, have recourse to the "judicial" technique: disputes are referred to the labour courts, which are joint bodies presided over by a professional magistrate; the procedure is free of charge. It will further be noted that there exists in these countries machinery for prior conciliation in the presence of a labour inspector, and similar machinery exists in other African countries such as Kenya and Nigeria. In most of the Latin American countries, women workers are also entitled under the labour codes to initiate proceedings in the labour courts to claim sums due to them; the Panamanian Code further provides that if the principle of equality is violated recourse may be had to a shortened form of procedure. In the USSR, three types of bodies are competent to handle labour disputes in general. They are, in order, the labour disputes boards (composed of an equal number of representatives of the local trade union committee and of the management of the undertaking), the local works or factory trade union committees, and the district people's courts.

73. In countries which have passed special laws, appeals may be made either through machinery set up under these laws or through machinery already in existence if it is considered to be satisfactory. For instance, the possibility of establishing a special authority that had been envisaged in New Zealand was abandoned, as the commission of inquiry considered it preferable that the existing machinery of the Industrial Conciliation and Arbitration Act should be utilised, together with the tripartite Court of Arbitration, owing to its experience in industrial matters.¹¹⁰ Whatever solution is adopted, it is important that it should be possible for the procedure to be set in motion other than by the filing of a complaint by an individual woman worker. In certain provinces of Canada (Alberta, Manitoba, Ontario, Nova Scotia), inquiries may also be undertaken on the initiative of the authority responsible for law enforcement. The labour inspection service or a trade union in New Zealand, the Secretary of State for Employment or an industrial association in the United Kingdom, may initiate recovery proceedings¹¹¹; in Belgium the trade unions are entitled to act even if the women workers concerned do not wish them to do so. Experience with the United States Federal Equal Pay Act shows that women workers

prefer lawsuits to be filed in the name of the Secretary for Labor rather than in their own name. Real progress has been made with the effective implementation of the principle since the civil rights legislation of 1964 was amended in 1972 to give the body responsible for the enforcement of the law genuine powers of prosecution, including the right to initiate proceedings in the federal courts.¹¹²

Protection against measures of reprisal

74. Undoubtedly one of the main reasons why it may be seen that women workers do not take advantage of the avenues of appeal open to them is the fear of reprisals by their employer. Fear of dismissal, for instance, is in the opinion of the Commission of the European Communities a major deterrent which discourages individuals from taking steps to secure respect for the right to equal remuneration.¹¹³ The laws of some countries contain provisions designed to counteract this risk: for example, the Labour Code of Guatemala (section 10) contains a general provision prohibiting reprisals against employees with a view to preventing them from exercising the rights granted to them by the Constitution, the Code or the other labour laws; this provision accordingly applies to the exercise by women workers of their right to equality. The Labour Regulations of Ghana prohibit employers from discharging or otherwise discriminating against any person who has made a complaint or given evidence or assisted in any way in any proceedings concerned with securing the exercise of the right to equal pay. The New Zealand and Irish Acts stipulate that an employer is committing an offence if he dismisses an employee (or, in New Zealand, alters an employee's position in the undertaking to the employee's prejudice) where that employee has made a claim or filed a complaint, the onus of proof that there was no relationship of cause and effect lying with the employer; the Irish Act prescribes the penalty of a fine.

Control of the legality of clauses in individual and collective agreements

75. The conferring upon women workers of a subjective right does not suffice to ensure full implementation of the principle of equal remuneration. Action is also necessary in respect of collective agreements. The need for both forms of action was particularly stressed during the preparatory discussions on the United Kingdom Act of 1970.¹¹⁴ More recently, the Commission of the European Communities clearly stated for its part that without calling in question the autonomy of the social partners, it appeared indispensable to declare null and void any provision in an agreement or contract contrary to the principle of equal remuneration.¹¹⁵ In practice a number of countries have adopted this point of view. The French and Luxembourg Acts provide that any such provision shall be *ipso jure* null and void. In Argentina, while the law likewise declares to be void any provision to the contrary embodied in a collective agreement, it appears to leave outside its scope agreements at the level of the undertaking and individual contracts, which play a major role in Argentina as in many other countries in Latin America and elsewhere.¹¹⁶

76. Such provisions may also be declared null and void in countries where equal pay is regulated by their labour codes, by virtue of the principle that individual contracts or collective agreements may not run counter to the provisions of the labour code or be prejudicial to public order. This is generally the case in both African and Latin American countries, as well as in Eastern European socialist countries. In New Zealand and the United Kingdom, the equal pay laws give the parties or the labour administration the right to refer to a court for amendment any provisions in a contract or agreement which are discriminatory.

¹ For example, Austria, France, India, Japan, Pakistan, Turkey, Republic of Viet-Nam. In the United States, the 27th Amendment to the United States Constitution, adopted in 1972, which lays down that "equality of rights under the law shall not be abridged by the United States or by any State on account of sex . . .", has been ratified by 32 states. It will come into force when it has been ratified by three-fourths of the states (38 states), but will not interfere in private relationships. It should moreover be noted that 12 states in this country have equal rights provisions in their constitutions.

² For example, Iraq, Libyan Arab Republic, Malaysia, Madagascar.

³ For example, Canada, Chad, Colombia, Gabon, Indonesia, Japan, Madagascar, Morocco, Portugal, Rwanda, Senegal, Spain, United States, Zaire. The 1973 Constitution of Bangladesh prohibits discrimination on the ground of sex with regard to access to any educational institution or to any form of public employment; at the same time it allows for the possibility of adopting special measures of protection.

⁴ RCE—General survey of 1963, "Discrimination in respect of employment and occupation", p. 202, paragraph 65.

⁵ Article 39 (d) of the Constitution of India (*Legislative Series (LS)* 1949—Ind. 1).

⁶ Article 17 of the Constitution of 24 June 1973.

⁷ Cf. Peasle: *Constitution of nations*, 3rd Edition, Vol. 1, *Africa*, p. 784.

⁸ Argentina, article 14bis (*LS* 1957—Arg. 2); Costa Rica, article 57, which however deals with minimum wages; Cuba, article 62 of the Constitution of 1940 (*LS* 1940—Cuba 1), ratified by the Revolutionary Government; Guatemala, article 114 (*LS* 1965—Gua. 1); Honduras, article 124 (*La Gaceta*, 17 June 1965); Nicaragua, article 95 (*LS* 1950—Nic. 1); Venezuela, article 87.

⁹ As is specified in the following constitutions: Brazil, article 165 of which prohibits differences in wages based on sex (*LS* 1946—Bra. 3); Ecuador, article 148; Mexico, article 123 (*LS* 1960—Mex. 1, and 1962—Mex. 1); Panama, article 66; El Salvador, article 182.

¹⁰ Decree No. 3185 of 1940 (*LS* 1940—Cuba 1B).

¹¹ Legislative Decree No. 598 of 1954.

¹² Bulgaria, article 72 (*LS* 1947—Bul. 3); Hungary, articles 45–50 (*LS* 1949—Hun. 4); Poland, article 55 of the Constitution of 1952; Romania, articles 17 and 18 (*LS* 1969—Rum. 1). It is the same with the German Democratic Republic (articles 20 to 24 of the Constitution), which has not ratified the Convention.

¹³ Czechoslovakia, articles 20–27; Yugoslavia, article 154.

¹⁴ As regards Yugoslavia, however, see paragraphs 39 and 108.

¹⁵ However, in the Federal Republic of Germany, the Works Constitution Act of 15 January 1972 re-states the constitutional principle in section 75, which reads as follows: "The employer and the works council shall ensure that . . . there is no discrimination against persons on account of their race . . . or sex".

¹⁶ Mention may be made, among other decisions, of that of the Federal Labour Court of the Federal Republic of Germany on 6 April 1955 disallowing as being unconstitutional any reduction in the wages of women workers based on the "economic" value of jobs performed by women to their employer. In Italy, the Supreme Court of Appeal (judgement of 30 August 1960) and the Rome Court of Appeal judgement of 16 June 1967 have both ruled that output cannot serve as a criterion on which to base a difference in remuneration.

¹⁷ RCE, 1956, p. 154.

¹⁸ ILC, 33rd Session, Geneva, 1950, Report V(1), p. 80.

¹⁹ See in this connection: *Equal pay in New Zealand: Report of the Commission of Inquiry*, Wellington, September 1971, pp. 39 and 50.

²⁰ RCE, 1956, p. 150.

²¹ Act of 17 March 1959, section 23 (*LS* 1959—Iran 1).

²² Act No. 91 of 1959, section 130 (*LS* 1959—UAR 1).

²³ Act of 1 May 1970 (*LS* 1970—Libya 1).

²⁴ Section 67 (*LS* 1967—Cam. 1).

²⁵ Act of 2 June 1961, section 96.

²⁶ Section 141 (*LS* 1966—Chad 1).

²⁷ Section 79 (*LS* 1967—Dah. 1).

²⁸ Section 89 (*LS* 1962—Gab. 1).

²⁹ Section 123 (*LS* 1960—Gui. 1).

³⁰ Section 80 (*LS* 1964—I.C. 1).

³¹ Section 56 (*LS* 1960—Mad. 1).

³² Section 85 (LS 1962—Mali 1).

³³ Section 90 (Journal officiel (JO), 25 August 1962).

³⁴ Section 104 (LS 1962—Sen. 2).

³⁵ Section 90 (JO, 18 August 1962).

³⁶ Section 72 (LS 1967—Congo (Kin.) 1).

³⁷ Congo (section 80 of the Code), Burundi (section 65 of the Code), Rwanda (section 82, LS 1967—Rwa. 1).

³⁸ The first of these Orders (11 April 1945) stipulated that "in equal conditions as regards work and output", the minimum wage rates for women should be equal to those for men.

³⁹ See *Droit social*, 1947, pp. 26–30 ("Les salaires féminins"), and Gonidec and Kirsch, *Droit du travail des territoires d'outre-mer*, Paris, 1958, p. 578.

⁴⁰ Brazil, section 461 of the Consolidation of Labour Laws (LS 1943—Bra. 1); Costa Rica, section 167 of the Labour Code; Ecuador, section 78 (LS 1971—Ec. 1); El Salvador, section 119 of the Labour Code (Decree No. 15 of 23 June 1972); Guatemala, section 89 (LS 1961—Gua. 1); Honduras, section 367 of the Labour Code of 1959; Mexico, section 86 of the Federal Labour Act (LS 1969—Mex. 1); Panama, section 10 of the Code of 30 December 1971 (LS 1971—Pan. 1); Venezuela, section 67 of the Labour Act.

⁴¹ This is the case with the following: Colombia, section 144 of the Code of 1950; Dominican Republic, section 186 (LS 1951—Dom. 1); Haiti, section 56 of the Code of 20 October 1961; Paraguay, section 230 (LS 1961—Par. 1).

⁴² In Peru, where no provision exists either in the Constitution or in the Labour Code, it is the Civil Code (section 1572) which guarantees "equal pay without distinction based on sex for equal work".

⁴³ Act No. 1475 of 25 August 1971 (Official Gazette of 1 September 1971, No. 13943).

⁴⁴ Following a statement by the Government of Paraguay to the effect that workers who received wages higher than the minimum rates, or for whom minimum wage rates had not been fixed, were protected only in so far as they worked in one and the same undertaking, the Committee, in its direct request of 1969, requested the Government to consider the adoption of appropriate measures to encourage the objective appraisal of jobs with a view to facilitating the application to all workers of the principle of equal remuneration. In 1970 and 1972, when asking for details as to the interpretation of the principle in Turkey, the Committee pointed out to the Government of that country that the concept utilised by the Convention was that of "work of equal value", and requested it to state how the application of this principle was ensured or promoted on a general basis in the light of the situation in the different branches of industry or sectors of the economy within a given locality or region. The Government replied that the principle is applied, in the meaning of the Convention, by means of objective appraisal of jobs, widely encouraged and applied at industry level.

⁴⁵ Act of 9 December 1971 (LS 1971—USSR 1).

⁴⁶ Section 78 of the new Code of 1973.

⁴⁷ Code of 1961 as amended by the Act of 23 November 1966 (*Gesetzblatt I*, No. 15, p. 125).

⁴⁸ Act No. 10 of 23 November 1972 (LS 1972—Rum. 1).

⁴⁹ For example, in Czechoslovakia and in Hungary.

⁵⁰ LS 1973—Yug. 1.

⁵¹ See Chapter III below.

⁵² Act No. 151 of 16 July 1970 (LS 1970—Iraq 1), which in addition stipulates that remuneration must be proportionate to the effort made.

⁵³ Section 114 of the Labour Code.

⁵⁴ Announcement of the Ministry of the Interior dated 16 August 1972 respecting labour protection (LS 1972—Thai. 2).

⁵⁵ The Tasmanian Act does not apply to public administration.

⁵⁶ In effect, as will be described in more detail later, this Commission, which had adopted in 1969 the definitions and interpretations used in the State Acts, in 1972 declared itself in favour of the application of the concept of work of equal value, as defined in the Convention.

⁵⁷ Act No. 62 of 1971, deleting section 146 of that State's Industrial Arbitration Act, which declared its provisions on equal pay to be non-applicable to work essentially or usually performed by women; Act No. 108 of 1973, deleting section 144(2) of the same Act, which indicated to the competent authority the factors to be taken into consideration in determining whether work was equal.

⁵⁸ For the United States, in addition to the Government's report, the following basic documentation has been used: M. L. Simchak, "Equal pay in the United States", *International Labour Review*

(ILR), June 1971, pp. 541–557; OECD: *The role of women in the economy*, document (73)13/07 of 23 November 1973, pp. 146 ff.; ILO: Meeting of Experts on Equality of Remuneration, Geneva, 1974, Working Paper No. 2: “Equal pay programmes in Canada and the United States”, by Sylva Gelber.

⁵⁹ United States Code, Title 29, section 206, *United States statutes at large*, 1963, Vol. 77, p. 56.

⁶⁰ *Schultz v. Wheaton Glass Company*, 421 F. 2d 259 (1970). The consequence of this interpretation was the retroactive payment of nearly \$1 million to some 2,000 women employees of the company in question (cf. aforementioned OECD report, p. 147, para. 314). It is to be noted that the text of the original Equal Pay Bill introduced in the 87th Congress in 1961 provided for equal pay for “comparable” work, but during the legislative process it was amended so as to require equal pay for “equal” work (cf. *ILR*, June 1971, op. cit., p. 550).

⁶¹ United States Code, Title 42, section 2,000 (e), *United States statutes at large*, 1964, Vol. 78, p. 253.

⁶² Alabama, Louisiana, Mississippi, North Carolina, Tennessee, Texas, Virginia.

⁶³ The same type of wording is to be found in the Labour Regulations of Ghana (Legislative Instrument 632 of 15 September 1969, *LS* 1969—Ghana 1B, C), which prohibit pay differentials for identical “or substantially identical” work, such work being defined as work where “the job, duties or services are identical or substantially identical”, while in Israel, where the 1973 amendment to section 1 of Act No. 5724 of 1964 on equal remuneration has caused the Act to become applicable to work which is “substantially the same”, instead of “the same”, as formerly.

⁶⁴ *Equal remuneration for work of equal value*, International Labour Affairs Branch, Canada Department of Labour, 1970, p. 7.

⁶⁵ The Court applied the Act to work the performance of which did not require “identical” skill, effort and responsibility, but required equal skill, effort and responsibility and was performed under similar working conditions. The case concerned a claim by nurses for equal pay (*The Municipality of Metropolitan Toronto vs. Howard and Warren*, Ontario Court of Appeal, 16 April 1970).

⁶⁶ Act of 29 May 1970 (*LS* 1970—UK 1). An Act dated 17 December 1970 contains identical provisions applicable to Northern Ireland.

⁶⁷ The Act specifies that the differences (if any) between the work done by men and by women must not be “of practical importance in relation to terms and conditions of employment”, and that in comparing the work regard must be had to “the frequency or otherwise with which any such differences occur in practice as well as to the nature and extent of the differences”.

⁶⁸ However, the comparison may be extended to another establishment in Great Britain if both belong to the same employer (or an associated employer) and if “common terms and conditions of employment are observed” at both establishments—an expression which it is left to the courts to interpret.

⁶⁹ The concept as expressed in the Convention was not retained as the sole concept because the Government considered that the application of the Convention implied a general evaluation of all jobs—an operation which it deemed to be too costly and technically impracticable (see *Parliamentary debates—Commons*, 1969–70, Vol. 895, p. 915).

⁷⁰ The Act comes fully into force on 29 December 1975.

⁷¹ It should further be noted that the provisions of the Act calling for the removal from collective agreements of provision for rates of pay applicable only to women, or at the least for the bringing of such rates up to the lowest level payable to men, will extend the application of the Act beyond the criterion of the same work. Nevertheless, the trade unions have pointed out that the problem remains for women who are entitled to equal pay but cannot claim it because their jobs have not been evaluated. These questions are of major importance in view of the number of women employed in “women only” jobs (the number of women in occupations where men are less than 10 per cent of the workforce has been estimated at 2.5 million: *Equal pay*, Office of Manpower Economics, 1972, para. 27).

⁷² It may be considered that section 3 (c) of the Act implicitly refers to it. This section provides, in effect, that two persons shall be regarded as employed on like work 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. The wording of the Act is nevertheless somewhat ambiguous.

⁷³ See *Equal pay in New Zealand*, op. cit., pp. 18–21.

⁷⁴ Section 2 (1) of the Equal Pay Act, 1972 (*LS* 1972—NZ 1).

⁷⁵ Which is not evident, for example, from the British Act previously examined.

⁷⁶ Law No. 65 of 18 October 1972 (Labour Code), section 65 (*LS* 1972—Som. 1).

⁷⁷ New Labour Code, Presidential Decree No. 442 of 1974, section 133.

⁷⁸ Legislative Decree No. 20392 of 16 May 1973 (*Boletín Oficial*, 29 May 1973, No. 22675, p. 3). It is to be noted that this Act was adopted as a result of direct contacts between the competent national services and a representative of the Director-General of the ILO (see RCE 1974, Report III, Part 4A, p. 167).

⁷⁹ Act No. 72-1143 of 22 December 1972 respecting equal remuneration for men and women (*JO*, 24 December 1972) and the decree of 27 March 1973 for the administration of the Act (*JO*, 29 March 1973).

⁸⁰ Grand Ducal Regulations of 10 July 1974 (*Mémorial*, No. A-56, 22 July 1974).

⁸¹ Moreover, in Belgium, where there is no specific law on equal pay, the Royal Order of 24 October 1967—replaced by the Labour Act of 16 March 1971 (*LS* 1971—Bel. 2), which gives women workers the right to take their case before the courts—referred explicitly to the definition in Article 119.

⁸² For a detailed analysis of Article 119, see: *Le droit de la Communauté économique européenne*, Vol. 7, *Politique sociale*, pp. 14-23 (Institut d'études européennes, Université libre de Bruxelles, 1973).

⁸³ Bulletin of the EEC, 1960, No. 6/7.

⁸⁴ *Ibid.*, 1962, No. 1.

⁸⁵ Proposal for a Council Directive on the approximation of the laws of the member States concerning the application of the principle of equal pay for men and women contained in Article 119 of the EEC Treaty (*Official Journal of the European Communities*, No. C 114, 27 December 1973).

⁸⁶ The ninth Member, Ireland, ratified the Convention on 18 December 1974.

⁸⁷ See *Official Journal of the European Communities*, No. C 88, 25 July 1974. Finally adopted on 10 February 1975, the Directive refers to equal work or work to which an equal value is attributed (*ibid.*, No. L45/19, 19 February 1975).

⁸⁸ Bill of 12 August 1974. See ILO: *Social and Labour Bulletin*, No. 2, December 1974, pp. 70-71. A Bill has been tabled by a Member of Parliament in Belgium which likewise embodies the concept of equal value (*Le Soir*, 25-26 August 1974).

⁸⁹ See *Parliamentary debates, Commons, 1967-70*, Vol. 795.

⁹⁰ See *ibid.*, Vol. 801-1788.

⁹¹ *Report of the Commission to the Council of the European Communities on the application of the principle of equal pay for men and women in Denmark, Ireland and the United Kingdom—situation on 31 December 1973*, SEC (74) 2721 final, Brussels, 17 July 1974, p. 42.

⁹² See J. Grosdidier de Matons: *Droit du travail africain* (Abidjan, 1969), pp. 111-116.

⁹³ This is the case—undoubtedly rather unusual—in Algeria, where, as a consequence of the Act for the freezing of high wages, bonuses, allowances and payments in kind are provided which are frequently equal to or greater than the basic wage in the strict sense of the term.

⁹⁴ See Wage and Hour Division, Equal Employment Opportunity Commission: *Guidelines on discrimination because of sex*, S 1604-9, 37 FR 6836, 5 April 1972.

⁹⁵ See *Official Journal of the European Communities*, 26. 7. 1974, op. cit. The Council of the European Communities has followed the Economic and Social Committee.

⁹⁶ Example in Africa: Labour Code of Mauritania.

⁹⁷ Examples in Latin America: Labour Codes of Honduras and Paraguay.

⁹⁸ In Latin America it is rare for labour codes to apply to agriculture and stockbreeding. In the United States the state laws often exclude agricultural workers, who are likewise exempted in Ethiopia, Libyan Arab Republic and Iran, as are tenant farmers in the Philippines.

⁹⁹ For example, Canada (British Columbia, Nova Scotia, Northwest Territories, Quebec), Egypt, Ethiopia, Libyan Arab Republic, Iran, Philippines and Thailand, state laws in the United States.

¹⁰⁰ For example, Philippines for homeworkers, United Republic of Cameroon, Canada (Quebec, Saskatchewan) and Iran for employees of small undertakings and family undertakings.

¹⁰¹ In Quebec, the Act which prohibits discrimination in employment does not apply to persons holding managerial or supervisory positions. In Ecuador, Decree No. 855 of 15 June 1971 (*LS* 1971—Ec. 1A, B) excluded from the scope of the new Code a series of workers in highly skilled professions (persons discharging managerial or administrative duties, occupations presupposing university studies, chief accountants, professional laboratory staff, draughtsmen and teachers).

¹⁰² And by the end of 1973 the Act was applicable in the United States to 63 million salaried employees, or approximately 82 per cent of all employees in this category. See Meeting of Experts on Equality of Remuneration, Working Paper No. 2, op. cit., p. 5.

¹⁰³ Only a few categories are not yet protected, mainly employees of certain small services or retail trade establishments.

¹⁰⁴ Even by stages, the implementation of equal remuneration does not always proceed smoothly, as shown by experience in the European Community, where the Recommendation of 20 July 1960 prescribed a time limit of three years. During the period of introduction setbacks may occur. For instance, in the United Kingdom, where the Act of 1970 authorised the Government to make an order providing for partial application of the Act as from 31 December 1973 (women's rates being raised to 90 per cent of men's rates), in view of the inflationary economic situation the Government did not consider it feasible to take such a step.

¹⁰⁵ See *JO*, 14 November 1972, p. 817.

¹⁰⁶ OECD, Manpower and Social Affairs Committee: *The role of women in the economy—National report: the United States*, op. cit., pp. 146–147.

¹⁰⁷ *JO*, 14 November 1972, p. 808.

¹⁰⁸ It is interesting to note that in most of the French-speaking African countries there are a certain number of women in the inspection or supervisory corps. In Mali they represent nearly half the inspection staff. See *Information sur les conditions générales de travail*, No. 16, D.21, 1972, p. 44 of the discussions.

¹⁰⁹ However, penal sanctions may be imposed indirectly through the supervision exercised by inspectors in respect of collective agreements with a possibility of extension and the provisions of minimum wage regulations.

¹¹⁰ See the report of the New Zealand commission of inquiry, op cit., p. 43.

¹¹¹ Some laws provide that women workers may claim wages in arrears for periods of up to two or three years (examples: Ireland, United Kingdom, United States).

¹¹² See in this connection *Working Paper No. 2 prepared for the ILO Meeting of Experts on Equality of Remuneration*, op. cit., p. 6. Spectacular successes have been achieved, such as, for instance, the ordering of the American Telephone and Telegraph Company to pay 38 million dollars.

¹¹³ *Exposé des motifs de la proposition de directive du Conseil* (EC.COM(73) 1927 final, Brussels, 14 November 1973). Article 5 of the Directive invites member States to take the necessary measures to prevent any dismissal which might be construed as an employer's reaction to a complaint at the level of the undertaking.

¹¹⁴ See Peter Paterson and Michael Armstrong: *An employers' guide to equal pay* (London, 1972), pp. 28–40.

¹¹⁵ Proposed Council Directive, p. 3 of French text.

¹¹⁶ But the Contract of Employment Act of 20 September 1974, which ensures the application of the equal pay principle, supplements, in Argentina, the Equal Pay Act.

CHAPTER II

APPLICATION OF THE PRINCIPLE IN RATES OF REMUNERATION “SUBJECT TO STATUTORY REGULATION OR PUBLIC CONTROL”

SECTION 1: APPLICATION OF THE PRINCIPLE IN INDUSTRIES AND UNDERTAKINGS OPERATED UNDER PUBLIC OWNERSHIP OR CONTROL

77. In most countries in the world state intervention is on the increase in more and more activities. The outcome of this development has been a significant increase in public employment not only in the industrialised countries but also in developing ones “where increases in public service personnel are considerable—sometimes even spectacular”.¹ This can be demonstrated by a few figures: in Sweden the number of persons employed by state and local authorities has increased by close to 70 per cent while the labour force in the private sector remains more or less constant; approximately two-thirds of those employed in the administrative services are women.² At the other end of the GNP-per capita scale, in Africa, the public authorities are by far the largest single group of employers: the State may employ between 25 and 75 per cent of all wage earners, and in some countries, such as Mauritania or Ghana, 70 per cent of women in wage-earning employment may work in the public services.³ This predominant position of the State in the field of employment means that the State’s wages policy comes to have a strong influence—a dominating influence⁴—on the private sector. This does not mean, however, that the State is not in any way restricted in its ability to introduce the principle; there are budgetary constraints, the development of collective bargaining in some countries, and the need to balance competition between the private and the public sector. Obviously, however, the State must set an example as the “model” employer and must pursue a policy that can serve as a pattern. This is assuredly the reason why Recommendation No. 90 cites, as a first measure to implement the Convention, the application of equal remuneration in all occupations in which “rates of remuneration are subject to statutory regulation or public control”. The principal themes to be discussed are the application of the principle in the public service, in public undertakings and in public works contracts. A separate section will be devoted to the discussion of the role of special wage-fixing schemes in the countries with a centrally planned economy where almost all wage earners are employed in the socialist sector.

Equality of Remuneration in the Public Service

78. Most countries have special rules governing the conditions of work of public servants. Public service Acts do not usually make any distinction between men and women workers. This can be verified in countries of Africa as well as in the countries of Latin America, Europe, etc. In the United Kingdom, for example, *de facto* equality was achieved in 1961, i.e. almost a decade before the adoption of the Equal Pay Act. It is not difficult to establish that in almost every country public administration is the

most equitable sector in this respect, the one where wage differentials based on sex are "traditionally . . . least frequent".⁵ The system of remuneration in the public services largely explains this state of things, or in any event has greatly facilitated it. The standard pattern is as follows⁶: the salary proper depends on the public servant's category, grade and step; it corresponds to a rate or an index number whose magnitude is generally fixed by regulations. The most common system for fixing a basic salary is to multiply the basic gross rate by the index number. Generally speaking each post starts with a minimum salary, rising to a maximum, the basic minimum being not lower than the statutory minimum wage applicable in each country.⁷ The salary systems are closely linked with the public service structures, which are based on the classification of public servants into groups according to the level and nature of qualifications required. The salary corresponds to a position and not to the provision of a specific services. In general there is an official scale fixing the rates applicable to public servants in different grades. Although obviously "depersonalised" and although based as often as not on job classifications in which sex plays no part, these remuneration systems, none the less, are not proof against the emergence of discrimination. 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. In the Swiss administration, for example, the classification of posts did not prevent the relatively lower classification of equivalent jobs when they were performed by women "for reasons of social policy".⁸ In this connection it should be pointed out that the ratification of Convention No. 111 by Switzerland before its ratification of Convention No. 100 resulted in the elimination of these "sub-classes".⁹ In Norway, where Convention No. 100 was ratified in 1959 and where the principle was therefore supposed to be applied in the government service, it has recently been acknowledged that there were some occupational fields in which women predominated and in which remuneration was lower; a commission was set up recently to evaluate the remuneration of the public service jobs which are usually performed by women.¹⁰ Sometimes, as in the Sudan, the Government has fixed special scales for jobs which are considered as "feminine" by virtue of a memorandum which stipulates, however, that for other jobs the same wage scales should be fixed.¹¹ Furthermore, the practice of having separate rates for certain jobs which are considered as essentially feminine, such as those of shorthand-typists, telephonists, telex operators or punch card operators, was condemned by the ILO's Joint Committee on the Public Service in 1970.¹² More recently the report of the Commission of the European Communities indicated that in Ireland wage scales in the public service and teaching vary with marital status and sex.¹³

79. Direct discrimination, i.e. differentials based on sex, seems, however, to be the exception to the general rule in the public service. What is no doubt commoner is the practice of underclassification or discrimination in employment and promotion. As a general rule, however, the principle of equal remuneration is fairly adequately applied in this sector both in the countries which have ratified the Convention (in which case they must "ensure" its application) and in those which have not. Nevertheless, what has been stated above might lead one to think that the mere fact that regulations and wage-fixing machinery make no distinction on the grounds of sex does not necessarily mean that there is genuine equality in the public services. There is no doubt at all that it would be better if the principle of equal remuneration were to be enshrined in the texts governing the employment of public servants. As has been shown there are some special Acts concerning equal remuneration which are applicable to public servants but there are others, including labour legislation, whose scope often excludes them. In actual fact, the public service texts in most countries specifically refer to the principle.

80. In Japan, for example, discrimination on the grounds of sex has long been expressly prohibited in both the national and local public services.¹⁴ The principle of equal remuneration properly speaking is included in the legislation of a number of countries. In Iceland women employed in the administration have been legally entitled to equal remuneration for the "same work" since 1954.¹⁵ In the Latin American countries there are some specific provisions concerning the wages of state employees which prohibit any difference in wages on grounds of sex and which ensure the application of the constitutional principle of equal remuneration for equal work; examples of these provisions can be found in relatively old texts¹⁶ as well as in much more recent ones.¹⁷ In some of the countries which have adopted public service legislation prescribing equal remuneration and, subsequently, general legislation on equal remuneration, a comparison reveals that there has without doubt been an improvement in definitions of equal work and equal pay. Thus the idea of equal remuneration for "identical services" or for "equal work" in the public service Acts in Luxembourg¹⁸ and the Philippines¹⁹ has given way to the idea of equal pay for work of "equal value" in these countries' Acts of 1974, discussed above. New Zealand adopted an Act respecting equal pay in the public service in 1960 but in contrast with the 1972 Act it only applies to the basic wage.²⁰ This particular case provides an opportunity for fixing attention once more upon the need for a careful definition of remuneration. The application of the New Zealand Act has left the door open for discrimination on grounds of sex in the payment of bonuses in the public service, the post office and the railways. The Government recognises that these provisions do not comply with Article 1 of the Convention and present an obstacle to the ratification of the Convention.²¹ A systematic examination of the various elements of remuneration in some other countries would probably reveal hitherto concealed forms of discrimination because of the "proliferation of allowances" observed in the public service in all countries, creating various inequalities "which are not justified by differences in qualifications, output or special experience".²²

Equality of Remuneration in Public Undertakings

81. For many years now—the Committee referred to it in its 1956 general survey—the reports of a number of countries have indicated that the principle of equal remuneration is generally applied in the industries and undertakings operated under public ownership or state control or under a system of self-management. Such was the case, for example, in Austria, Chile, France, Japan, Turkey, Uruguay and Yugoslavia. This principle was applied "on an appreciable scale" in Canada, Norway and the United Kingdom.²³ Its application has since been made general either by legislation (in Canada and the United Kingdom) or collective agreements (Norway). In Italy the Committee noted in 1962 the elimination of distinct wage rates for work performed by women in state undertakings.²⁴ In Colombia, as had already been mentioned, the Act concerning public servants' wages prohibits any differences in wages on grounds of sex and applies to all public undertakings and public works. In Mali a State Companies and Undertakings Staff Statute stipulating that no distinction must be made between the sexes was adopted in 1972.²⁵ In other countries workers in commercial or industrial public undertakings are protected, albeit in a limited manner, by the application of specific provisions concerning minimum wages in public undertakings (Egypt²⁶) or of general minimum wage provisions (Syrian Arab Republic).

82. Generally speaking, information on the application of the principle in the industrial and commercial public sector is distinctly inadequate. Most of the time for the purpose of drawing up reports this sector is considered as comprising only the public sector in the strict sense of the public service and information only covers this.

It is vital for the Committee to have detailed and systematic information on the current position in this sector, particularly in the light of its growing importance in many market economies. It could happen, for example, that nationalised industries might encounter difficulties in applying the principle of equal remuneration, particularly when these industries do not have a total monopoly and have to compete against national (or international) private employers who are not bound to a strict application of the principle. The Royal Commission on Equal Pay in the United Kingdom gave its attention to this question as long ago as the end of the Second World War and it considered that no government "even in general sympathy with the claim of a rule of equal pay, would feel able to take the initiative in introducing such a rule forthwith in its own industrial establishment".²⁷ With the 1970 Act equality is imposed on the public industrial sector at the same time indeed as on the private sector and in the same progression.

Equality of Remuneration in Public Works Contracts

83. Recommendation No. 90 (Paragraph 2(c)) provides that application of equal remuneration should also be "ensured" in work executed under the terms of public contracts. Governments may, when drawing up public contracts for the carrying out of public works or the supply of commodities or services, exert a not inconsiderable influence on the conditions of remuneration of a great many workers since the employment sector covered by private undertakings carrying out such contracts is often very large.²⁸ One of the most interesting examples of countries in which specific provisions have been adopted with a view to direct action in this field is the United States. Executive Order No. 11246 of 24 September 1965 was amended in 1968 to prohibit discrimination on grounds of sex by all employers (and their subcontractors) with federal contracts and by all contractors (and their sub-contractors) carrying out federally aided construction. The prohibition applies to all aspects of employment. The Order covers every type of employment and category of workers without exception. It contains only one restriction, relating to the minimum size of a federal contract below which the non-discrimination clause is not insisted upon. This minimum (\$10,000) is, however, the one already fixed in the Walsh-Healy Act of 1936 respecting public contracts and providing for compliance with the principle of equality in minimum rates; strictly speaking, it no longer constitutes a restriction nowadays. An agency with over-all responsibility for ensuring the application of the Order has been set up within the US Department of Labor (The Office of Federal Contract Compliance (OFCC)). Where discrimination has been disclosed and it has proved impossible to remedy it by informal means, various sanctions are available.²⁹

84. In Canada, too, it is interesting to note recent advances: in 1973 the federal Government amended the fair wages legislation to include, inter alia, sex and civil status among the prohibited grounds for discrimination in employment when carrying out federal government contracts. Although there is no explicit mention of this, equality of remuneration is one of the conditions of employment covered.³⁰

85. There do not seem to be many examples of similar provisions to the ones just mentioned. In numerous countries the legislation prescribes a fair wage clause in public contracts, "fair wages" being the current rates of remuneration generally fixed by collective agreements or arbitration awards.³¹ In this case, it would also seem to be appropriate to specify that wages for women and men must be equal (for work of equal value) since the situation in question tends to restrict the opportunities for the public authorities to take action concerning equal remuneration if the application of the principle is not already compulsory. The Committee invites the governments to

devote particular attention to the most appropriate means to be adopted for effectively supervising observance of the principle. After all, the keen competition between contractors to win a state contract is definitely not a positive factor for equality of treatment in as much as women run the risk of being considered as forming a cheap "reserve" of labour.

*Equality of Remuneration and Centralised Wage Fixing
in Countries with Planned Economies*

86. The socialist countries with centrally planned economies were quick to establish a legal guarantee of equal wages for men and women. As was stated elsewhere, the principle is enshrined in almost all their constitutions and labour legislation. These countries, however, insist upon the other aspects of the guarantee, i.e. the material or practical one which follows from the principles and methods of wage fixing adopted. It is for this reason that there is some benefit to be derived from a discussion at this juncture of the broad outlines of the way in which wages in a planned economy are determined and fixed.

87. The philosophy behind remuneration is based on the principle of "to each according to the work performed".³² The criteria for payment of wage differentials are the quantity and quality of the work done—in the same branch of activity wages vary with skills, the complexity of the job and the conditions under which it is done as well as the importance of the activity in the national economy as organised by the central plan. These principles are implemented through official wage-regulating machinery in which the State controls not only the ultimate decision but also the preparation of the proposals themselves. Participation of the trade unions gives them a part to play in this machinery, however, and one which gathered strength towards the end of the 1960s as a result of changes in planning methods and systems of remuneration.

88. The practical application of the principle of equal remuneration has been facilitated by the adoption of uniform principles and procedures for fixing basic remuneration. This is determined—in Poland, for example—according to the "tariffs system". Tasks and jobs are classified and a list is then drawn up of "fixed tariffs for classifications" which establishes an ascending scale of specialisations. In the Polish productive sector there are 9 of these grades for manual workers, and 13 for non-manual workers; each grade has its own wage rate. Each undertaking in the USSR has a special classification board composed of management and union representatives with procedures governed by objective standards laid down by the central authorities. Basic wage scales are largely standardised for the various branches of industry and the central ministries and authorities ensure that classifications are co-ordinated. In Hungary the Government has established a national wage scale for the purpose of abolishing basic wage inequalities between workers in different occupations performing jobs of equal value.

89. The basic wage is the main element in the worker's remuneration. In Poland, for example, the authorities are currently aiming to make the basic wage account for 80 per cent of the total wage. As in the market economies, however, wages also include other elements: allowances, bonuses, gratuities, etc. Furthermore, as with the basic remuneration these wage supplements or extras are fixed according to uniform standards which disregard sex. When wages are geared to output account is taken of the particular potentialities and abilities of women when the required norms are fixed, e.g. in Poland. It is nevertheless recognised in Poland that women do not, or rarely, receive some wage supplements including, for example: resettlement allowances, extra

payment for work that is urgent or arduous or in excess of the statutory hours of work, or supplements related to the importance accorded to some branches of industry (mining, heavy industry, building). "The absence of these elements from the wages of women as well as the fact that in practice women are employed on less-skilled jobs (on average from one to one-and-a-half categories in the wage scale) mean that the average wages of women in the national economy as a whole are lower than those of men."³³ The Hungarian Government found the same thing in 1973 when it investigated the practical implementation of the principle of equal remuneration; the factors involved are of the "objective" type: skill, seniority, working conditions. The Hungarian Government's report adds that when wages were increased in 1973, opportunities for larger increases were granted to industrial undertakings normally employing women. These examples bring out clearly the difficulty of achieving wage equality even in cases where the public authorities have the means of securing implementation of the principle of equal pay for work of equal value. This is a problem which exists in all countries whatever their economic or social system.³⁴

SECTION 2: APPLICATION OF THE PRINCIPLE IN OTHER SECTORS: INTERVENTION IN WAGE-FIXING SYSTEMS BY VIRTUE OF PUBLIC REGULATIONS

I. Direct State Intervention: Minimum Wage Fixing

90. Governments must ensure the application of the principle of equal remuneration as regard minimum wage rates determined under public authority. In the majority of countries the public authorities in fact intervene directly in the determination of wages by fixing "floor" rates. There are many types of wage-fixing machinery in use.³⁵ Minimum wages are sometimes fixed by statute (in Canada, the Philippines or the United States, for example). In the centrally planned economies, as indicated in the general discussion on wages, minimum wages are determined and fixed by the executive. In a large number of countries they are fixed by the government following consideration of recommendations made by central, local or regional wages boards (for example, in Latin America: Brazil, Colombia, Costa Rica; in Africa: Congo, Dahomey, Guinea, Madagascar, Mali, Mauritania; in Europe: France, the wages councils or joint labour committees in the United Kingdom, Ireland and, in Africa, Kenya, Malawi). In some instances, government approval or recommendations made by ad hoc agencies is a formality, and in Argentina or the United Kingdom (for agricultural wages), for example, these agencies are empowered to fix the rates themselves³⁶; they are tripartite in composition. Employers' and workers' organisations are generally consulted on, or participate in, the preparation of decisions. In the majority of countries having wage-fixing bodies, employers' and workers' organisations are represented on these bodies and sometimes form the majority of the membership (as for example in the French-speaking African countries).

91. The scope of minimum wage provisions varies. Roughly speaking, there are two types of legislation. The first establishes a uniform national minimum wage system (for example: socialist countries with a centrally planned economy, New Zealand, Spain) or other systems providing general coverage (e.g. Argentina, Brazil, France, numerous African countries). The second type of legislation is designed to establish minimum rates for certain categories of workers (e.g. India, the United States) and frequently for occupations, trades or industries requiring special coverage and in which there is no wage-fixing machinery (the system in the United Kingdom and a great many African—for example Ghana, Tanzania—and Asian—for example

Burma, Sri Lanka—countries). In practice the distinction between the two main types of systems is less clearly marked since legislation affording general coverage makes provision for exemptions. In general, countries often provide for exemption of certain industries, trades or occupations such as those of public servants, domestic servants and agricultural workers in Latin America. In some instances categories of persons exempted are, generally speaking, those whose productivity is not expected to be high, and sometimes lower minimum rates are fixed for exempt categories; as will be seen later, these exemptions may affect persons engaged in "light" work and, either expressly or indirectly, women.

Minimum wages and the principle of equal remuneration in developing countries

92. Minimum wage rates exert a real influence on the relationship between men's and women's wages, especially when basic wage rates of unskilled workers tend to settle around the statutory minimum rate (and often below). This is the position in the developing countries, where the majority of women in employment belong to the unskilled worker category. When fixing minimum wages the public authorities are obliged, naturally, to respect the principle of equal remuneration where it is recognised by the Constitution or legislation. Thus in Latin America, the principle seems to be generally respected without, however, being specifically mentioned in every law and regulation covering minimum wages. It is sometimes stipulated, on the other hand, that the minimum wage must be fixed regardless of sex and must be the same for equal work. This is the case, for example, with provisions in force in Honduras³⁷ and Peru³⁸ as well as those of two countries which have not ratified the Convention, El Salvador³⁹ and Venezuela.⁴⁰ The Venezuelan decree, however, also fixes separate rates (lower for women) in the agricultural sector. It is perhaps considered that in agriculture women do not perform "work of equal value" "in identical circumstances" according to the terms of the provisions providing for equality.

93. In Peru the Decree prescribing rules for minimum wage fixing introduces an exception to the principle of equality enshrined therein: lower minimum wages may be fixed for women whose output is "obviously lower" than that of men.⁴¹ Although it did not find any evidence of discrimination in the successive minimum wage orders and noted that in 1965 the National Minimum Wage Commission of Peru had reached the decision not to establish a distinction on the grounds of sex, the Committee has repeatedly requested the Government to amend this Decree. It clearly pointed out in 1973 "... the legislation should not permit the fixing of different rates for different categories of workers except on the basis of objective criteria, taken for instance from the classification of jobs on the basis of the work involved, but never by reference to the sex of the worker".⁴²

94. Similarly, the Committee has repeatedly pointed out to the Government of India since 1965⁴³ that it was difficult to assume the general existence of differences of work or output as between men and women that might justify different minimum wage rates for wide sectors of activity. In the early 1960s, in fact, differentials ranging from 20 to 30 per cent could be observed in some states of the Union in tea plantations, tobacco factories or agriculture in general, whereas other States fixed uniform rates for the same jobs. Some of the state governments and central government ministries had expressed the fear that an upward revision of women's wages might have an adverse affect on the level of employment; in any case, equalisation should in their view be phased in. The Committee, whilst recognising the need to take into account the "complexity of the problem" and the "progressive manner in which decisions have to be taken" none the less still recalled its fundamental position: the fixing of different

classes or categories of wages should be based on objective criteria without consideration of the sex of the worker. In this case, relating to India, it added a further remark that if there was a desire to take the worker's output into account for fixing his wages this could be done by methods that are applicable to workers in general by fixing piece-rates or bonuses for output, for example (without any distinction on the grounds of sex). Progress has been achieved and differences eliminated in the plantations, agriculture and a number of industries. Such progress will doubtless be speeded up by the recent decision of the State Labour Ministers Conference pledging the states governments to eliminate all inequalities in wages between men and women.⁴⁴

95. In the French-speaking African countries the Labour Codes generally guarantee equal remuneration, and in almost all of them the governments have fixed a minimum wage of general application, the rates of which make no distinction on the grounds of a worker's sex. It should be noted, however, that in Rwanda⁴⁵ a difference is made in the minimum rates applicable to common labourers according to whether the work is classed as "heavy" or "light", and the possible detrimental effects of this for women workers would need to be evaluated. A similar differential was made in Zaire up to 1963; lower minimum rates were fixed for light jobs which were designed as jobs requiring little physical effort and calling for no special skills or previous training.⁴⁶ The situation in the North African countries which have not inherited the system of the French Overseas Labour Code is somewhat different because of this. Nevertheless, the recent Ordinance establishing a national minimum wage in Algeria guarantees its application to either sex in agricultural or non-agricultural, public, private or self-managed sectors.⁴⁷ In Morocco, however, the minimum wage for women in agriculture was fixed in 1973⁴⁸ at 80 per cent of the minimum guaranteed wage, and in some industries (catering and textiles in particular) the rates for women are the subject of special arrangements. The Government indicates, however, that steps are being taken towards equality.⁴⁹

96. In a State in the Indian Ocean—Mauritius, a country whose sole crop is sugar—there is a considerable disparity between minimum rates for men and women agricultural workers in the sugar industry. In 1973 the rates for women were almost 50 per cent lower than those for men.⁵⁰ In its report submitted under article 19 (Mauritius has not ratified the Convention) the Government appears to justify this discrimination on the grounds of differences in output and by the "heavy" nature of some jobs. The job definitions given in the legislation do not appear to be such as to provide grounds for such differences in the fixing of differential rates on grounds of sex and is without doubt contrary to the principle of equality as defined in the Convention.

97. In East Africa the regulations in one country which has not ratified the Convention (Kenya) provide for a reduction of around 10 per cent for women workers in unskilled jobs.⁵¹ There is also a "geographical" differential: the minimum wage for women towards 1970 was 20 per cent lower than that for men in urban areas, whereas there was parity in the rural zones.⁵² In cases of this sort the rural migration which is rife in the developing countries would not be accompanied by an upgrading of the economic position of women. Other African countries which have ratified the Convention apply the principle in a "negative" way in that the minimum wage provisions they have adopted make no distinction on the grounds of sex.⁵³ Malawi, in particular, is an interesting example since it demonstrates yet again the difficulties of applying the principle of prohibition where there is an assumption that women are classified in a lower wage category because of their supposedly lower output. Decrees fixing minimum rates established a system whereby the piece rates varied, being fixed in forms of a daily task of a different total content for men and women to allow for their respective average capabilities.⁵⁴ The Committee, while recognising

that differences in remuneration correspond to differences in the value of the work done, noted that these distinctions were only made in respect of women workers and that they ran contrary to the requirements of the Convention that wages must be fixed "without regard to sex".

Minimum wages and the principle of equal remuneration in developed countries

98. The position regarding the application of the principle in the industrialised countries generally gives rise to fewer problems. In 1961 the member States of the European Economic Community declared in their Resolution of 30 December that "the application of the minimum compulsory wage to men alone or the fixing of this wage at different levels for men and women" was discriminatory. In its report to the Council on the situation on 31 December 1972 the Commission of the European Communities points out that "in this regard the principle is fully respected: there is no indication of any discrimination in the three countries in which a minimum legal wage is laid down by legislation, that is, France, Luxembourg and the Netherlands".⁵⁵ However, legislation in these last two countries provides for the possibility of temporary exemptions.⁵⁶ In two of the new member countries of the Community, Ireland and the United Kingdom, the situation is different as neither has a national minimum wage. In Ireland minimum rates are fixed in the non-agricultural sector by decisions of joint labour committees which are given the force of law by administrative decisions. Approximately 15,000 men and 27,000 women are covered by these awards. In 1973 differential rates were fixed for men and women in certain sectors such as haberdashery, packing, the hotel trade and hairdressing.⁵⁷ The implementation of the 1974 Act should lead to the rapid elimination of these inequalities. In the United Kingdom it is estimated that there are approximately 2.3-2.5 million women covered by wages council awards (there are around 8.5 million women in employment). The 1970 Act, which is in force for five years, has resulted in significant progress; in 1972 most women's rates were 80 per cent of men's and in 1974 they were 90 per cent; according to the Government, discrimination should be completely eliminated by the end of 1975. It may be recalled that in the United States the 1963 Act was incorporated into the Fair Labor Standards Act and its scope corresponded (before it was eventually extended) to the jobs covered by minimum wage legislation, whereas in Canada there are no longer any minimum wage Acts or provisions laying down separate rates, the last existing distinction having been abolished in 1974.⁵⁸ The Commission of Inquiry into Equal Pay in New Zealand recommended that the separate and lower rate laid down for women in the Minimum Wage Act of 1955 should be abolished. The 1945 Act was intended for workers not covered by arbitration awards and it applies mainly to domestic workers. A phase-in period was not considered necessary since the minimum wage rate for men was generally below the award rates for unskilled women workers.⁵⁹ This recommendation was not followed in the 1974 Minimum Wage Decree, which again fixed separate rates (it will be recalled that the 1972 Equal Pay Act is not due to be fully applied until 1977).

Problems of application

99. Finally, machinery for supervising the application of minimum wage provisions is similar to that discussed in respect of special legislation. Firstly, it involves "publication": decisions fixing current rates are published in the official gazettes in all countries and, in most countries, special obligations are laid down for employers in this respect (in particular, the requirement to post up information on the work premises). The labour inspectorate must supervise the application of Acts and regulations. Generally speaking, in countries of Africa, Latin America and Asia, in the

industrial countries as well as those with centrally planned economies, minimum wage provisions are matters of public policy and infringements are punishable by fines or imprisonment. The usual appeals procedures are of course open to the workers. There are problems involved in implementing the provisions in all countries, but they are naturally more numerous and more acute in developing countries, where there is often a greater gap between law and practice. Whether it be in Africa, Asia or Latin America, the information is consistent: the minimum wage is not generally applied and the observed gaps have been mainly in the industries, trades and occupations in which women predominate. The reasons for this are familiar: inadequacy of the supervision and implementation services, ignorance of workers about their rights and how to assert them, and fear of reprisals on the part of the employer resulting in the loss of jobs which are hard to come by because of endemic unemployment. The reasons are obviously the result of underdevelopment and hence an intrinsic part of it. These countries must no doubt seek specific solutions by way of measures specially adapted to the particular features and types and jobs of workers to be protected.

II. Indirect State Intervention in the Determination of Earnings

100. Although the wage rate in the market economies is largely a result of bargaining and the forces at work between the two parties (employers and workers), it sometimes happens that the State, exercising its prerogatives as the public authority, intervenes indirectly in the operation. Generally speaking, it can do this in three ways: by setting up legal machinery for settling disputes and giving it powers of intervention (arbitration system); by regulating and modifying the scope of collective bargaining (extension process); and thirdly, even more indirectly, the State may offer recommendations to the parties possibly based in some instances on studies and proposals made by ad hoc state agencies. The aim of this section will be to examine briefly how the first of these methods is used; the other two types of action will be discussed in the section devoted to the application of the principle in collective agreements.

Wage fixing through arbitration

101. In a great many countries the authorities keep the determination of wages under supervision through a compulsory arbitration procedure for settling disputes. This system is widely practised in Africa (Ghana, Ethiopia, Tanzania and some French-speaking countries) and in Latin America, where it is frequently the Minister of Labour who makes the final decision on appeals. Some Asian countries (for example, Singapore and, to a certain extent, India and Malaysia) also use this system. However, it is particularly identified with Australia and New Zealand, where consequently it is not to be wondered at that the question of equal pay should be closely linked with it, although to a lesser extent in New Zealand. For this reason, the New Zealand system will not be gone into further except to recall that emphasis there has been placed on legislation and that the practical application of equal pay is effected through the negotiation and arbitration machinery provided for by law.

102. The Australian system of wage determination is extremely complex, and only a broad outline can be given of the main features needed to understand the problem. Unlike the state governments, the federal Government has no power to legislate directly in the field of wages but, like the States, it can set up machinery for settling disputes. At the federal level, arbitration functions are carried out by the Commonwealth Conciliation and Arbitration Commission and legal interpretation and im-

plementation functions by the Commonwealth Industrial Court. Commonwealth Arbitration Commission awards cover approximately 40 per cent of the workforce⁶⁰, and, generally speaking, this body has the highest authority. In the State of Victoria the wages councils are obliged by law to take the Commonwealth Commission's awards into consideration. The Commission determines the level and structure of wages as a whole and its awards fix a guaranteed minimum wage which is a type of floor rate below which the wage rates for no category of work may fall. The awards also fix basic rates by category for particular groups of workers. Since 1966 the Commonwealth Arbitration Commission has used the concept of a "total wage" abolishing the former division between the "basic wage", which used to form the basis for award rates, and the "margins" which were added to the basic rate.⁶¹ The State of Victoria has also adopted this type of total wage.

103. Three important decisions by the Commonwealth Arbitration Commission are indicative of the change which has occurred in theory and practice over the past few years in respect of women's wages. In the first equal pay case, which was judged in 1969, the Commission decided that federal arbitration awards should incorporate the principles adopted in the laws of most of the States.⁶² Consequently this 1969 decision contains the same narrow concept of equal pay that was enforced in the States. The Commonwealth Commission set out nine principles on the subject. Without going into details it can be stated that in substance the decision referred to the concept of equal pay for equal work performed, not workers within the same undertaking, but by workers covered by the same award. In particular, the ninth principle provided that equal pay would not apply where the work was "essentially or usually" performed by women.⁶³ It is estimated that the 1969 decision has enabled approximately 18 per cent of women in the workforce to receive equal pay.⁶⁴

104. In 1972 the concept of "equal pay for equal work" seemed to the Commonwealth Commission to be too narrow. Considering that it was not enough to amend the earlier decision and that it must set forward a new principle, the Commission deemed that the time had come for adopting the principle of "equal pay for work of equal value", which it defines as meaning that wage rates should be fixed without regard to the sex of the worker. Three stages spread over a total period of 2½ years are laid down for achieving complete equality by the middle of 1975. The change is not a formal one: the 1972 decision extends the application of the principle to 16 of the 18 most important awards covering women's unemployment, whereas only 10 were affected by the 1969 ruling.⁶⁵

105. The third important decision was made in 1974, when the Commonwealth Arbitration Commission ruled that the principle of equal pay should be applied to the guaranteed minimum wage and that, as a result, the rate for women should be raised from 85 per cent of the men's rate in mid-1974 to 100 per cent by mid-1975. This is a new course in comparison with the one adopted in its 1972 decision. In this decision, indeed, the Commonwealth Commission, after adopting the principle of equality as set forth in Convention No. 100, had rejected the request of the trade unions concerning the payment of equal minimum wage rates by invoking the "family" component in men's wages. This family consideration in wages is linked, as has been stated above, to the history of wage determination in Australia. The preparatory report for the adoption of Convention No. 100 quoted a 1948 decision using this argument to justify the inequality between the rates for men and women.⁶⁶ Even in 1950 the report challenged the argument by referring, in general, to the development of social security and the transfer of responsibility for ensuring the family wage from the employer to society. In 1974 the Commonwealth Commission finally recognised

that the minimum wage should not be varied in relation to the family responsibilities of the worker concerned and that the care of family needs was a task for governments.⁶⁷

106. The final outcome of the development of equal pay in Australia has been the ratification of Convention No. 100 in December 1974. The obstacle often raised beforehand was that wage fixing was not the Government's responsibility but that of the Commonwealth Arbitration Commission. This obstacle has now been removed, as have others in other countries based on the non-intervention of governments in the determination of wages.

¹ ILO: Joint Committee on the Public Service, First Session, Geneva, 1970, Report I, p. 4.

² Sources: *The status of women in Sweden*, Report to the United Nations, 1968, p. 91, and G. Högberg: "Recent trends in collective bargaining in Sweden" in *ILR*, March 1973, p. 227.

³ Sources: ILO, Reports II (pp. 108-109) and III (pp. 32 and 51). Second African Regional Conference, Addis Ababa, 1964, and M. Greenstreet: "Employment of women in Ghana", in *ILR*, February 1971, p. 122.

⁴ J. Lecaillon: *Les salaires*, op. cit., p. 80.

⁵ As noted by the ILO Joint Committee on the Public Service in 1970. See Report I, op. cit., p. 54.

⁶ As described in the above-mentioned report, pp. 41 et seq.

⁷ In Panama public servants are entitled, irrespective of sex, to a minimum wage laid down by the Labour Code. Legislative Decree No. 1 of 26 April 1965 fixed a wage comprising these characteristics for officials working for the government, independent institutions and local bodies. In France an automatic reference is provided by the national minimum wage.

⁸ See H. Thalmann-Antenen: "Equal pay; the position of Switzerland", in *ILR*, October 1971, p. 278.

⁹ It should be noted moreover that following its ratification in 1972 of Convention No. 100 the federal Government of Switzerland sent a circular (dated 13 September 1973) to the governments of the cantons recommending that they apply the principle of equal pay to public servants and employees of the cantonal governments. The federal Government noted in its 1971 report to the Federal Assembly on the 54th Session of the International Labour Conference that the cantons had declared in favour of ratification and therefore it could be presumed that there were no longer any major differences.

¹⁰ By Royal Decree of 1 December 1972, at the request of the Equal Pay Council, proceedings were also started in the municipality of Oslo following a declaration by the City Council adopted on 12 April 1973 recognising the existence of certain wage disparities and demanding their elimination during the coming round of collective bargaining.

¹¹ Circular of 25 August 1968 of the Government Establishment Bureau. The Committee recalled in a direct request to the Government in 1973 that all considerations relating to the sex of the worker should be excluded from the criteria and elements taken into account when determining rates of remuneration. Following similar action by the Committee, new criteria for classifying labourers employed by the State in Italy were established by the Act of 18 March 1968 (s. 23) and the decrees made thereunder (Nos. 1078 and 1079) on 28 December 1970 fixed new salaries, wages and remuneration for employees of the State without differentiation on the grounds of sex.

¹² Report I, op. cit., p. 60.

¹³ Marriage differential are generally applied to administrative, executive and clerical grades. Married men get higher pay. The minimum starting wages are generally identical but on 1 January 1973 the maximum wage for unmarried men and women was approximately 80 per cent of that for married men. Sex differentials apply to technical grades (engineers, architects, draughtsmen); and the differences in wages are similar. These inequalities based on marital status or sex have been reduced by 17.5 per cent with effect from 1 June 1973 and the national agreement of 1974 provides for additional progress by eliminating 33 1/3 per cent of these inequalities. Source: *Report of the Commission to the Council of the European Communities on the application of the principle of equal pay for men and women in Denmark, Ireland and the United Kingdom—situation on 31 December 1973*. See SEC (74) 2721 final, Brussels, 17 July 1974, pp. 11-40.

¹⁴ National Public Services Act No. 120 of 21 October 1947 (s. 27) and Local Public Services Act No. 261 of 13 December 1950 (s. 13).

¹⁵ Act No. 38 of 14 April 1954 (s. 3).

¹⁶ Colombia, s. 5 of Act No. 6 of 19 February 1945 (*LS* 1945—Col. 1) which deals with wages of persons employed by the State, public enterprises and on public work.

¹⁷ Guatemala, s. 1 of Decree No. 11 of 1973 to regulate wages in the public service.

¹⁸ Act of 22 June 1963 (s. 2(3)) fixing the rules governing the salaries of public servants.

¹⁹ Public Service Act (Act No. 2660 of 1959, s. 22).

²⁰ According to the explanation given by the Government, the Act itself uses, without defining, the terms "salary or wages" (s. 3, Act No. 117 of 1960, Government Service Equal Pay Act 1960).

²¹ See nevertheless above, para. 5.

²² ILO: Report I of the Joint Committee on the Public Service, op. cit., p. 44. In Denmark the wage differential concerning the allowance paid to the head of a family, which was paid to married men but not to married women in the public service, has been abolished since 1958 (Act of 7 June 1958).

²³ RCE 1956, Report III, Part IV, p. 151.

²⁴ Act No. 143 of 1962, RCE 1965, observation respecting Italy.

²⁵ Ordinance No. 55 of 19 December 1972.

²⁶ Act No. 102 of 1962 established uniform minimum wage rates in public industrial undertakings.

²⁷ Royal Commission on Equal Pay, 1944-46, *Report* (Cmnd. 6937). p. 171.

²⁸ In the United States, for example, a third of the total workforce is employed in undertakings which are contracting partners of the Government. Cf. *Report of the US Commission on Civil Rights*, 1970, p. 133.

²⁹ See M. L. Simchak, op. cit., p. 555. The OFCC (or the contracting agency with its approval) can: (a) start proceedings to cancel the contract or debar the contractor from future federal government contracts; (b) publish the names of non-complying contractors or unions; (c) recommend that the Justice Department file suit to enforce the contractor's obligations or that appropriate proceedings be commenced under Title VII of the Civil Rights Act of 1964.

³⁰ See the amendments of 29 May 1973 (i) to the regulations governing fair wages and hours of work; (ii) to the decree concerning the rule of fair wages (*Canada Gazette*, Part II, Vol. 107, No. 11, 13/6/1973 (SOR/DORS/73-278 and SI/TR/73-40)).

³¹ It might be useful to refer here to the Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84). Article 2 of the Convention stipulates that the contract to which it refers should include clauses ensuring to the workers concerned wages and other conditions which are not less favourable than those established for work of the same character by collective agreement, arbitration award or national laws and regulations.

³² Apart from government reports the information used here is based on two reports presented to the ILO's Meeting of Experts on Equal Pay held in Geneva in May 1964: Y. N. Korshunova: "Equal pay in the USSR" (Working Paper No. 4) and J. Grabania: "Equal rights as regards remuneration for Polish women" (Working Paper No. 3).

³³ Working Paper No. 3, ILO Meeting of Experts on Equal Pay, op. cit., p. 11.

³⁴ See below, Chapter IV.

³⁵ For information on minimum wage-fixing machinery, see Report VII(1) to the 53rd (1969) Session of the International Labour Conference, Chapter IV in particular.

³⁶ Minimum wages may also be fixed by arbitration award and be extended to cover workers and employers additional to those in respect of whom the award originally applied. Government intervention may also have the effect of giving a minimum rate fixed by collective agreement the force of law by means of the procedure for extending collective agreements (on these questions see further, paras. 101-106 and paras. 110 and 112).

³⁷ S. 8 of the Act of 30 April 1971.

³⁸ S. 14 of Legislative Decree No. 14222 of 23 October 1962.

³⁹ S. 4 of Executive Decree No. 55 of 16 July 1973.

⁴⁰ S. 137 of the Labour Act Regulation (Decree No. 1563—*Gazeta Oficial*, 31 December 1973, No. 1631).

⁴¹ S. 15 of the Legislative Decree of 23 October 1962.

⁴² RCE 1973, p. 153. The Government has indicated that this provision had not received practical application and will be soon modified.

⁴³ See the observations addressed to this country by the Committee in 1965, 1967, 1969, 1971 and 1973.

⁴⁴ State Labour Ministers Conference, New Delhi, 27-28 September 1974. The Conference fixed a very brief phasing-in period for this (three to six months).

⁴⁵ Country which has not ratified the Convention.

⁴⁶ The distinction has been abolished by Ordinance No. 275 of 26 November 1963.

⁴⁷ S. 1 of the Ordinance of 16 January 1974.

⁴⁸ Dahir of 24 April 1973 to promulgate the Act of the same date concerning remuneration of agricultural workers, which stipulates that no discrimination may be made between one worker and another.

⁴⁹ The 1973 Dahir raised the rate for women from 75 to 80 per cent of the men's rate. The rates of statutory increases in the minimum wage are identical for both sexes in all sectors of activity.

⁵⁰ Monthly rates for labourers were fixed at 234 rupees for men and 133.90 rupees for women (The Sugar Industry (Agricultural Workers) Wages Regulation Order, 1973).

⁵¹ Regulation of Wages and Conditions of Employment Act (Cap. 229).

⁵² Seminar on Wages and Employee Welfare in Enterprises in Africa, Yaoundé, 12-24 October 1970 (ILO, Geneva (*Information sur les conditions générales de travail*, No. 16—Document D.21-1972, p. 29 of the Annex)).

⁵³ For example, Egypt (Act No. 102 of 1962 concerning minimum wages in industrial undertakings in the private sector), Malawi (Ordinance concerning the regulation of minimum wages and conditions of employment, amended by Act No. 19 of 1965) and Sierra Leone (Regulation of Wages and Industrial Relations Act, No. 18 of 1971).

⁵⁴ A similar system is also found, however, in other countries such as Poland (see para. 89).

⁵⁵ *Report of the Commission to the Council of the European Communities on the application of the principle of equal pay for men and women: situation on 31 December 1972*, (Brussels, 18 July 1973), p. 15.

⁵⁶ The Act of 12 March 1973 of Luxembourg to reform the minimum social wage established in 1963 retained the possibility of exemptions for employers who considered that the situation in their undertaking does not allow them to apply the minimum rates; scarcely any use seems to have been made of this option. In the Netherlands temporary exemptions were authorised by the Government mainly in jobs which are "not mixed". The Government indicates that at the end of July 1974 an exemption was granted to 140 women workers aged between 15 and 23 (the Act of 27 November 1968 fixing the minimum wage does not apply to persons aged under 23). The Decree of 29 November 1973 (LS 1973—N.1) introduced a system of minimum wages for workers between the ages of 15 and 23 with gradually decreasing abatements).

⁵⁷ See *Report of the Commission to the Council of the European Communities on the application of the principle of equality in Denmark, Ireland and the United Kingdom*, op. cit., p. 21.

⁵⁸ Separate decisions for men and women were abolished in the Province of Prince Edward Island from 1 January 1974.

⁵⁹ See *Equal pay in New Zealand*, op. cit., p. 49.

⁶⁰ State Commission awards cover almost 50 per cent of the workforce, the 10 per cent, approximately, not covered consist of domestic workers and non-unionised groups.

⁶¹ The basic wage was that applied irrespective of the type of work done. It had long been fixed more on a family basis than on economic considerations. Margins were fixed according to coefficients reflecting skills, responsibility, etc., and were, therefore, rates based on the nature of the job.

⁶² See the section dealing with legislative recognition of the principle (paras. 41-42).

⁶³ It is this concept which was upheld by the New Zealand employers during discussions held in 1971 preparatory to the New Zealand Act. See *Equal pay in New Zealand*, op. cit., p. 20.

⁶⁴ Cf. Nieuwenhuysen: "Equal Pay in Australia", in *International Journal of Social Economics*, Vol. 1, No. 1, 1974, p. 101.

⁶⁵ For the reasons given above, the 1972 award is applied in the State of Victoria. It should be noted that an identical decision both as to principle and as to the phasing-in period was adopted in 1973 by the New South Wales Industrial Commission. Commissions in the other states do not appear to have made such rulings as yet under the general powers conferred on them by law. As has already been pointed out, according to all but one of the states' legislation, awards and agreements must include provisions respecting equal pay; however, as was shown in the section dealing with legislation, the concept of equal pay in these laws is still a very narrow one in spite of the movement towards liberalisation already noted.

⁶⁶ ILC, 33rd Session, 1950, Report V(1), p. 110. It should be noted that in the course of the preparatory work for the Convention an amendment designed to enable the application of the principle to be waived when the wage rates are fixed with reference to family requirements was rejected by the competent committee of the Conference.

⁶⁷ See ILO: *Social and Labour Bulletin*, No. 2/74, pp. 67-68. In 1974 all the states decided to follow the example of the Commonwealth Commission and fix an equal guaranteed minimum wage starting from 1975 (Western Australia alone refusing to fix a timetable).

CHAPTER III

EQUAL REMUNERATION IN COLLECTIVE AGREEMENTS

107. Legislation is not the only method of applying the principle of equal remuneration. Article 2 of Convention No. 100 specifically provides for the application of the principle by means of collective agreements between employers and workers.

108. In point of fact, quite apart from legislative recognition of the principle, collective agreements have an important role to play in a direct and practical way, as was fully recognised during the ILO's Meeting of Experts on Equality of Remuneration in 1974.¹ Naturally, as the experts pointed out, the nature and extent of that role depends on the legal system and the collective bargaining structures of each country. A prime factor is the degree of "coverage" provided by the collective bargaining system and its effectiveness will be inversely proportional to the number of women employed in branches or undertakings not covered by the system. For women workers whose conditions of employment are governed by collective agreements, difficulties could arise first of all out of the "structural" discrimination incorporated into the agreement (scales, grades, classifications) or else out of the disparity between agreement rates, which are minimum rates, and actual rates. Finally, although the terms of collective agreements are in principle freely determined by the parties concerned, examples are not lacking of more or less direct state supervision of the clauses of agreement or of direct or indirect intervention in the bargaining process. This is another important factor to be taken into consideration when discussing the effectiveness of the protection afforded by collective agreements. These briefly are the sorts of questions to be considered.²

Coverage Provided by Collective Agreements

109. The scope of collective agreements varies greatly in extent according to the country, its system of industrial relations, its use of the bargaining procedure, the strength of its trade union movement, etc. In Nordic countries (Denmark, Finland, Norway and Sweden) where there is no general legislation to enforce respect for the principle of equal remuneration, almost all sectors of activity are covered by collective agreements. This does not mean, however, that there is general coverage of the workers; it may not operate for a number of firms, especially the smaller ones, within a particular branch of activity. In Finland, for example, the Committee has been able to point out that according to the Government's report a considerable proportion of the workforce was not covered. In these countries, however, the collective bargaining structure is highly centralised and in practice conditions of work for non-unionised workers are also governed by central agreements. There is still, however, a need to protect workers who are not covered and, in this respect, the Committee has been able to note with interest the adoption of a new Act in Finland respecting contracts of employment which provides equality of treatment for workers not covered by collective agreements.³

110. In the countries belonging to the European Community there has been a positive movement towards improved general coverage since 1968 when the lack of protection for women workers in various categories and regions was still "very frequent".⁴ In 1972 there were still a number of gaps in the Federal Republic of Germany where between 500,000 and 1 million workers (men and women), particularly in handicrafts and services, were not covered; in France (shops, mixed farming and cattle breeding); in Italy (handicrafts, household helps) and in Luxembourg (food and wood sectors). Since 1970 national collective agreements in Ireland have covered the vast majority of workers but in the United Kingdom the conditions of work of 4 million employees, one-third of whom are women, are negotiated on individual basis.⁵ Furthermore it must be noted that in the six original members of the Community the extension procedure for collective agreements enables the effects of an agreement, which at first only bound the contracting organisations, to be extended to all workers and employers in the branch concerned. This procedure is followed in other European countries (Austria and Switzerland, for example). Legislation also provides for extension of collective agreements in French-speaking African countries (where the majority of agreements are of the extendable type). It is also possible in some other countries in Africa (for example, Ghana, Ethiopia and Sierra Leone) and Latin America (Argentina, Brazil, Ecuador, Mexico and Peru). In French-speaking Africa the coverage of collective agreements, although difficult to estimate, was roughly as follows in 1970: the number of workers whose wages were fixed by agreements was very large in the Congo, the Ivory Coast and Senegal and relatively low in the Central African Republic and Madagascar; wage negotiations were not widespread in Zaire and they were non-existent in Burundi and Rwanda; the categories usually excluded are domestic servants and agricultural workers.⁶ In Latin America, there are generally only a small number of workers whose conditions of work are fixed by collective agreement; most wages are fixed unilaterally by the employer.⁷ In the United States and Canada a vast majority of occupations in which women are employed are not covered.⁸

111. To put it more clearly, there are a number of gaps in the coverage of collective agreements. These concern some sectors (small businesses, handicrafts, domestic service) which are more often than not those in which women prefer to work. "This situation must be examined in the light of the difficulty of organising these sectors due to the small number of workers per employer; hence the need for legislation fixing minimum wages and providing opportunities for appeals against discrimination."⁹

The Role of the Authorities

112. Wherever it exists (see Chapter II, section 2) the statutory minimum wage restricts the freedom of the bargaining parties and is made use of by the State as a means of achieving the desired protection. Above the statutory rate, conditions of work are as a rule determined by the parties between themselves. However, in some countries and to varying degrees the State is not devoid of power to influence the terms of collective agreements. Consequently, it has no longer any reason in such circumstances to justify its abstention from applying the principle on the plea that anything over and above the statutory minimum wage is a matter for free negotiation by the parties concerned. Thus, in a recent case, the Committee did not accept an argument of this kind on the particular grounds that there was a requirement in the country concerned that collective agreements be registered and that collective agreements must prescribe methods whereby the principle of equal remuneration for work of equal value shall be applied; it would therefore appear to be completely in line

with the practices of the country, the Committee pointed out, for the government to take steps to promote the application of the principle not only in the fixing of the statutory minimum wage but also its progressive application in agreements.¹⁰ It is precisely the extension procedure which provides the State with the means of keeping an administrative check on the content of collective agreements. The extent of the supervision and hence its actual force vary with the procedures. In some instances respect for the principle of equality is not a condition for giving the extension validity and some discriminatory collective agreements have been given binding force *erga omnes*, e.g. in the Netherlands.¹¹ In many other countries, however, it is the reverse that is the rule. Both Belgium and Switzerland, for example, have laws empowering the authorities to refuse to give binding force *erga omnes* to discriminatory collective agreements in which the principle of equality before the law was not respected.¹² The development in Switzerland of the use of this power is worth noting. When the Federal Council first came to a decision in 1952 as to the matter of equal remuneration it affirmed that the social partners had sole responsibility for wage fixing; in 1960 it agreed that, on the basis of the 1956 Act, it could intervene in extending the scope of collective agreements¹³; in 1971 the Federal Council clearly stated that in view of the ratification of Convention No. 111 its practice was to refuse to extend clauses and agreements containing differential wage rates.¹⁴ In France the relevant legislation specifies what clauses must be included in collective agreements which seem likely to be extended and among these are "the manner of the application of the principle of equal wages for equal work". The Labour Codes in the French-speaking African countries include the same provision. However, the fact that collective agreements generally speaking do no more than restate the provision in the Code without going any further into the particulars of standards of application makes this provision a somewhat formal one. In this respect progress was achieved by the Acts of 13 and 16 July 1971 in France obliging signatories of collective agreements to indicate what basic factors determined occupational classifications and levels of skills and to provide for procedures to settle any difficulties. In Luxembourg, on the other hand, although there is a law stipulating that all collective agreements have to lay down the manner in which the principle is applied, the Government considered that although it had the power to supervise the content of collective agreements, it was not its responsibility to supplement the agreement with references to methods of objective job evaluation. The Committee pointed out to the Government in 1972 that this negative answer did not appear to be an entirely satisfactory application of the Convention since the authorities share responsibility with the social partners for the "manner of the application of the principle". As for the supervision of application and penalties, the statutory nature of a collective agreement likely to be extended entails special consequences in some countries: in France the work inspectors can supervise its application, while penal sanctions are provided for any violation of the wage provisions.

113. Examples can be found where such powers of government intervention in the content of agreements are laid down for standard agreements. In Africa (Mali, for example), supervision of the legality of these agreements is similar to that exercised in most of the other French-speaking countries in respect of agreements that can be extended. In Europe, the Luxembourg Act of 12 June 1965 stipulates, as has just been shown, that all collective agreements have to lay down the manner in which the principle of equal pay is applied. Cases of this type seem to be the exception to the rule that the parties are free to determine the terms of their agreements and rules. This freedom is restricted, however, to compliance with the law and public order and, in this respect, one can only endorse the statement of the Commission of the European Communities that "equal rights for men and women obviously constitute a basic principle of the modern State".¹⁵ Hence the need for empirical supervision of the

legality of the terms of each agreement and the importance of laws providing for the complete nullity of any clause in an agreement contrary to the principle of equal remuneration (see Chapter I, paragraph 76).

114. In countries which traditionally adhere to the principle of non-intervention by the public authorities in collective bargaining, no supervision is exercised by the State over the application of agreements. Some of these countries, however, as was seen in the section just referred to, have adopted general laws establishing the principle of equal remuneration which enable the public authorities to supervise the legality of the content of agreements or which enable the parties to request that the terms be amended. Nevertheless, some countries with kindred legal systems have not enacted legislation in this sphere. The countries in question are mainly Nordic ones (Denmark, Finland, Norway and Sweden) as well as Austria and Switzerland. Except where the collective agreement itself makes provision for equal pay, the guarantees that the principle will be applied are very limited in these countries. The provisions of Convention No. 100, when ratified, as well as those, moreover, of Article 119 of the Treaty of Rome are not generally assumed to be directly applicable to the relationship between individuals.¹⁶

115. However, ratification means that the authorities in these countries are pledged to "promote" the application of the principle in freely negotiated agreements. Indirectly, this induces them to intervene and to play a certain part. For example, after Switzerland had ratified the Convention in 1972, the Federal Council sent a circular, dated 13 September 1973, to the central employers' and workers' associations drawing their attention to the provisions of the ILO Convention and requesting their "active co-operation as regards collective agreements". In Austria, which ratified the Convention in 1953, the Government assumed that respect for the principle was then assured in collective agreements and it did not contemplate any form of intervention. At present, however, the Government has undertaken to scrutinise collective agreements in force and to draw the attention of occupational organisations to any departures from the principle it finds. The Nordic countries have pledged themselves to do even more. The Swedish Government has clearly stated that the public authorities should play an active role in achieving equal status for women. The Government of Finland has stated no less clearly that the implementation of the principle for equality would be uncertain if it were left to "voluntary" machinery and procedures alone and in 1970 the Committee on the Status of Women declared that it was in favour of both legislation and collective agreements being used. The Norwegian Government, for its part, has announced its intention of tabling a Bill respecting equal status for men and women in which equal pay will obviously form a large part. In practical terms, intervention by the authorities in these countries has been organised through the setting up of advisory bodies ¹⁷ of the type mentioned above, whose task is to carry out surveys and research, to organise information campaigns, to put forward practical suggestions and recommendations to act as guidelines for government policy or, by working with the occupational organisations, to encourage them to promote the principle. The occupational organisations are, moreover, represented in these bodies. The activities of the Equal Pay Council in Norway can be used to illustrate the role of these bodies. This Council has repeatedly made requests to occupational organisations when it found evidence of wage inequalities on grounds of sex with a view to inducing them to bring their collective agreements into line with the principle of equality. In addition, it has invited them to carry out systematic studies of job evaluation and to facilitate the access of women to certain jobs. In most of the sectors in which the Council has intervened these recommendations have shown

results, since the organisations took the required corrective or promotional measures to apply them.

116. The public authorities in Nordic countries have therefore performed a far from insignificant role, which has increased since these countries ratified the Convention about 1960 and which is likely to take on growing importance in the future.¹⁸ None the less the principle still holds that the parties remain free and that the question of equal pay has mainly been dealt with through collective bargaining between them. It should be pointed out that in order to do this the highly centralised structure of collective bargaining in these countries has been an asset to them. In Sweden, for example, since the mid-1950s bargaining has regularly been preceded by central agreements which "formally" amounted to recommendations for the guidance of the occupational organisations; "in practice however, the recommendations have had binding effect".¹⁹ Similarly, in Denmark national agreements (usually two-yearly) serve as a point of reference for most collective bargaining. This special feature of the organisation of industrial relations and the lack of general provisions to enforce the provision of equal remuneration must be kept in mind when studying action undertaken by the parties in these countries compared with the progress achieved at the collective agreement level in other countries. Two important problems lie at the heart of this study—the problem of "direct" discrimination resulting from the existence of separate scales for men and women and that of "indirect" or "concealed" discrimination connected with job classification systems or "wage drift".

Inclusion of the Principle in Collective Agreements

117. At the 1974 Meeting on Equality of Remuneration the participants did not agree on the formula that should be adopted in collective agreements; differing views were expressed as to the advisability of or the necessity for including in the agreements special clauses specifically guaranteeing equal remuneration.²⁰ The solutions adopted in practice vary widely. No particular formula is used in agreements in Italy and the principle is rarely mentioned in Denmark.²¹ There is a similar "negative" guarantee in some Latin American countries such as Nicaragua or Peru in agreements signed long ago in the textile industry and in Panama in agreements signed in the clothing manufacturing sector in 1974. In other instances, however, agreements in some of the Latin American countries refer specifically to the principle of equal pay in the same terms as in their labour code; this is the case with agreements concluded in Guatemala between 1966 and 1969 for the liquor industries, an agreement in Colombia in 1970 for the dressmaking industry and all agreements in Honduras including, for example, the one concluded in 1974 in the distilling trade. In the French-speaking African countries collective agreements usually repeat the relevant provisions in the labour codes; in Dahomey, for example, there is the collective agreement for the railways of 14 August 1972 or the national collective agreement for the hotel industries of 29 December 1973, and other examples could be taken from the Central African Republic, Ivory Coast, Madagascar or Upper Volta. Similarly, many agreements in Egypt, including those for industries employing a great many women (agriculture, commerce, transport), indicate that remuneration is equal for men and women. In Canada there are also clauses guaranteeing equal wages but they generally reflect the narrow concept of equality ("equal work", "work that is identical or substantially the same..."). It would obviously be desirable if collective agreements were to adopt the concepts of Convention No. 100 as was done in France, for example, in the collective agreement for metalworking in Paris, the codicil of which specifically refers to the Convention and the definition of equal pay for work of equal value. On the other hand, as the Committee had occasion to point out to the Government of Ghana, the

inclusion in certain agreements of clauses declaring that the provisions applying to the masculine gender shall apply to the feminine gender "except where the masculine gender is specified" or "unless otherwise specified" cannot be considered as complying with Article 1(b) of the Convention. It is clear that such other formulas as "women in so far as they perform a man's job shall receive a man's wage" and variants of this which are found in several collective agreements in Austria²² also ought to be eliminated.

Wage Scales

118. The first requirement for achieving equal remuneration is that differential wage rates for men and women should be abolished. As far as this aspect of open discrimination is concerned the general trend in collective agreements clearly seems to be towards the introduction of single scales.

119. In Nordic countries, firstly, central agreements were concluded at the start of the 1960s in Finland, Norway and Sweden, in which the occupational organisations demonstrated their support for the principle of equal pay. The main objective was to put an end to the practice of fixing separate wage rates in force prior to the ratification of the Convention, by adopting uniform wage determination criteria that had nothing to do with the sex of the worker. Collective agreements were progressively amended: for example, between 1960 and 1965 in Sweden and between 1961 and 1967 in Norway the terms "men" and "women" were suppressed and separate wage scales were combined. Changes have been slower in Denmark; differences in rates were gradually reduced between 1961 and 1971 but the national agreement of 1971 (between the Workers' Confederation (LO) and the Employers' Confederation (DA)) once again fixed different rates for men and women; the new 1973 national agreement, however, provided that all differential scales in industry agreements should be abolished.²³

120. Substantial advances have also been made in a number of other countries. In the six-member Community, for example, the Commission of the European Communities considered that the assessment of the situation on 31 December 1972 was "positive" as far as the elimination of direct discrimination in collective agreements was concerned. The practice of having separate scales was abolished in France, Federal Republic of Germany²⁴, Italy²⁵ and Luxembourg in the latter half of the 1960s. There still seems to be some impediment in Belgium²⁶ and the Netherlands²⁷ although there too it appears to be on the way out. On the face of it, the situation is less favourable, although developing along the right lines, in two of the new Member States of the Community—Ireland and the United Kingdom. In Ireland, although the difference has been "significantly reduced", negotiated wage increases have always been lower for women during the preceding decade and in 1972 the basic rates of unskilled and semi-skilled women workers in several collective agreements once again ranged from 60 per cent to 70 per cent of the basic male rate in the manufacturing industry and from approximately 75 per cent to 85 per cent in the distributive trades²⁸; on the other hand, the 1974 National Wage Agreement gave equal increases to all workers. The application of the Equal Pay Act adopted in 1974 and which comes into force on 31 December 1975 should lead to the parties rapidly bringing their agreements into line with the principle of equality.

121. In the United Kingdom, it will be recalled, the Equal Pay Act was adopted in 1970 but it was due to be phased in over a period of five years. It has therefore played a part in the progress achieved. In 1972, equal remuneration had been, or was expected to be, introduced in a quarter of the national agreements (for manual

workers), but the wage rate for one in nine women workers was below 80 per cent of that for men. In March 1974 two-thirds of the national agreements as against approximately one-seventh in 1972 fixed women's rates at 90 per cent, or more, of the men's rates.²⁹ It would be extremely difficult to make a complete study of the question, particularly, of course, in countries such as Canada, the United States and Japan where bargaining is conducted at the works level. However, on every occasion that the Committee has been made aware of instances of discrimination it has endeavoured to have them eliminated and it has often been able to report progress. This has already been pointed out in respect of Italy and Federal Republic of Germany; reference can also be made, for example, to Austria³⁰, and in Latin America, Guatemala³¹ and Argentina.³² What emerges from the available information is that "direct" discrimination, although probably still fairly widespread in some countries³³, is indeed increasingly tending to disappear.

Job Classifications

122. The elimination of direct discrimination through the introduction of single wage scales is the first requisite for achieving equal remuneration. Although it is indispensable it is not sufficient since indirect discrimination can emerge out of job classification systems. An illustration of this is provided by the Nordic countries. Following the central agreements on equal pay concluded in these countries, new wage scales and categories were negotiated by the parties. Although in some cases, as in Sweden, agreements provide for a smaller number of wage categories than before, others have had the opposite effect: in Finland, for example, the new scale comprised 5 to 12 wage categories instead of the usual 4. According to the Confederation of Finnish Trade Unions this increase in the number of wage categories has resulted in women being placed in the lowest categories; such was the case, for example, in the metalworking industries. The lower classification of women is a common occurrence. In the clothing industry in Norway 70 per cent of the jobs performed by women workers were classified at a lower level than another group in which more than 70 per cent of the jobs were performed by men; in the canning industry almost all (97 per cent) of the women's jobs were classified in the lowest group and here there were no men at all.³⁴

123. As the Committee pointed out to the Norwegian Government in 1973³⁵, the tendency to classify women in low-wage categories seemed to have developed in the manufacturing industry; it was also significant among commercial and office employees as the Norwegian National Union for this category of workers confirmed. Whereas the agreements concluded should normally in practice show an upward adjustment in women's wages, in fact equality with men's wages has not in general been achieved. In jobs performed for the most part by women (as, for example, is the case in the canning industry in Norway mentioned above) and in which therefore there was practically no basis for comparison with the work performed by men, the level of women's wages was not raised after the agreements came into force.³⁶

124. With the exception of Sweden, where the proportion of undertakings using a system of job evaluation almost doubled between 1965 and 1970, it would appear that the use of a method of this sort has been comparatively restricted both in Finland³⁷ and in Norway³⁸, especially in those categories with a high concentration of women workers; in Denmark it is not normal that agreements about job classification should be valid for a whole field of agreements, although this does not exclude that agreements about job classification may have been entered into locally in the firms.³⁹ One of the reasons for this situation is probably to be sought in the guarded attitude of the employers to a method—job evaluation—which they claimed was deficient

and would not ensure an objective classification.⁴⁰ In actual fact experience has often shown that job evaluation did not achieve its primary goal because it was invalidated at the outset by the use of subjective criteria. As the Finnish Committee on Equality has clearly shown⁴¹, where greater prominence and "weight" are given to qualities traditionally considered as "peculiar to men" rather than those which are considered natural to women (the classic example being physical strength as against dexterity) then discrimination is built into the evaluation or classification system.

125. In the Finnish Committee's view it is vital, particularly when men and women continue to be employed in different work, that the "peculiar qualities" of women should be considered on an equal footing with those of men.⁴² To achieve a more objective balance in practice, moreover, greater attention should be paid than seems to have been the case so far to evaluation procedures in the undertaking and more precisely to the composition of the evaluation committees.⁴³ The need for further measures to be adopted so that a new wage system can be established on the basis of an objective analysis of jobs has repeatedly been expressed by the Finnish workers' organisations. In the few sectors in which it had been introduced, it was noted that there had been "an increase in women's wages both in absolute terms and in relative terms".⁴⁴ Similarly, in Norway the Committee recently noted favourable changes in the situation of some women (in the engineering industry and in municipal employment), mainly as a result of a higher classification of certain tasks considered as "typically feminine".⁴⁵ In Finland, as in Norway, the Committee noted not only the growing recognition by the social partners of the need for objective appraisal of jobs on the basis of the work to be performed, but also their desire to find solutions rapidly.⁴⁶

126. A survey of classification systems in the EEC countries highlights a number of difficulties similar to those found in the Nordic countries. Discrimination may first of all arise out of the existence of occupational categories and jobs reserved for women. These exist, for example, in Belgium, the Federal Republic of Germany and Italy. A very favourable development can be noted in this sphere. Between 1955 and 1964 the social partners achieved a single classification in the Federal Republic of Germany. Women-only categories were almost eliminated in Belgium by 1964 except in some sub-sectors of the foodstuffs industry. In Italy the classification system establishing exclusively feminine categories in agriculture is being eliminated.⁴⁷ In this same country the agreement concluded on 16 July 1960 between the confederations of industrial employers' and workers' organisations was the starting point of a development process marked by the elimination of women's classifications and the adoption of a single classification divided first of all into eight categories and later into five or even three in some branches (shoes, clothing, hosiery).⁴⁸ On the other hand, the Commission of the European Communities noted in 1973 that different classifications for men and women were common practice in both Ireland and the United Kingdom.⁴⁹

127. However, as has been noted in Nordic countries, the unification of classifications does not mean that equality of treatment is automatically achieved. The most significant example in this respect is the Federal Republic of Germany where "the separation into "light work" in comparison to "heavy work" categories has made it possible, without referring to women, to insidiously re-establish discrimination".⁵⁰ When defining the two categories physical effort is of course a major criterion in comparison with other requirements (responsibility, dexterity, job skills, etc.) and according to the Confederation of Trade Unions (DGB) companies systematically interpret the category given as "light work" as "physically" light work for women only, which results in the underrating of women. On the other hand, the Confederation

of German Employers' Associations (BDA) maintains that there is no discrimination and that all workers are classified on the basis of the same principles that are applicable to men as well as to women.⁶¹ The Committee noted in 1973 that rates for light work still existed in the collective agreements in many industries but pointed out that the elimination by stages of the existing discrepancies in the chemical and paper industries confirmed that it was possible to change the situation in other branches of industry.⁶² The Federal Government recently initiated action to try to resolve the impasse.⁶³

128. To conclude this survey of the difficulties raised by job classification and evaluation systems negotiated by the parties, it is worth recalling briefly the value of the provisions included in the general laws (in France, Luxembourg, New Zealand and the United Kingdom, for example) prohibiting separate classifications and requiring the application of objective and uniform criteria in job evaluation methods. This can provide women workers with a means of appeal against indirect discrimination.

Low Wages and Wage Drift

129. Even when the method of job classification and evaluation is systematically applied with a view to achieving equalisation of remuneration it is difficult for it to prevent women being under-graded. Apart from this consideration, moreover, one of the main features of the structure of the female workforce in most countries is its concentration in sectors and branches with relatively modest productivity and wages. "It might therefore be thought desirable, in order to improve the wage situation of women with a view to bringing it closer to that of men, to adopt measures destined to raise all the lowest wages, more particularly and as a matter of priority, in the sectors employing a large proportion of women workers."⁶⁴ This approach whereby action is taken in respect of low wages has been adopted in the Nordic countries. The method used has generally consisted of establishing the same minimum basic wage for all workers, on the one hand, and, on the other, of negotiating increases by fixed and equal amounts for both sexes (and not by percentage of wages); in addition, special increases have been granted for low wages. In the view of the Finnish and Norwegian⁶⁵ trade unions this policy has given good results. In Sweden, the government points out in its report that special increases granted to women employed in the commercial and industrial sectors under agreements concluded in 1970, 1973 and 1974 have enabled the disparities to be appreciably reduced (women's wages rose from 89.1 per cent of men's in 1969 to 93.6 per cent in 1973). Although certain experts at the 1974 Meeting on Equality of Remuneration cast doubts on the validity of such an approach "since the level of wages is not fixed solely by decision of the employer but is the result of the economic situation in each sector, the structure and organisation of the sector and the proportion of wages costs in the cost of production", most of the experts recognised that "there is a close connection between the problems of low wages and equality of remuneration as between men and women".⁶⁶

130. Nevertheless, even where special increases are granted for low wages, equalisation is counteracted, particularly when there is a shortage of labour, by "wage drift", a term used to describe a gap between basic rates fixed by agreements and the wages actually paid. This gap has taken on growing proportions in many countries.⁶⁷ The Committee, moreover, noted in 1973 in respect of Norway⁶⁸ that since the 1961 agreement came into force, the individual increments granted by the undertakings had not respected the principle of equal remuneration and that this had produced a wage drift in favour of men's wages. In 1970, it is interesting to note, Norway introduced a guarantee against wage drift designed to ensure certain supplementary

payments in sectors where there was little or no wage drift. In short, the effective application in these cases of the principle of equal pay will depend, generally speaking on the desire and the powers of the trade union organisations to keep a watchful eye on the margin of remuneration above the basic rate fixed by agreement. In countries where there are laws designed to enforce respect for the principle of equal remuneration and to enable its application in respect of actual wages to be supervised, these may provide effective guarantees.

¹ See Report of the Meeting of Experts on Equality of Remuneration (Geneva, 6-15 May 1974) (GB.193/9/15, para. 24).

² It should be noted that some of the questions dealt with in this chapter may also arise within the framework of a decentralised socialist system of determination of earnings such as that of Yugoslavia (Act of 13 April 1973 respecting the relationships between workers in associative work, LS 1973-Yug. 1; see above, Chapter I, para. 39).

³ Act No. 320 of 30 April 1970, LS, 1970—Fin. 2. See the observation made by the Committee in 1971, RCE 1971. In addition it should be pointed out that minimum wage coverage is provided by law for forestry work in Finland and home work in Norway.

⁴ E. Sullerot: "Equality of remuneration for men and women in the Member States of the EEC" (Working Paper No. 5 presented to the Meeting of Experts on Equality of Remuneration, p. 21).

⁵ See the report of the Commission of the European Communities on the situation on 31 December 1973 respecting the application of Article 119 of the Treaty of Rome in the three new member States, op. cit., pp. 14-15.

⁶ ILO: *Informations générales sur les conditions de travail*, No. 16, 1970, op. cit., p. 34.

⁷ Report IV, 9th Conference of American States Members of the ILO, Caracas, April 1970, p. 28.

⁸ See the Report of the Meeting of Experts on Equality of Remuneration, op. cit., para. 24.

⁹ International Confederation of Free Trade Unions: *Egalité des salaires*, Report of the ICFTU International Conference, Brussels, 17-19 October 1972, p. 30 (not available in English).

¹⁰ See RCE 1973, observation concerning Haiti, p. 151.

¹¹ Report of the Commission of the European Communities on the situation on 31 December 1972 regarding the application of Article 119 of the Treaty of Rome, op. cit., p. 10.

¹² Belgium: Act of 5 December 1968; Switzerland: Act of 28 September 1956.

¹³ As B. Knapp notes, "it is on this last point that the position of the Federal Council has obviously shifted between 1956 and 1960" ("L'égalité de rémunération des travailleurs masculins et féminins dans la CEE et en Suisse", in *Rapports—Berichte du Centre d'études juridiques européennes*, p. 47).

¹⁴ It refused, for example, to extend the scope of a collective agreement for hairdressing on the grounds of disparities between wages for men and women.

¹⁵ EEC Report on the situation on 31 December 1972 respecting the application of Article 119 of the Treaty of Rome, op. cit., p. 42.

¹⁶ See the Reports of the Commission of the European Communities on the application of Article 119 in the six original member States and in the three new member States, pp. 4-5 and 5-7 respectively.

¹⁷ An Equal Pay Council was established by Norway as far back as 1959, the year it ratified the Convention; in 1972 it was replaced by the Equal Conditions Council. In 1966 Finland established a Committee on the Status of Women and, in 1973, the Advisory Council on Equality, the executive body for the Committee's proposals.

¹⁸ In Norway, for example, the former Executive Secretary of the Equal Pay Council expressed the opinion in 1971 that if the occupational organisations did not manage to correct the remaining imbalances (which seemed likely to him), "the State cannot disclaim responsibility for a more direct contribution towards eliminating the pay discrimination against women". Kari Vangsnes: "Equal pay in Norway", in *ILR*, April 1971, p. 391.

¹⁹ G. Högberg, op. cit., p. 228.

²⁰ See the Report of the Meeting of Experts on Equality of Remuneration, op. cit., para. 27.

²¹ See *Egalité des salaires*, op. cit., p. 32.

²² Ibid., p. 31.

²³ See the 1974 report of the Commission of the European Communities, op. cit., pp. 16 and 46.

²⁴ At the invitation of the Government (in pursuance of the Commission of the European Communities Resolution of 30 December 1961) the social partners progressively eliminated separate wage scales when renewing agreements. There only remained a few instances of discrimination in the agreements made in the leather industry and these have since been eliminated thanks mainly to the action of the ILO's Committee of Experts (cf. RCE 1971, p. 148).

²⁵ In 1971 the Committee noted the elimination of minimum wage differentials which still existed in certain industrial sectors (RCE, 1971, p. 150).

²⁶ The Commission of the European Communities noted that according to trade union sources there were differences in the rates applicable from October 1971 to 1972 ranging from 11 to 12.75 per cent in the foodstuffs trade. In 1972-73 the Commission noted, according to government and trade union sources, differences generally in the region of 5 per cent in a few branches employing about 800 women workers (1973 report, p. 19).

²⁷ On 1 July 1972, the Commission of the European Communities noted the existence of a number of disparities between the rates for men and women in several branches: bakery (10 to 22 per cent), pottery (10 per cent), textile industry (9.5 to 11.5 per cent), clothing manufacturing (7 to 8 per cent), footwear manufacturing (5 per cent) and laundering (3.5 per cent). In its report, the Government of the Netherlands informed the ILO Committee that on 15 September 1973 only three collective agreements did not implement the principle of equal remuneration and that different rates were due to be eliminated from two of these agreements (one of them is for the textile industry) on 1 January 1975.

²⁸ According to Report No. 42, 1972, of the Irish Commission on the Status of Women, quoted by the Commission of the European Communities in its 1974 Report on the application of Article 119, p. 17.

²⁹ *Equal pay*, First Report on the Implementation of the Equal Pay Act, 1970 (Office of Manpower Economics, London, 1972), and *Department of Employment Gazette*, August 1974, pp. 691 et seq.

³⁰ Following observations made by the Committee, differences in wage rates based on sex were eliminated from the collective agreements made in a number of industries including the chemical industries. See RCE 1967, p. 103.

³¹ The necessary steps were taken in Guatemala when collective agreements were reviewed for the purpose of eliminating differences in the wage rates for unskilled workers to which the Committee drew the Government's attention in 1968.

³² In several observations made since 1965, the Committee has taken steps to have instances of discrimination in agreements concluded in a number of branches (the meat, tobacco, textiles, soap and cosmetics industries) eliminated in Argentina. In 1972 the Committee was able to note the substantial progress that had been achieved; out of 281 agreements renewed as of 24 May 1971, only 16 still provided for different rates of remuneration; however, the Committee noted that certain of these 16 agreements applied to sectors in which the proportion of women employed seemed to be particularly high (tobacco, clothing, dyeing and cleaning, foodstuffs). See RCE 1972, p. 188. (Before the adoption of the 1974 Act concerning equality, which applies to collective agreements, there was a Legislative Decree of 1956 providing for the halving or the elimination of different wage rates in agreements according to whether the difference was above or below 10 per cent.)

³³ As, for example, in Switzerland. A 1973 inquiry into 366 collective agreements showed that such discrimination still persisted; in the collective agreement for the chemical industry, which expired at the end of 1974, the gap between the basic rates for men and women was 15 per cent (*Correspondance Syndicale Suisse*, No. 26, 17 July 1974). According to another source a growing number of collective agreements are fixing minimum rates without distinction related to sex. (H. Thalmann-Antenen, op. cit., p. 279-280.)

³⁴ See "Equal pay in Norway", op. cit., p. 383.

³⁵ RCE 1973, Convention No. 100, observation concerning Norway.

³⁶ See "Equal pay in Norway", op. cit., p. 384.

³⁷ This is pointed out by the Committee for Equality in its comments appended to the Government's report under article 19.

³⁸ According to information from the General Confederation of Trade Unions in Norway (LO) noted by the Committee in its 1973 observation to the Norwegian Government.

³⁹ See the 1974 Report of the Commission of the European Communities on the application of Article 119, op. cit., p. 19.

⁴⁰ This was the case, for example, in Norway. See "Equal pay in Norway", op. cit., p. 383.

⁴¹ In its observations attached to the Government's report under article 19.

⁴² See, in this respect, the jurisprudential developments in the United States in connection with the application of the 1963 Equal Pay Act.

⁴³ For example, in Finland, a report by the Committee on the status of women noted that there was little participation by women in trade union activities and, consequently, their participation in the various stages of job classification conducted by a specialist and a joint committee was also slight.

⁴⁴ See the report of the Finnish authorities to the OECD on the role of women in the economy (document MO (73) 13/22).

⁴⁵ RCE, 1973, Convention No. 100, observation concerning Norway.

⁴⁶ RCE, 1973, Convention No. 100, observations concerning Finland and Norway.

⁴⁷ The Committee noted in 1973 the progress made in eliminating jobs considered as exclusively feminine from the classification of agricultural jobs in collective agreements. RCE 1973, observation concerning Italy.

⁴⁸ The 1973 report of the Commission of the European Communities, op. cit., pp. 22-24.

⁴⁹ The 1974 report of the Commission of the European Communities, op. cit., p. 19.

⁵⁰ E. Sullerot, Working paper No. 5 for the Meeting of ILO Experts in 1974, op. cit., p. 22.

⁵¹ See 1973 report of the Commission of the European Communities, pp. 22-23 and 26-27.

⁵² For example: metalworking, saw-milling, timber, fine porcelain, plastic materials, foodstuffs, preserving fruit and vegetables and other preserves.

⁵³ The Government points out in its report that after long consultations with the social partners without any tangible result, it undertook to arrange for independent experts to carry out an inquiry to evaluate the tasks of these categories of workers in an objective manner.

⁵⁴ Report of the Meeting of Experts on Equality of Remuneration, 1974, op. cit., para 33. The proportionately larger increase in lower wages is normally to the advantage of women. In France, for example, wage increases in 1973-74 were relatively larger for workers with less skills than for highly skilled workers and this shortening of the span of wage scales "has been accompanied by a reduction in the gap between the wages of men and women" (F. Euvrard: "Revenus et salaires en France", in *Revue d'économie politique*, September-October 1974, p. 757).

⁵⁵ According to K. Vangsnes, however ("Equal pay in Norway", op. cit., p. 384), the definition of what constitutes a lower wage differs in many cases for men and women. Some trade unions secured equal wage increments while others negotiated differentiated increments.

⁵⁶ Report of the Meeting of Experts on Equality of Remuneration, op. cit., paras. 34 and 35.

⁵⁷ In Australia, for example, the proportion of wages fixed by arbitration awards dropped from around 75 per cent of the male worker's total earnings in 1961-62 to 65 per cent in 1971-72 (Commonwealth Bureau of Census and Statistics: "Wage Rates and Earnings, Average Weekly Earnings"). In Norway wage drift usually accounts for half the total pay increase for men (Vangsnes: "Equal pay in Norway", op. cit., p. 385).

⁵⁸ RCE 1973, Convention No. 100, observation concerning Norway.

CHAPTER IV

RELATED MEASURES TO FACILITATE IMPLEMENTATION OF THE PRINCIPLE

131. The Convention provides for other ways and means of facilitating directly the implementation of the principle of equal remuneration. Article 4 invites Members to co-operate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of the Convention. Co-operation being necessary in most fields, the role of these organisations has been referred to many times in the preceding chapters; all that remains to be said is to mention it here in connection with the subject dealt with in section 1 of this chapter—job evaluation.

132. The Recommendation, for its part, advocates a number of forms of action of a more general nature designed to promote equality of opportunity in respect of employment and hence, indirectly, equality of remuneration, on the understanding that complete equality can be assured only through application of the principle of equal pay for work of equal value. Section 2 of this chapter deals briefly with these measures.

SECTION 1: OBJECTIVE APPRAISAL OF JOBS

133. Article 3 of the Convention stipulates that where such action will assist in giving effect to the principle of equal remuneration, measures shall be taken to promote objective appraisal of jobs. The importance attached to such measures is clear from the final provisions of the same Article: differential rates between workers are compatible with the general principle if they correspond, without regard to sex, to differences determined by such objective appraisal. These provisions of Article 3 are consistent with the definition given in Article 1. The Convention, as is known, did not set out to narrow the scope of the principle of equality down to the confines of "equal work", but sought to secure its application on as widespread a basis as possible by adopting the concept of "work of equal value". Only with such a definition can the problem be tackled of the increasing compartmentalisation of jobs. But, essential though it is as a principle, it is nevertheless difficult to make it "operational". It is so abstract and lacking in precision that it allows the bodies responsible for implementing it quasi-discretionary powers of appreciation, with the implied risk that arbitrary, ill-founded and consequently unpalatable decisions may be taken. Job evaluation may be the "essential tool"¹ whereby effect may be given in practice to the principle of equality based on work of equal value. The comments of the Committee have followed a consistent line in this respect. It has confirmed on a number of occasions² the importance of the measures called for in Article 3, pointing out in particular that such measures were "appropriate" where the value of the work performed by men and women was difficult to compare (as with categories of jobs mainly performed by workers of one or the other sex). The optional nature of job evaluation is clear both from the provisions of the Convention and from the position adopted

by the Committee. In effect, out of respect for the usual wage fixing machinery and the prerogatives of the workers' and employers' organisations in respect of job classification, the Conference did not wish to make it absolutely compulsory to introduce evaluation schemes. There is, however, a negative obligation, namely the obligation not to allow rates of remuneration to be based directly or indirectly on considerations of sex.

134. Experience in countries such as Canada or the United States with the application of their equal pay laws is significant in this respect. In these countries, as we have seen, it is rather the narrow concept of equal remuneration that has been adopted; moreover, these laws define in general terms the criteria to be taken into consideration. Nevertheless, in both Canada and the United States, the bodies responsible for enforcing the law have met with the same difficulty: the general absence of formal job evaluation plans has deprived them of the necessary tools for the administration of the law. "Where differences in salary ranges occur for the same job it is essential that these should be based on objective and empirical wage and salary studies. It is essential that differences in job skill, effort and responsibility connected with the job be assessable."³ If job evaluation is seen to be a valuable tool for applying the principle to jobs involving equal, similar or substantially equal work, it must be all the more so when it is necessary to compare the value of jobs involving different work.

Job Evaluation Methods

135. There are various methods of objectively appraising jobs, and Paragraph 5 of the Recommendation provides moreover that this may be done "whether by job analysis or by other procedures". A few preliminary general remarks about job evaluation may be helpful at this stage with a view to making clearer the comments which follow.⁴ The basic principle of the method is the determination and comparison of the demands that the normal performance of a particular job makes upon a worker, irrespective of his personal capacities or output. It is the job that is evaluated and not the individual. Job evaluation is an impersonal operation designed to achieve objectiveness and equity in the pay structure.

136. A distinction may be made between four main types of job evaluation schemes, based on the ranking method, the grade or classification method, the fact comparison method and the point rating method. The first two are referred to as non-analytical methods, since the jobs are not subdivided in accordance with their component elements as with the other two methods, known as analytical methods. The ranking method is the simplest of all job evaluation methods, since it merely entails placing the jobs in order of the demands they are considered to make on those who perform them, on the basis of their titles only or of simple descriptions of each job. The grade method differs from the ranking method in that a certain number of grades are established (e.g. unskilled, semi-skilled, skilled and highly skilled) before actual job characteristics are examined; the grade descriptions are so framed as to cover discernible differences in degree of skill, responsibility and other job characteristics, or in working conditions. The factor comparison method has the advantage over the two methods previously mentioned that it permits of a more systematic comparison of jobs; it involves the ranking of different jobs in respect of certain factors (in the case of manual workers, for instance, five factors are generally selected: skill, mental and educational requirements, physical requirements, responsibility and working conditions), and the assigning of money wages to these jobs. The point rating method comprises an analysis of a number of factors similar to those just mentioned, but instead of jobs being simply ranked in terms of the various factors, as

previously, a study is made of the degree to which they are demanded and the various degrees are assigned certain point values expressing the importance attached to the various elements composing a job. A few general observations are called for as concerns the value of four techniques outlined and the extent to which each is used. The non-analytical methods have the advantage of being simple and inexpensive; the grade method is widely used in the civil service; but they are relatively imprecise and subjective. The factor comparison method is complicated, and is criticised because job evaluation and wage fixing are often viewed as two distinct operations and the apportionment of wages among different factors is held by many to be arbitrary; for these reasons it is not very widely used. Most of the analytical schemes in operation are of the point rating type.⁵

137. Job evaluation can be, and in fact is, practised at various levels. In the United Kingdom, for instance, it is carried out mainly at the level of the undertaking, and far more rarely at the level of an industry or a branch of industry (except in the case of coal mining and the textile industry). In the United States and Sweden, on the other hand, evaluation schemes often cover the whole of an industry. The grading schemes in operation in the USSR are typical of the nationwide schemes used in the centrally planned economy countries. But examples are also to be found in other countries in Europe (the Netherlands), Latin America (Cuba), Africa (Algeria⁶, United Republic of Cameroon⁷). At the close of the 1960s job evaluation covered approximately 25 per cent of the workers in the manufacturing industry and certain service sectors in the United Kingdom, 20 per cent of all manual workers in Sweden and 70 per cent in the Netherlands, and about two-thirds of the employed labour force in the United States.⁸

The Different Levels at which Job Evaluation Can Be Carried Out

138. The more a job evaluation scheme is centralised and the higher the level at which it is carried out, the lower the risk must logically be of the simultaneous operation of a variety of schemes based on different forms of selection and criteria and producing conflicting evaluations. But nationwide schemes involve problems of cost and planning which have been cited as obstacles to the application of the principle of equal remuneration as understood by the Convention in some countries which have inferred that the Convention called for a general evaluation of jobs. This was the case with Australia in 1969.⁹ A similar opinion was expressed by the Government of the United Kingdom at the time of the adoption of the Equal Pay Act of 1970.¹⁰ Nevertheless, it can already be noted that subsequently Australia came round to the definition of work of equal value in 1972, and ratified the Convention in 1974, and that the United Kingdom adopted a compromise solution whereby this definition was used in cases where a job evaluation study had been carried out, prior to ratifying the Convention in 1971. In New Zealand, on the other hand, a similarly motivated decision not to introduce a system of job evaluation covering all jobs¹¹ was not regarded as an obstacle to the adoption of the concept of work of equal value, since, as has been seen, the 1972 Act embraced this concept unreservedly.

139. These same countries have however fully acknowledged the usefulness of job evaluation at the level of the undertaking. One of the deterrents to the introduction of an evaluation scheme, especially in the case of small undertakings, is the cost. Apart from the cost of operating the scheme, evaluation normally paves the way for the raising of women's wages. In the United Kingdom, for instance, it has been claimed that on average a revaluation to comply with the Equal Pay Act may add 10 per cent to an undertaking's wage bill.¹² In the short term this is a deterrent, but

it does seem that in the medium or long term the profit-cost ratio of the operation becomes favourable. The main advantage lies in the establishment of a rational and equitable pay structure which will be acceptable as such in so far as it has been established in close co-operation between the employer and his employees or their representatives. The first report on the application of the Equal Pay Act in the United Kingdom used arguments of this kind and came out in favour of job evaluation as being a simple and efficacious means of implementing the Act¹³, particularly since there are other advantages to be derived by the employer from the use of job evaluation.¹⁴ At the same time the report noted that most of the undertakings examined, particularly the larger ones, had introduced a system of evaluation, but in the majority of cases for reasons other than the application of equal pay.¹⁵ It seems of interest to note in this connection the view expressed by the New Zealand Commission of Inquiry as to the role that can equally successfully be played by a negotiated work classification based on a realistic appraisal of jobs by commonsense people with detailed knowledge of the industry concerned.¹⁶ There is certainly no need for a sophisticated, costly and complicated scheme in order to achieve the desired objective.

Difficulties Raised by Job Evaluation

140. Bearing in mind the interest that can and should be taken in the objective appraisal of jobs, there are some comments that need to be made to take account of "certain limitations and pitfalls"¹⁷ in the method. In the first place there is one limitation which stems from the very nature of the method. Since it evaluates the job and not the worker, it determines the rate for the job and not the amount actually earned by the employee. Consequently, "it is not irrelevant to remark that the proclaimed equity concerns only part of the wage".¹⁸ Furthermore, and more generally speaking (at least as far as the market-economy countries are concerned), one of the main sources of difficulties derives from the manner in which wages are determined in practice. As was stressed during the preparatory work on the New Zealand Act of 1972¹⁹, job content is not the sole factor entering into the fixing of pay rates. Pay rates and pay differentials are normally the product of negotiation, and in many respects a more decisive influence is exerted by the state of the labour market, the relative strength of the parties, or custom and usage.

141. More directly related to the application of the principle of equal remuneration is the question of objectiveness. The point rating method, for instance—the most widely used of the analytical methods, largely on account of its presumed advantages of objectiveness and fairness—gives a false impression of scientific accuracy, due no doubt to the fact that the results of the evaluation are expressed in figures. However, "basically, the selection of factors, the definition of degrees and the point values attached thereto involve many arbitrary and subjective elements . . .".²⁰ No more will be said about the classic example, described in the previous chapter, or the distinction between light and heavy work coinciding with that between men's and women's work. But it may serve as a basis for a more general remark. As the reports of certain governments²¹ have pointed out, technological progress has transformed the work content of most jobs, and some criteria for appraising the value of work have become less important, while new ones have come to the fore. In the light of these changes, a re-examination of the factors and criteria to be taken into consideration, as well as of the "weighting" to be assigned to them, appears desirable, if not necessary, in the interests of fairness in appraising the new demands made upon workers.

142. What has been said about the difficulties and pitfalls of objective job evaluation implies the existence of machinery for supervising the methods used and elim-

inating discrimination. As has already been noted, equal pay laws often stipulate that job evaluation must not be discriminatory: the establishment of different categories or the application of different grading criteria are obviously unacceptable from the standpoint of the principle of equal remuneration. It may be added here that in this respect the laws do not always provide all the safeguards desirable, being too imprecise or remaining silent about the evaluation criteria and methods to be used.²² Worthy of notice and encouragement are the efforts being made by the governments of some countries (such as Canada, Japan, the United Kingdom, the United States) to lay down guidelines or provide study and advice services for employers and workers. Particular attention needs to be paid to the joint training of managerial personnel and staff representatives in undertakings.

SECTION 2: EMPLOYMENT AND SOCIAL POLICY

143. The Convention states that remuneration must be equal for work of equal value. Furthermore, if the principle is to have its full impact, women must have equal opportunities to perform work of equal value. Application of the principle alone, no matter how strictly it is applied, will be insufficient to eliminate the disparity between the average earnings of men and those of women. This disparity is mainly the result of the division of work into men's jobs and women's jobs. Discrimination and such factors as training, work experience and seniority are determining factors although it is not possible to determine the exact role played by each despite a number of recent studies of the question (particularly in the United States) drawing attention to the importance and persistence of some of them, such as the relatively low quantity of useful skills acquired and of hours worked by women in comparison with men. Such considerations were recognised when the equal remuneration standards were being drawn up. The first preparatory report stated 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 remuneration. . . . In other words, social developments such as progress in rational utilisation of manpower resources, in increasing productivity, in social security, and, generally, the improvement of social conditions have a direct bearing upon the position of women in the labour market and, consequently, upon their remuneration"²³, and these considerations provided the *raison d'être* for 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, particularly those with family responsibilities (Paragraph 6 (c)) and to promote equality as regards access to occupations and posts (Paragraph 6 (d)). Some examples will be mentioned briefly to illustrate the main trends that emerge from the reports and not to provide a complete survey of these matters since this would be outside the realm of equal remuneration properly speaking and would be entering that of equality of opportunity and treatment.²⁴ These examples will be grouped under two headings: manpower and employment policy and social policy.

Manpower and Employment Policy

144. A great many countries report that they have equality as regards access to education and training and that women enjoy the same facilities as men for vocational guidance and placement. The reports of the socialist countries emphasise that equality of opportunity in education and training is guaranteed both by the Constitution and

by the law: in the USSR the basic legislation of the Soviet Union and the Union Republics adopted in 1973 reaffirms the fundamental principles: equality of access independent of sex, free co-education and a single general curriculum in vocational training institutes and establishments. The over-all statistics show that equality has largely become a reality: in 1972-73, 53 per cent of pupils in secondary education and 50 per cent of students in higher education were girls; in 1973 there was the same proportion of men and women workers who had a secondary or tertiary education (718 in every 1,000 men, 717 in every 1,000 women). The over-all statistics do not, however, account for qualitative inequalities and gaps at the technical-vocational training level. There are serious deficiencies in a number of specialised branches called into being by technological progress and in those connected with automated processes. In Poland some kinds of training still lead towards occupations where women predominate.²⁵

145. In Finland where all vocational training institutions are open to boys and girls without distinction it has been found that some of the entrance criteria and selection factors used have contributed to an unequal distribution of the sexes in the various courses offered. A special committee was set up in 1972 to study selection systems in the colleges and universities and a similar study on the systems of selecting students for technical and legal careers was undertaken by the Minister of Education in 1974.

146. Governments are paying increasing attention to the pre-vocational training of women to enable them to take advantage of equality of access to training. In Belgium, for example, individually prescribed training is provided in special sectors so that women can attain the standard required for adult vocational training courses. In Poland preliminary vocational training courses are organised to provide preparatory vocational training for women who have no specific skill; women workers can receive training grants for this purpose.

147. Permanent education and continuing vocational training seem to be particularly suited to the needs of working women or those who wish to take up employment. As the 1972 French Committee on the Employment of Women ²⁶ noted, the special needs of women as regards continuing training are the result of their special situation: lack or inadequacy of initial training; interruption in their careers and fewer chances of acquiring in-service training because of family responsibilities. In France the Act of 16 July 1971 laying down the principle of the right to continuing vocational training, places women who fulfil certain conditions (heads of families or those with three children and who are taking vocational training courses) on the same footing as workers following a redeployment course and this entitles them to remuneration. Two adverse conclusions, however, can already be drawn from the experience of OECD countries in this field.²⁷ First, women do not seem to be taking as much advantage of the opportunities offered as men are: in 1972 only 30 per cent of the participants in the Canadian programme were women, while in France and Japan women accounted for no more than 15 per cent of the total enrolments. Second, the same imbalances in distribution recur with a concentration of women in preparatory courses for jobs traditionally held by women. "Thus, the occupational choices of women are still limited through a traditional narrow range of sex-typed jobs. . . . The status quo with respect to the kinds of occupations women train for has not been altered in any dramatic way in the expansion of continuing education opportunities".²⁸

148. Some interesting steps have been taken, particularly in the Nordic countries, to counteract the tendency to dichotomy in training and employment. In Norway the employment services and vocational organisations have started up a joint training

scheme to recruit women into the engineering industry. Moreover, Norway has also organised intensive information activities designed mainly to acquaint women, and employers, with the vocational training opportunities available. This activity seems to have had good results, with the largest breaches being made in the metalworking industry which had till then been entirely dominated by men. In Sweden two measures suggested by the Advisory Council on Equality have been included in the draft budget for 1974-75. A government subsidy will be granted, on an experimental basis, for a period of three years to private-sector employers who provide training or employment for women, or men, in jobs dominated by the opposite sex. The other measure establishes a novel quota system: 40 per cent of the new jobs created out of the regional development aid funds in industries hitherto primarily employing men will be reserved for women; conversely, 40 per cent of the jobs in sectors mainly employing women will be reserved for men. Moreover, the same Council launched an experimental scheme in one of the countries to encourage women to apply for jobs which were traditionally a male preserve; the methods employed range from informational meetings to training grants or the provision of in-service training; considering that the results have been extremely good, the Government decided in April 1974 to expand the experiment to five other counties.

149. Measures have been adopted in some developing countries to promote the employment of women. In some African countries, for example, new undertakings have been established that are specially suited to the aptitudes and dexterity of women; the canning and preserving of seafoods in Senegal, the manufacture of matches and cigarettes in Mali and large commercial complexes in Dahomey and Gabon.²⁹ In Latin America the Government of Ecuador has provided for the creation and development of food-processing jobs to be given to women living in the countryside. The Committee lacks more detailed information about actions of this type which could *a priori* be considered as opposed to the ones previously discussed, as being likely rather to create a sex-based division of jobs, or to accentuate this division.

150. A number of industrialised as well as developing countries have endeavoured to improve the employment and placement services for women. In Norway, for example, where the employment services were nationalised in 1960 the emphasis in the creation of jobs has been placed on the need to improve the services offered to women without it being considered desirable to create specialised jobs: training courses and seminars on the special problems of women in employment are organised for employment services officials. Sweden has budgeted for 100 new posts in 1974-75, the incumbents of which will deal with the problems confronting women on the employment market. In one developing country, Tunisia, the Government reports that each public placement office has on its staff a guidance expert and a female official; there are offices specialising in the placement of women located in the major towns and cities.

151. For reasons which would need to be made more explicit if this were not beyond the scope of the present survey, government action regarding the promotion of equality of opportunity in employment has generally been a great deal less apparent than that designed to ensure or promote the application of the principle of equal remuneration. Even in jobs which are under its direct authority the State does not always seem to have been the "model employer" to the same extent as it has been in respect of the payment of equal wages. Some progress and some useful examples are indicated in a number of reports. Before referring to them, the Committee would like to draw attention here to the reverse side of the problem of equality in employment, which could be called equality in the face of unemployment. Because the economy

creates few jobs in the developing countries and priority is generally given to men who are heads of family, and because, for various reasons, in many developed countries women workers play the role of a manpower reserve supply, there exists a form of institutionalised female unemployment almost everywhere in the world. Where women have entered employment, they are among the first to be affected by measures to reduce the labour force, unemployment and underemployment. Last to be recruited and promoted, first to be dismissed, such is often, in somewhat generalised terms, the situation of women. And, naturally, this fluctuation between economic activity and non-activity hampers the acquisition of work experience and can but reinforce the tendency towards a sex-based division of jobs.

152. On the whole, entry into the public services is open to applicants of either sex. The public service regulations, as was pointed out in Chapter II, rarely make distinction on the grounds of sex. There are still at this stage, however, some examples of discrimination. In the laws of some countries the principle of equality of access is paired with restrictions based on the physical aptitude required for some jobs or the subordinate nature of the job. In Mali, for example, positions of authority are reserved for civil administrators of the male sex. In Madagascar women are given a restricted role in the labour inspectorate. What is more frequent, however, is the undergrading of women, reserved categories of jobs or lack of equality in promotion. The resulting disparities in remuneration can be very considerable in countries with an extremely wide range of salaries and this is often found to be the case in the developing countries. In Africa, for example, hierarchical disparities in the public service are very pronounced; the difference between the minimum and maximum salary rates can range from 1 to 5 in Madagascar and Senegal, from 1 to 22 in the Ivory Coast, and 1 to 5 in Ghana and Kenya.³⁰ A number of countries seem to be beginning to tackle the problem of promotion. In 1971 the Public Service Commission in Canada established an Office of Equal Opportunities whose function is to monitor and, where necessary, recommend changes to employment policies and practices; the following year a Directive was issued to government departments and agencies calling on them to take steps to encourage the advancement of more women into middle and upper echelon positions and an interdepartmental committee was set up to supervise the implementation of the Directive. In Sweden an agreement concluded in 1974 established parity in promotion in central government jobs.³¹

153. Some countries have adopted specific laws to prohibit discrimination in employment in the public and/or the private sector. In Canada the laws of every province (except British Columbia) prohibiting discrimination in employment apply to the provincial public service as well as to the private sector.³² This is not the case at the federal level but the Government announced its intention in 1974 of introducing before the end of the year an anti-discrimination law applying to the private sector. In 1973 Sweden adopted a law to prohibit discrimination on the grounds of sex in advertisements for situations vacant and hiring for public service jobs; the law also deals with access to training for these jobs.

154. A noteworthy legislative action in this sphere is that pointed out in the United States' report and which has developed since 1964 under the two following headings: prohibition of discrimination in employment and affirmative action to promote equality of opportunity in employment. Title VII of the 1964 Civil Rights Act prohibits any discrimination in the private sector on the grounds of sex and the Equal Employment Opportunity Act of 1972 extended the scope of Title VII to State and local government as well as to private employers and trade unions with 15 or more employees or members.³³ The Act covers almost all aspects of employment: job

advertisements and hiring, classification, promotion, remuneration, training, dismissal and discrimination in trade unions. The implementation of Title VII is primarily the responsibility of the Equal Employment Opportunity Commission; it gained considerably in effectiveness, it will be recalled, when it was given powers in 1972 to enforce the Act and to bring civil actions. Legal actions to enforce the Act are also available to aggrieved parties against private employers and unions, and when brought in the form of "class actions" they may have application substantially beyond the complaining parties. As for "affirmative action", a good illustration is provided by the application of the Executive Order governing federal government contracts; it is an integral part of the obligations arising out of a contract and must be undertaken in all matters relating to recruitment, training and access to managerial positions, and employers must analyse the situation and establish objectives and detailed timetables. Some states or local governments follow federal policy in this sphere.³⁴

155. One of the issues dealt with in the directives on sex-based discrimination issued by the Equal Employment Opportunities Commission in the United States is the question of protective legislation and more precisely that which prohibits or controls women's work in certain conditions. In the Commission's view the states' laws restricting the employment of women do not take into account their individual preferences, capacities and aptitudes; they are discriminatory and contrary to the provisions of Title VII of the 1964 Act. In the United States there has been a continuing evolution since 1970 towards the elimination of restrictions, particularly those concerning hours of work.³⁵ There is a marked trend in many countries towards the revision, if not the elimination, of laws or regulations introduced at a now outdated stage of their industrial development. It is beyond the scope of this survey to enter into details of a question which has been dealt with, moreover, in Report VIII to the 60th Session of the Conference.³⁶ It is sufficient to point out these provisions have without any doubt contributed to the sex-based division of jobs and the limited earnings of women and that the proviso at the end of Paragraph 6 (*d*) of the Recommendation has lost some of its justification and force. Nevertheless, the study on night work for women submitted by the Office in 1973 to the Governing Body shows that precautions must be taken before advancing arguments in favour of radical solutions. Logically, however, it will be increasingly difficult to try to achieve equality while retaining "protective" measures that could be considered anachronistic.

Social Policy

156. Measures of this sort are specifically provided for in Paragraph 6 (*c*) of Recommendation No. 90. The first preparatory report for the Convention had included maternity protection among "the methods of raising the productivity of women workers by reducing the handicaps which they suffer in the employment market".³⁷ The provisions which are most closely connected with the question of equal remuneration and equality of opportunity in employment are those which deal with maternity protection, the payment of benefits or wages and the right to be re-engaged. These provisions enable a woman to continue to receive her remuneration at a time when she is obliged to withdraw partly or entirely from the workforce in order to fulfil a social function and, if she so desires, to take up her job again without loss of any of the rights she has acquired.

157. Forms of protection systems are extremely diverse. Those described in the reports of the socialist countries are among the most detailed. According to the USSR report, for example, the legislation provides for the possibility of pregnant women to be transferred to more suitable jobs, at the same wage; maternity leave remunerated

at the full rate; a mother is entitled to paid leave of absence to nurse her child; dismissal is prohibited because of pregnancy and a mother is entitled to be given her job back within the 12 months following the date of confinement. Protection against dismissal is included in the regulations of a great many other countries and in the United States the Equal Employment Opportunities Commission has revised its directives on sex-based discrimination and specified that any dismissal attributed to the worker's sex would be deemed contrary to Title VII of the 1964 Act.

158. A question of special importance, as for child care as will be seen in the following paragraphs, is the question of financing. Where the costs are borne by the employer, this could to varying degrees have unfortunate effects upon the employment of women. In practice it has been found that young married women have been discriminated against by employers, particularly in small- and medium-scale establishments, as a result of maternity leave provisions.³⁸ The impact on employment is minimised when the schemes are financed out of public funds, as is provided for in the Maternity Protection Conventions, Nos. 3 and 103.

159. Finally, with a view to removing the difficulties caused by the growing burden of women's family and occupational responsibilities are those dealing with child care. It has been pointed out that "The position of women in society and particularly in the labour market depends to a great extent on the organisation of day care for children . . . many today feel that the problem of child care is the most important social issue related to changing attitudes of women towards work and of society towards women working."³⁹ This is however a question which goes beyond the scope of the present survey.

160. In many countries it is the responsibility of the public authorities to provide day-nurseries and to bear the major part of the cost.⁴⁰ In other cases the law makes employers responsible for the provision of facilities which may result in employers seeking to evade this legal obligation by taking on fewer women than they would have normally.⁴¹ In the USSR the network of day-nurseries constitutes the first stage in the national education system. In other countries, as in North America, child care is not a government responsibility but is arranged privately or provided by the undertaking.

161. One feature is constant throughout all the systems in force: the disproportion between the needs and the available resources.⁴² The growing number of women in employment in the industrialised as well as in the developing countries is leading increasingly to an awareness that this is a public responsibility and to greater efforts being made than before. There has been a marked development in Australia which relied on private initiative until 1972. Several countries, such as France, Finland, Italy and Sweden, report that they have considerably increased their investment in this field, or intend doing so. In 1973 Finland adopted an Act fixing a specific goal: the setting up of an extensive network of state and private child-care centres, and Norway was taking steps at the end of 1974 to adopt an Act to establish a programme in which the municipalities would participate. These few examples seem to be an indication of encouraging developments in this sphere.

¹ See the Report of the Meeting of Experts on Equality of Remuneration, *op. cit.*, para. 30.

² This has already been explained in earlier chapters; see, for example, the Committee's observations with respect to the Federal Republic of Germany, India, Italy or Peru.

³ Meeting of Experts on Equality of Remuneration, Working Paper No. 2, *op. cit.*, p. 11.

⁴ For a full explanation, see: ILO: *Job evaluation*, Studies and Reports, New Series 56 (Geneva, 1960).

⁵ For example, in Sweden, in 1968, all the schemes were based on the point rating method. A survey carried out at about the same time in the United Kingdom revealed that 47 per cent of the schemes in use were of the point rating type, 28 per cent the grading type, 20 per cent ranking, and only 5 per cent factor comparison (*Job evaluation*, National Board for Prices and Incomes, Report No. 83 (London, 1968), pp. 11 and 29).

⁶ A Decree of 20 March 1974 entrusted the Ministry of Labour with the task of preparing a nationwide classification of jobs, fixing a wage to correspond to each job and drawing up a national list of names of jobs.

⁷ A Decree of 17 January 1969 empowered the National Joint Collective Bargaining Agreements and Wages Board to take binding decisions, inter alia, for the establishment of a standard classification of occupations valid for all sectors of activity.

⁸ National Board for Prices and Incomes: *Job evaluation*, op. cit., pp. 10, 28, 29, 33.

⁹ When making a comparative examination in 1969 of national law and practice and of the international labour standards, the Department of Labour concluded that the application of the principle to persons performing different jobs would require a quasi-general evaluation of jobs which would give rise to "considerable problems" (Australian Department of Labour and National Service: *Review of Australian law and practice relating to Conventions adopted by the International Labour Conference*, 1969, p. 90).

¹⁰ *Parliamentary Debates—Commons*, 1969–70 Vol. 895, 915. A general evaluation scheme was held to be too costly and technically impracticable.

¹¹ *Equal pay in New Zealand*, op. cit., p. 46. During the preparatory work on the Act of 1972, the Commission of Inquiry examined the possibility of adopting a general system of job evaluation, but decided against it due to the "extreme difficulty" of setting up such a system.

¹² See *An employers' guide to equal pay*, op. cit., p. 47.

¹³ Office of Manpower Economics: *Equal pay*, op. cit., p. 47.

¹⁴ It may provide useful information for the purposes of selection and training, work organisation, etc. On the benefits in general to be derived from job evaluation, see National Board for Prices and Incomes: *Job evaluation*, op. cit., p. 15.

¹⁵ In this connection, it may be argued, as some have done, that in view of the compromise adopted on the definition, the 1970 Act might provide an incentive not to introduce job evaluation (*Equal pay*, op. cit., p. 42).

¹⁶ *Equal Pay in New Zealand*, op. cit., p. 47.

¹⁷ To the existence of which attention was drawn, inter alia, by certain experts at the 1974 Meeting on Equality of Remuneration. See the Report of the Meeting, op. cit., para. 31.

¹⁸ M. Dadoy: "Les systèmes d'évaluation de la qualification du travail, pratique et idéologie", in *Sociologie du travail*, April–June 1973, p. 132.

¹⁹ See *Equal pay in New Zealand*, op. cit., p. 45.

²⁰ ILO: *Job evaluation*, op. cit., p. 33.

²¹ Particularly these of Austria and Japan.

²² This opinion has been expressed, for instance, by the trade unions in the United Kingdom. They have pointed out that the Equal Pay Act does not specify that employers must discuss and agree upon the criteria to be used with the unions. In their view the subject of job evaluation is broached in terms which are too vague in the legislation, and so long as special guidelines are not laid down it will always be possible to introduce discrimination into an evaluation scheme. See the report on the application of the principle of equal remuneration in Great Britain, submitted by the TUC to the International Conference of the ICFTU (*Egalité de salaires*, op. cit., pp. 74–75).

²³ Report V(1), ILC, 33rd (1950) Session, p. 99.

²⁴ For information on these matters see Report VIII to the 60th (1975) Session.

²⁵ For further information on these points see Working Papers Nos. 4 (USSR) and 3 (Poland) submitted to the ILO Meeting of Experts on Equality of Remuneration in 1974, op. cit., pp. 11 and 3, respectively.

²⁶ Referred to in OECD: *The role of women in the economy*, National Report for France, Paris, 30 Oct. 1973 (document MO (73) 13/08).

²⁷ See OECD: *The role of women in the economy: Summary*, Paris, 16 Nov. 1973 (document MS/S/73.3), paras. 85–89.

²⁸ *Ibid.*, para. 89.

- ²⁹ ILO: *Informations générales sur les conditions de travail*, No. 16, op. cit., Discussions, p. 11.
- ³⁰ See: ILO: Joint Committee on the Public Service, 1970, Report I, pp. 52-53.
- ³¹ Until now there has been a dual system of promotion, one for a category of officials in which 97 per cent were women and the other for a category of higher officials in which 70 per cent were men.
- ³² The laws of Prince Edward Island and the Yukon Territory do not, however, include sex in the prohibited grounds of discrimination.
- ³³ The 1964 Act only applied where there were 25 or more employees or members. Federal administrations and state undertakings, however, are still not covered by the Act as amended in 1972.
- ³⁴ See: OECD: *The role of women in the economy*, National Report for the United States (document MO (73) 13/07, Paris, 23 Nov. 1973).
- ³⁵ See the national report to the OECD, op. cit. In 1964 there were provisions in 40 states limiting the hours of work for women; in 1973 only 2 states had retained their legislation without major amendments.
- ³⁶ Op. cit., see p. 44 et seq. of the report.
- ³⁷ Report V (1), ILC, 33rd Session, op. cit., p. 113.
- ³⁸ See, for example, the report of the comprehensive employment strategy mission: *Sharing in development in the Philippines* (Geneva, ILO, 1974), p. 655.
- ³⁹ OECD: *The role of women in the economy; Summary*, op. cit., para. 142, p. 77.
- ⁴⁰ In Colombia, Act No. 27 of 1974 provided that the Colombian Family Welfare Institute should establish child care centres for pre-school age children of all workers in the public and private sectors to be financed in particular by a contribution from all undertakings, equivalent to 2 per cent of their total wage bill (information provided by the National Association of Industrialists in connection with the Government's report on Recommendation No. 90).
- ⁴¹ This has proved to be the case in Latin America, for example. See Report IV, Ninth Conference of the American States Members of the ILO, Caracas, April 1970, p. 59.
- ⁴² This is true even in the most highly developed countries in this field, such as the Nordic or East European ones. The Swedish Government points out that in spite of increased subsidies there is still a great shortage of places. In the USSR it is acknowledged that the construction of child care facilities is lagging behind the building of towns and other settlements (Working Paper No. 4, ILO Meeting of Experts on Equality of Remuneration, op cit., p. 18).
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CONCLUSIONS

162. Since its adoption by the Conference in 1951 the Equal Remuneration Convention (No. 100) has been ratified by an increasing number of States. The steady flow of ratification can be readily illustrated. In 1956, when the Committee made its first general survey, 10 countries had ratified. In 1969, when the Committee submitted its report on the prospects for ratification and the difficulties encountered in connection with 17 of the major Conventions, there were 65 ratifications. Today, the total has risen to 84, or a multiplication by about eight since the first general survey. The Convention is thus among the most widely accepted instruments of the ILO, since the total indicated now places it among the ten Conventions which have received the highest number of ratifications. However, in spite of this satisfying picture of the development of the situation there still remain 43 member States, or about a third of the membership of the ILO, which have not yet ratified the Convention. It is true that some of these countries have only recently joined the ILO and their distribution according to economic and geographical criteria shows that, with few exceptions, they are developing countries and that roughly one-half of these countries are in Asia, the other half being divided between the African and American continents. In spite of the special difficulties which several of these countries encounter in putting into effect the principle of equal remuneration, which have been emphasised several times, the Committee hopes that the indications given in the present survey will enable many countries (both developing and developed) which have not yet ratified the Convention to undertake a positive re-examination of the possibility of ratifying it, particularly on the occasion of this "International Women's Year".

163. In effect, the ratifying countries are distributed throughout the world, developing and developed, and include countries in which wages are fixed by the authorities, countries where they are fixed voluntarily and countries where a combination of the two methods is used. This diversity shows how flexible were the rules laid down in 1951. As observed in the Introduction, there is an obligation to ensure or encourage respect for the principle of equal pay, according to whether or not the authorities be able to keep wage fixing under control, directly or indirectly. In other words then, the aim is set but countries are free to choose means compatible with or adaptable to their own wage-fixing methods. The Committee pointed to this feature of the standards enacted as far back as 1956, in its first survey, and subsequently in other reports on general or particular cases. Government attitudes have evolved very favourably in this particular connection. From the first few years after the date on which the Convention took effect, it speedily became apparent that one of the main difficulties of substance frequently invoked as a reason for non-ratification was that in some countries the authorities are not supposed to have any say in wage fixing in the private sector. The Committee, in its 1969 survey on the 17 Conventions, observed that this was the difficulty most frequently invoked, but observed that out of five countries which had mentioned this difficulty on the occasion of the general survey in 1956, three had ratified the Convention. And of the eight countries which in 1968 had invoked the same obstacle, four had since ratified. Among the countries

which have not yet ratified, hardly any refer, explicitly at any rate, to this particular problem.

164. The explanation is doubtless to be found in the fact that people are less and less inclined to assume that the part played by the authorities, on the one hand, and by the parties, on the other, in collective bargaining, are mutually exclusive. In the countries deeply attached to the idea that wage fixing should be free, laws have been adopted, or are planned, to give this principle of equal pay a general scope. In other countries, where there is no legislation on the matter, advisory bodies have been set up to undertake studies and research and to make proposals and recommendations, in co-operation with the occupational organisations, designed to promote the principle of equal pay. In all these countries it is now accepted that the authorities must take an active part in seeing that the principle is given effect. This is very much in accordance with the general trend for governments to play an increasingly active part in labour matters. While it is true that, as regards countries where wages are fixed without intervention by the authorities, the Convention merely requires that the principle of equal pay be encouraged, it is important that results be achieved, and experience goes to show that results are not achieved just by merely recommending the parties to abide by the principle of equal pay. Such recommendations are likely to remain purely formal unless agreement is reached on definite stages, means and aims in the process of giving them effect.

165. The developments outlined above promise well for future ratifications. In the countries which have not yet ratified, the principle is, generally speaking, applied in the public sector. Besides this, some of these countries have adopted detailed legislation to ensure that the principle is generally applied—sometimes going well beyond what would be required by the letter of the Convention—as regards the obligations imposed on the parties or the rights which may be individually invoked. The main obstacle still subsisting seems to be an economic one, i.e. the fear of the cost of introducing equal pay and the effects of such a measure on employment. Normally, of course, there is an increase in over-all wage bills, since women's wages have to be brought up to men's wherever the women are doing equal work. It is often feared that the increase in production costs resulting from this will place industries where a high proportion of women are employed at a disadvantage in relation to foreign competitors. It is feared, too, chiefly in the developing countries, where the relative levels of men's and women's wages are often the determining factor in allocation of the rare jobs vacant, that equal pay will discourage the employment of women. Basically these apprehensions are caused by long-standing prejudice as to the value of women's work. With the disappearance of these prejudices it is likely that the risk of increased costs being guarded against by taking on men rather than women will diminish. This consideration demonstrates the value of legislation forbidding the dismissal of women workers who demand equal pay. Incidentally, the law should provide incentives to make the employment of women more "profitable" by measures designed to enable them to acquire skills and experience equal to those of men. Lastly, the very flexibility of the principle and the fact that it can be given effect in stages (authorised by the 1951 instruments) offer governments a great deal of room for manoeuvre in taking action to cushion the effects. Some countries which, in 1956 or again in 1968, had invoked economic factors as a reason for not ratifying, later ratified the Convention or adopted legislation putting the principle into effect by stages.

* * *

166. One initial difficulty in devising methods to give effect to the equal pay principle lies in lack of knowledge of the true situation. In almost all countries the location,

size and degree of inequalities are ill-defined and the statistics inadequate. The reason why very few figures are used in this study is that the data available present such discrepancies, and are so very vague that no general conclusion can be drawn from them. Such data mostly relate to average real earnings, which make allowance for "structural factors" such as hours of work, the structure of the labour force by sector and occupation, seniority and skills. They are not such as to make it possible to measure discrimination against women, and the extent to which the principle of equal pay for work of equal value is applied nationally, while international comparisons would be even more meaningless. It would be most useful to possess comparable data to ascertain how far equal pay is a reality and how the position is likely to evolve. True, there are all sorts of problems connected with the production of such statistics—problems of methodology, of the money available, the staff required, etc., and their importance should not be underestimated. But much progress could be made it seems, if the existing statistical apparatus were better used, or if recourse were had to suitable procedures, such as sampling inquiries. The efforts made in this direction could be guided and encouraged by ILO standards and operational activities in the field of labour statistics.

167. Consideration of the reports submitted by governments shows that the principle of equal pay itself is generally accepted as a matter of public policy, but that there are hesitations and shortcomings in putting the principle into effect. First and foremost, there is no homogeneity of definition. Until quite recently, not enough attention seems to have been paid to the way in which the principle is interpreted by the Convention. All too often the principle has been enshrined in law and practice in a simplified fashion in the form of the slogan "equal pay for equal work", no attempt being made to decide what is meant by "equal", "pay", and "work". Thus definitions excessively restrictive have been adopted. The definition of "equal work" which is still most frequently encountered is that of the "same work" done in the same undertaking or for the same employer; such restrictions are sometimes tempered by a qualification: "substantially the same", "substantially equal", and so on. But this is by no means the same thing as equal pay as understood by the Convention, which tried to give full effect to the principle by speaking of "work of equal value", defined as entailing the fixing of wage rates without discrimination as to sex.

168. Several countries seem to have hesitated in face of the difficulties of practical application derived from the definition given in the Convention, in view of obstacles, of a technical or financial nature, of undertaking a general assessment of jobs. In this regard the 1951 instruments are drafted in very flexible terms, imposing neither the principle of job evaluation nor any methods in connection therewith. But adoption of the idea of work of equal value necessarily implies some comparison between jobs, and it would be desirable that action be taken to encourage objective evaluation of jobs on the basis of the actual work they involve "when such action will assist in giving effect to the provisions of the Convention". Experience shows that no known method is completely objective. It is not necessary, nor is it always an advantage, for systems to be complicated. The essential thing is that there should exist, in case of need, i.e. when the value of different jobs has to be compared, a simple machinery and a simple procedure, easily understandable and readily accessible, to ensure that the sex of the worker is ignored in the operation.

169. The term "pay" should also be defined with adequate rigour. The principle of equal pay must apply not only to the basic wage—the wage proper—but also any supplements thereto which go to make up total earnings from the job and measured on the basis of the job. Equality must apply, too, to indirect elements of remuneration such as social welfare allowances arising out of the job but not measured by it (the

Convention refers to all aspects of remuneration "arising out of the workers' employment"). Application of the equal pay principle is certainly not made any easier by the increasing tendency to supplement basic wages by allowances, bonuses, and so on. Such factors in total earnings are the most difficult to apprehend. It is not enough to ensure equality with regard to the basic wage alone—that part of total earnings which is the easiest to measure—for inequality may creep in again by other means.

170. The interpretation of the principle of equal pay is not the only difficulty encountered in applying the principle correctly and effectively. Two other problems have been observed. The first is that of the scope of legislation. In many instances the law does not apply to certain classes of worker or to certain occupations; this of course restricts the application of the principle. There are exempted classes, protected by special legislation (in particular, civil servants), but often these exemptions relate to sectors ill-protected, if protected at all, by the law or by trade unionism: the traditional sector, agriculture, the small undertaking, homeworkers, many of whom are women. The rule must be that the equal pay principle shall apply everywhere.

171. There is also the problem of enforcement. Today the right to equal pay is acknowledged almost everywhere. But perusal of government reports, with what they have to say about the absence of court rulings or of reference to the subject in inspectorate reports, leads to some doubt regarding the effective practical application of the principle. Firstly, few people may know that the right exists. This is frequently the case in the developed countries, where people can easily be reached by all the publicity which can be, and usually is, made over such matters. But when very few people—and particularly women—can read or write, as is the case in the developing countries, then whatever action is taken must make the fullest allowance for the facts. In this respect, as the Committee has emphasised in the present survey, the use of appropriate information media, such as oral, broadcasting and visual methods including for example simple pamphlets, is an essential prerequisite if women are to be really aware of their rights and able to exercise them, and their employers inclined to respect these rights. In the absence of such measures, even the best intentions enshrined in legislation are too often in danger of remaining a deadletter.

172. Secondly, the means of enforcement are inadequate almost everywhere. Special measures are certainly necessary in this field. In some countries, including certain developing countries, these measures have taken the form of allocating a specialised staff, including women, to the tasks of labour inspection. However, such efforts presuppose the availability of a qualified staff enjoying the necessary authority, which is still not everywhere the case, especially in developing countries. The attitudes of workers' organisations, and of women workers themselves, stimulated by the information methods mentioned in the preceding paragraph, is also a decisive condition in order to give the inspection activities a solid basis.

173. Lastly, the Committee has 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, and establishing grievance procedures. It is important that enforcement procedures should be set in motion, not merely by an individual complaint, but also a responsible authority or body acting in lieu of the woman worker concerned. There must, too, be guarantees against dismissal or other reprisals by the employer against a woman worker who has had recourse to the procedure.

174. It is necessary that working women should be entitled to demand equal pay. But experience shows that this is not always enough to ensure that the principle is

fully applied. The guarantee must also, and perhaps above all, apply to collective bargaining. It is for the parties to the bargaining to give substance to this guarantee by eliminating outright discrimination in the shape of different pay scales for women, by ensuring that indirect discrimination does not arise as a result of apparently neutral classifications, by keeping the composition of pay and factual earnings under review, and finally by organising ad hoc procedures for the settlement of disputes. The employers' and workers' organisations share responsibility for shortcomings existing in this field and, of course, for the action to be taken. But a collective agreement is an agreement reached by bargaining between two parties, each with its own interests. It is a compromise reflecting the balance of powers—the respective bargaining powers of particular groups of employers and workers. Each party must, of course, also accommodate the conflicting interests among its own members in preparing its proposals for negotiations. Workers' organisations thus have a special and sometimes difficult responsibility to eliminate existing discriminations based on sex which some of their members may be reluctant to surrender. By definition, indeed, collective agreements cannot be deliberately directed towards attaining some socially desirable end, such as equal pay. Hence the authorities have a duty to guide the parties and help them in conciliating their interests, while promoting respect for a principle of public interest. When there is provision for the extension of collective agreements, the authorities can and should refuse to extend the application of a discriminatory clause any less binding on the parties. Hence, when legislation imposing equal pay has been enacted, it usually provides that such clauses shall be null and void as contrary to the public interest; or provision may be made for a procedure whereby agreements may be amended in the desirable sense. The same guarantees should apply to individual agreements and contracts of employment, without prejudice to the effects, varying according to country, which collective agreements may have on contracts of employment.

175. Collective agreements vary in scope according to the country concerned. While no general rules can be given, it is true that only rarely is the coverage offered by collective agreements satisfactory as regards the number of workers, male and female, to which they apply. There are also unorganised sectors (craftsmen, small traders, domestic servants, agriculture), which are often identical or overlap with the classes of people excluded from the scope of specific equal pay legislation. In all instances there is a need for a minimum legal wage. In laying down this wage, the authorities are obliged to ensure application of the equal pay principle, which they are doing to an ever-increasing degree, wage rates discriminating between men and women becoming even less frequent. The principle difficulties relate to exemptions from the scope of minimum-wage legislation, and with the general problem of enforcement of laws and regulations. The minimum wage rates have a definite effect on the relationship between wage rates for men and women. They restrict freedom of bargaining enjoyed by the parties. In the developing countries the actual earnings of unskilled workers (and most women are unskilled) are around and unfortunately often below the statutory minimum. But it is not only in laying down a lower limit for wages that the State can apply the principle of equal pay, give an example and urge others to follow it. Leaving aside the cases of countries where wages are fixed centrally, it may be said that the State in the developing countries is the biggest employer of labour. In the market-economy industrialised countries, the tentacles of state intervention are reaching even further into industry and commerce, with the result that its influence on the levels and structures of wages in private enterprise is growing. There is, however, some doubt (the information provided in this respect in government reports being inadequate) as to the way in which the equal pay principle is applied in the vast sector made up of public and nationalised concerns or in cases

when contracts for public works are to be executed, where the public employer may face competition from private enterprise without always having the safeguard represented by the job and wage classification system in force for the civil service. It is in public departments and administrations that the equal pay principle is best applied, usually in a negative way, i.e. the statutes make no reference to sex. But neither do they, at least in many instances, refer to the principle. Serious problems remain here arising from the underclassification of women and unequal opportunities for promotion.

176. As this instance shows, application of the equal pay principle in no way eliminates the problem of real earnings differentials as between the sexes. Factors other than discrimination in wage fixing play a part here. To an ever-increasing degree, governments are becoming aware that the equal pay problem must not be treated in isolation; it must, on the contrary, be considered in the broader context of equality of opportunity and treatment as between the sexes. To this end certain action is called for, in connection with equality of access to vocational training and a full use of existing facilities with regard to vocational guidance, training, placing, and so on. These problems concern both the developed countries and the developing countries, but in the latter they also require that considerable efforts be made in order that women should first of all benefit from literacy and basic education, of which they are in fact often deprived to a large extent by social traditions, family customs and the scarcity of means. The full participation of women, on an equal footing, in the development of such basic education is an essential prerequisite, without which the principles of non-discrimination in vocational training and employment would at the very best only benefit a very small minority of women and would essentially remain contradicted by realities.

177. Discrimination on recruitment should be abolished for all jobs. It may of course be harder to ensure equality in promotion, for already established individual relationships are involved. Just to offer protection against discrimination may not, in every instance, be enough to ensure that the ultimate goal is fully attained. To promote equality of opportunity definite action is required: indeed, in certain circumstances it may be necessary actually to discriminate somewhat in favour of women workers until such time as a proper balance between the sexes is achieved in jobs, promotions and positions. Lastly, social welfare action is needed to enable women to go on working while bringing up a family, in such a way that neither the job nor the home suffers. To this end, traditional notions of what constitutes "women's role" may have to be modified; to do this systematic campaigns will be needed to educate and enlighten the general public and all the groups within it in order to dissipate the conventional views and prejudices regarding the position of women. In many countries action along the lines indicated above has already been taken, and in some countries was taken many years ago. But today there is an ever-greater awareness of the need to abandon piecemeal measures in favour of an over-all approach and a concerted attack on the problem which is now beginning to be more clearly discerned.

* * *

178. Hence the Committee, in concluding, is encouraged to offer two more general comments. Firstly, the Equal Remuneration Convention, 1951 (No. 100), is giving concrete expression to a principle enshrined in the ILO Constitution ever since 1919, has of all ILO instruments been probably one of the most influential, if only by indicating a moral standard and offering the statutory foundation for an unquestionably just claim. Today hardly anybody would seriously challenge the state-

ment that a woman should be paid the same as a man for work of equal value. The economic considerations, frequently put forward as an excuse for postponing action, are less and less accepted as justifying the perpetuation of injustice. Certainly, the progress which remains to be made would be easier if economic expansion were to continue, but even if such expansion slows down or stops there can be no justification for postponing the elimination of inequalities; indeed, their elimination would become all the more necessary, since inequality is the more shocking, and even less tolerable, when there is no comfort to be expected from further growth from which all will profit.

179. The second comment is that elimination of unequal pay for women is just one of the aspects of a more general problem—unequal treatment for women based on their sex, or for any other spurious reason, in choice of occupation and employment. And this is why such elimination is part of the action provided for in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) to promote equality of opportunity and treatment in these fields. To an ever-increasing degree, such elimination is considered by governments as part of the same general policies and procedures. The Committee observes with interest that the Conference will consider this question as well, in the course of its general discussion of equality of opportunity and treatment for women workers (based on Report VIII, also submitted to this session).

180. Within the framework of the collective action undertaken by the community of nations over more than half a century for the promotion of fundamental rights and in particular of equality between men and women, the present survey brings out the extent to which equality in the field of labour is a determining factor in the establishment of true equality between men and women in all spheres. The Committee hopes for this reason that, on the occasion of International Women's Year, this survey will make a contribution to further progress in the many facets of this fundamental aspect of human rights.

APPENDIX I

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APPENDIX II

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 III

REPORTS RECEIVED BY 25 MARCH 1975

(Article 19 of the Constitution)

Reports received: 135 Reports not received: 36 Total: 171

State	Reports received on Convention No. 100	Reports received on Recommendation No. 90	State	Reports received on Convention No. 100	Reports received on Recommendation No. 90
Afghanistan	Rat.	—	Ethiopia*	×	×
Algeria*	Rat.	×	Finland	Rat.	×
Argentina	Rat.	×	France	Rat.	×
Australia	×	×	Gabon	Rat.	×
Austria	Rat.	×	German Democratic Rep.	×	×
Bangladesh	×	×	Fed. Rep. of Germany	Rat.	×
Barbados	—	—	Ghana	Rat.	×
Belgium	Rat.	×	Greece*	×	×
Bolivia	—	—	Guatemala	Rat.	×
Brazil	Rat.	×	Guinea*	Rat.	×
Bulgaria	Rat.	×	Guyana*	×	×
Burma	×	×	Haiti	Rat.	—
Burundi	×	×	Honduras	Rat.	×
Byelorussian SSR*	Rat.	×	Hungary	Rat.	×
Cameroon, United Rep. of	Rat.	×	Iceland	Rat.	×
Canada	Rat.	×	India	Rat.	×
Central African Rep.	Rat.	×	Indonesia	Rat.	×
Chad	Rat.	—	Iran	Rat.	×
Chile*	Rat.	×	Iraq	Rat.	×
China	Rat.	—	Ireland	×	—
Colombia*	Rat.	×	Israel*	Rat.	×
Congo	×	×	Italy	Rat.	×
Costa Rica	Rat.	×	Ivory Coast	Rat.	×
Cuba*	Rat.	×	Jamaica	×	×
Cyprus	×	×	Japan	Rat.	×
Czechoslovakia	Rat.	×	Jordan	Rat.	×
Dahomey	Rat.	—	Kenya	×	×
Democratic Yemen (Aden)	×	×	Khmer Rep.	—	—
Denmark	Rat.	×	Kuwait	×	×
Dominican Republic	Rat.	—	Laos	—	—
Ecuador	Rat.	×	Lebanon	×	×
Egypt	Rat.	×	Liberia	—	—
El Salvador	×	×	Libyan Arab Rep.	Rat.	×

Note: A total of 18 reports has also been received in respect of the following non-metropolitan territories: Australia (New Guinea, Norfolk, Papua); Netherlands (Netherlands Antilles, Surinam); United Kingdom (Antigua, Belize, Bermuda, British Solomon Islands, Brunei, Gibraltar, Hong Kong, Montserrat, St. Helena, Seychelles).

Rat. = Convention ratified.

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* = Report received too late to be summarised in Report III (Part 2).

State	Reports received on Con- ven- tion No. 100	Reports received on Recom- menda- tion No. 90	State	Reports received on Con- ven- tion No. 100	Reports received on Recom- menda- tion No. 90
Luxembourg	Rat.	×	Sierra Leone	Rat.	×
Madagascar	Rat.	×	Singapore	×	×
Malawi	Rat.	×	Somalia	—	—
Malaysia*	×	×	Spain	Rat.	×
Mali	Rat.	×	Sri Lanka	×	×
Malta	×	×	Sudan	Rat.	—
Mauritania	—	—	Sweden	Rat.	×
Mauritius	×	×	Switzerland	Rat.	×
Mexico	Rat.	×	Syrian Arab Rep.*	Rat.	×
Mongolia	Rat.	×	Tanzania	—	—
Morocco	×	×	Thailand*	×	×
Nepal	—	—	Togo	—	—
Netherlands	Rat.	×	Trinidad and Tobago*	×	×
New Zealand	×	×	Tunisia	Rat.	×
Nicaragua	Rat.	—	Turkey	Rat.	×
Niger	Rat.	×	Uganda*	×	×
Nigeria	×	×	Ukrainian SSR	Rat.	×
Norway	Rat.	×	USSR	Rat.	×
Pakistan	×	×	United Arab Emirates	—	—
Panama	Rat.	×	United Kingdom	Rat.	×
Paraguay	Rat.	—	United States	×	×
Peru	Rat.	×	Upper Volta	Rat.	×
Philippines	Rat.	×	Uruguay*	×	×
Poland	Rat.	×	Venezuela	×	×
Portugal*	Rat.	×	Rep. of Viet-Nam	×	×
Qatar	—	—	Yemen*	×	×
Romania	Rat.	×	Yugoslavia*	Rat.	×
Rwanda	×	×	Zaire	Rat.	—
Senegal	Rat.	—	Zambia	Rat.	×