



## TWELFTH ITEM ON THE AGENDA

**Domestic partnerships****Introduction**

1. The Consultative Committee on Administrative Questions (CCAQ) first examined, in 1991, the issue as to whether dependency status should be recognized in respect of situations other than a marriage formally solemnized by ecclesiastical or civil ceremony. Subsequent consideration led to the preparation of a Note by the CCAQ secretariat in 1998,<sup>1</sup> on the basis of which consensus was reached during the 88th (1998) Session of the CCAQ<sup>2</sup> on the following two-part policy on the definition of dependency:

At the outset, organizations which had not already done so agreed to undertake the necessary steps to put in place a policy to recognize common law marriage for dependency purposes if proof was provided that the common law marriage was recognized by the staff member's home country.

In addition, recognizing that this issue was intrinsically related to the work and life issues outlined in the Administrative Committee on Co-ordination's policy statement for a Work/Family Agenda, the Committee:

- endorsed the principle that organizations should move – to the extent possible, in unison – in the direction of non-discrimination with regard to the recognition of domestic partnerships;
  - agreed as a first step to initiate consultations within organizations on the basis of the draft criteria provided in annex V to the Note.
2. Annex V of the Note proposes criteria governing domestic partnerships, which require that the partners: (a) not be related by blood to a degree which would bar marriage in the country of residence; (b) not be presently married to anyone else; (c) be each other's sole partner with intention to remain so indefinitely; (d) be legally competent to contract and of

<sup>1</sup> UN doc. ACC/1998/PER/R.6 (88th Session, Rome, 14-17 April 1998) *Work and Family Agenda: Definition of Dependency*, Note by the CCAQ secretariat. (The Consultative Committee on Administrative Questions (CCAQ) was, at that time, the subsidiary body of the Administrative Committee on Co-ordination (ACC), the latter of which comprises the executive heads of UN organizations.)

<sup>2</sup> UN doc. ACC/1998/5, paras. 24 and 25, Rome, 14-17 April 1998.

a lawful age to marry; (e) have resided together for at least 12 months and intend to do so indefinitely; (f) have been jointly responsible to each other for basic living expenses and welfare for at least 12 months; (g) must immediately inform the employing organization in the event of dissolution of the partnership; (h) in the event of dissolution of the partnership, cannot apply for recognition of another domestic partner until at least 12 months have elapsed; (i) attest to the foregoing by means of a signed, notarized statement; and (j) recognize that any false representation in the foregoing context would give grounds to the employing organization for the recovery of appropriate damages.

## Current trends

3. In general, employers offering benefits to domestic partners, either opposite or same-sex, do so according to one of three levels of recognition: (i) full recognition: if the common-law marriage or registered domestic partnership is recognized under the applicable staff rules or procedure, the financial benefits accorded to the married staff member in respect of his/her spouse apply also to the staff member in respect of his/her partner; (ii) partial recognition: in many cases, the common-law spouse or other domestic partner is entitled to health insurance coverage, indemnity in case of the staff member's death, relocation benefits and residence or work permits in the country of the duty station; (iii) recognition for administrative purposes: this level of recognition is quite limited and allows, for example, access to certain premises or facilities of the employer (e.g. social or fitness facilities), access to courses sponsored by the organization and special leave arrangements for the staff member in case of the illness or death of the partner.
4. Private companies, academic institutions and trade unions in a number of countries tend to recognize domestic partnerships to a much greater degree than do their public sector counterparts. These initiatives have been taken irrespective of whether the organizations or firms concerned operate within the context of legislation which allows the formal recognition of domestic partnerships. Many organizations and companies in different States of the United States, for instance, have reportedly instituted schemes to offer benefits for domestic partners, both for reasons of equity (often to ensure a commitment with their own anti-discrimination policies) and to maintain a competitive edge in the market by demonstrating a commitment to diversity. With the increasing possibility to legally formalize relationships between partners of the same or opposite-sex under national legal systems, however, it is likely that this trend will accelerate. Partner registration legislation which allows same-sex couples the status and benefits similar to marriage (but often without the unfettered right to adopt children) now exists in a number of countries (for example, Denmark, France, Iceland, the Netherlands, Norway, Spain (Aragon and Catalonia), Sweden and Switzerland). In addition, recent legislation in Germany and in the Netherlands allows civil marriage between same-sex partners. Other countries (e.g. Belgium) have instituted statutory cohabitation contracts for same-sex and opposite-sex couples which provide a ritual and community acknowledgement of a relationship but do not grant the legal or financial benefits enjoyed by legally married couples, although the parties may develop their own binding legal agreements regarding their mutual responsibilities. Hungary has extended to same-sex couples the facility to conclude a common-law marriage.
5. The United Nations secretariat and its associated programmes<sup>3</sup> have, for some time, recognized common-law marriage for dependency purposes if it is accepted in the staff

<sup>3</sup> Including, for example, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Environment Programme (UNEP), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP).

member's home country. The opinion of 15 December 1981 of the UN Office of Legal Affairs, which sets out the basis on which common-law marriages are recognized, points out that the:

... law of a staff member's home country is used by the UN as the point of reference in determining a staff member's marital status for UN administrative purposes, i.e. the home country is the forum state. Consequently, if a common law marriage is valid where contracted and is recognized by the law of a staff member's home country, the UN will also recognize it. But, if the marriage is not valid where contracted, or even if it is valid where contracted and it is not recognized by the home country then, equally, the UN will not recognize it for the purposes of entitlements under UN Regulations and Rules.

Contemplating only common-law marriages between members of the opposite-sex, this opinion notes that certain prerequisites appear necessary in jurisdictions where it is possible to constitute such marriages, including the requirement that the parties have the legal capacity to marry (for example, that they not be prohibited from contracting a valid marriage because of a previously subsisting marriage; and that they agree to take each other as husband and wife and to fulfil the legal obligations of marriage).

6. While none of the UN specialized agencies has, to date, proceeded to recognize domestic partners (neither same-sex nor opposite-sex couples) outside the context of formal marriage, most organizations have the question under consideration. Other international organizations have, however, taken measures to extend a range of family benefits to the domestic partners of staff members. For example, in June 1993, the senior management of the World Bank announced a policy decision to recognize same-sex domestic partnerships. (Common-law marriages, which are valid in the jurisdiction where the marriage occurred, were already recognized and no differentiation is made between such unions and official marriages for the purpose of benefits.) World Bank policy as concerns same-sex domestic partners requires that an affidavit of domestic partnership be signed under notary by both partners, certifying that criteria which are almost identical to those proposed by the CCAQ are met. In support of the affidavit, the staff member is asked to supply as many as possible of a number of specified documents, including: joint property titles or a joint mortgage showing both partners' names; voter registration cards; driving licences and birth certificates; evidence of joint bank/savings accounts; evidence of common household expenses; execution of wills naming each other as executor and/or beneficiary; and evidence of other joint financial obligations. The parties also undertake to file the appropriate notification document ("Statement of Termination") in case the partnership ends (default of which may lead to disciplinary sanctions). Finally, a new domestic partnership cannot be enrolled until at least 12 months after filing a Statement of Termination. Effective September 1998, eligibility in the Bank Group's Medical Insurance Plan was made available to domestic partners of same-sex relationships. Registered domestic partners are eligible for World Bank identification cards, and staff in a domestic partnership may use short-term family leave to care for the registered partner. A proposal to make available all benefits to domestic partners, whether same or opposite-sex, is under consideration.
7. The International Monetary Fund recognizes common-law marriages for the purpose of paying benefits, provided these marriages are recognized as a valid and legal form of marriage in the jurisdiction in which they are formed. The question of recognizing domestic partnerships is under review regarding the granting of medical insurance benefits. Since October 2000, it has been possible for same and opposite-sex partners to receive a subsidized medical insurance coverage provided they have resided together for at least 12 months. The Organisation for Economic Co-operation and Development (OECD) recognizes registered domestic partnerships of the same or opposite-sex under specific criteria which mirror those most commonly applied by other organizations which grant

partial recognition. Partners are allowed to access the benefits of the health insurance scheme.

## The principle of non-discrimination

8. In consultations among organizations of the UN common system, concern has been voiced regarding the application of provisions which would effectively discriminate among staff members on the basis of their marital status or sexual preference. Implementation only of the first part of the policy agreed by the CCAQ would appear to be in direct contradiction to such a principle of non-discrimination. Assuming that the UN's present legal position remains the standard to be applied, that approach would also mean that a higher and different standard would be applied in respect of partnerships other than those solemnized by formal marriage, which need to be valid only where contracted and not subject to the additional requirement of being valid both where contracted *and* in the staff member's home country. In seeking to avoid the introduction or application of provisions that accord different treatment to its staff members, the Office is also concerned to avoid the possibility of action being taken either under the applicable internal grievance procedures or as an appeal to the ILO Administrative Tribunal.
9. The Office is concerned to advance discussion of this issue of recognizing the dependency status for the domestic partners of its staff. In doing so, it would hope that, even if the Governing Body prefers to take a step-by-step approach to the issue, it would be possible to eventually arrive at a situation where its staff are treated equitably in this area. This would be consistent with the ILO's role as a global champion of non-discrimination in employment and occupation. It would also be consistent with the Governing Body's approval, in November 2000, of a commitment to ensure that officials of the Office be selected without discrimination on the basis of, *inter alia*, marital status and sexual preference.<sup>4</sup>
10. A number of studies have been carried out regarding the question of the cost of recognizing domestic partners for the purpose of benefits, all of which show that the overall cost is low. While the extension of benefits to a staff member in respect of a domestic partner is individually expensive – but no more expensive than the benefit granted to a staff member in respect of a spouse – the collective cost of introducing such a scheme is low both because domestic partnerships comprise a very small proportion of the population and because enrolment in domestic partnership programmes is generally low. A 1995 survey<sup>5</sup> of employers found that 75 per cent of companies with domestic partner policies reported an enrolment rate of 2 per cent or less of eligible employees. Several factors appear to keep enrolments low: domestic partners seem to have a high rate of employment themselves and therefore enjoy coverage of benefits through their own employment; privacy concerns; and the lack of adequate legislative protection against discrimination on the basis of marital status and sexual preference operate to prevent some couples from disclosing their status.

<sup>4</sup> GB.279/PFA/12(Add.1), Appendix VI: *Draft Staff Regulations to give effect to the Collective Agreement on Recruitment and Selection*.

<sup>5</sup> *Domestic partner benefits: A census*, International Society of Certified Employee Benefit Specialists, Brookfield, Wisconsin, May 1995.

## Proposal

11. *The Committee may wish to recommend that the Governing Body authorize the Office to proceed on the following basis:*

- (a) that it first define the phrase “domestic partner” in terms of the relationships to be covered (i.e. a couple of the same or opposite-sex, whose relationship may be regulated by legal instruments, but who are unable legally, or not intending, to enter into a legal relationship of marriage);*
- (b) that it determine specified criteria which must be met for recognition (in line with those proposed by the CCAQ in paragraph 2 above);*
- (c) that consideration be given as to what benefits/assistance should be extended to a staff member in respect of a domestic partner. The Office considers it would be appropriate to indicate immediately that it will provide assistance in obtaining the necessary permit for a domestic partner to live with the staff member at the duty station and that, in the event of an evacuation from a duty station for reasons of security, the Office would assume the same responsibility for a domestic partner as it does for other recognized family members. The Office also proposes, on a pilot basis, to extend to domestic partners the benefit of payment of travel costs on appointment, transfer and repatriation and that it seek to identify, in discussion with other organizations of the UN common system, what additional benefits or assistance might be granted on a trial basis;*
- (d) that the Office approach the Management Committee of the Staff Health Insurance Fund (SHIF) to discuss the possibility, consequences and basis on which some or all of the health insurance benefits granted to other recognized dependent family members could be extended to domestic partners;*
- (e) that, in parallel, measures be taken in the context of inter-agency discussions to advance the human resources reform strategy and, in particular, the Work/Family Agenda being pursued in the UN, to seek agreement among the common system agencies for the governing bodies of individual agencies to address the issue of the recognition of domestic partners in the context of their own staff regulations or rules.*

Geneva, 2 November 2001.

*Point for decision:* Paragraph 11.