International Labour Organization

Achieving gender equality at work

International Labour Conference
111th Session, 2023



International labour conference, 111th Session, 2023

Achieving gender equality at work

General Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), the Maternity Protection Convention, 2000 (No. 183), the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Recommendation, 1981 (No. 165) and the Maternity Protection Recommendation, 2000 (No. 191)

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)
Report III (Part B)

International Labour Office • Geneva

ISBN 978-92-2-037743-7 (print)
ISBN 978-92-2-037744-4 (web PDF)
ISSN 0074-6681

First edition 2023

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

ILO publications and digital products can be obtained through major booksellers and digital distribution platforms, or ordered directly from ilo@turpin-distribution.com. For more information, visit our website: www.ilo.org/publns or contact ilopubs@ilo.org.

Produced by the Publications Production Unit (PRODOC) of the ILO.

The ILO endeavours to use paper sourced from forests managed in an environmentally sustainable and socially responsible manner.

Code: DESIGN-WEI-PMSERV

Table of contents

Introduction 11

I. **Background and scope of the General Survey** 12

II. **Methodology of the General Survey** 15

III. **Gender equality at the heart of the ILO's mandate and normative action** 16

Gender equality from the foundation of the ILO to the present 16

IV. **Global context of gender equality at work** 20

An international framework for the achievement of gender equality 20

Current trends, challenges and opportunities 22

Significant progress achieved; yet discrimination and inequalities persist 22

Unequal shares of unpaid care work and family responsibilities: Hindering women's progress in the world of work 24

The impact of pregnancy and motherhood on women's employment and occupational opportunities: The motherhood penalty 26

The impact of the COVID-19 pandemic: A deepening crisis 27

V. **Content and structure of the General Survey** 29

Part I. Legal and institutional framework for gender equality and non-discrimination 31

Chapter 1. Framework for gender equality and non-discrimination: Convention No. 111 and Recommendation No. 111 33

1. **The need for precise and comprehensive definitions and prohibitions of discrimination** 34

1.1. Discrimination as an evolving phenomenon 37

Direct and indirect discrimination 37

Discrimination-based harassment 39

Multiple and intersectional discrimination 40

Increasing recognition of other specific forms of discrimination 42

1.2. Gender equality and the grounds of discrimination covered by the Convention 43

Discrimination based on sex 43

Discrimination based on maternity, including pregnancy 44

Discrimination based on physical, mental and professional abilities and capabilities and other characteristics attributed to a particular sex or gender 45

Discrimination based on civil or marital status and family situation and responsibilities 48

Sexual orientation, gender identity and intersex status 51

Sexual harassment 55

Sex-based and gender-based harassment 58

1.3. Employment and occupation 59

2. Leaving no one behind in gender equality at work 60
2.1. The public sector 60
2.2. Domestic work 61
2.3. Informal economy 63
2.4. Self-employment 65
2.5. Digitalization and work 66
3. Achieving gender equality through a national equality policy 66
3.1. General features of the national equality policy 66
3.2. Means of application 68
Laws and regulations 68
National plans and strategies 69
Collective agreements 69
Affirmative action 70

Chapter 2. Framework for workers with family responsibilities: Convention No. 156 and Recommendation No. 165 73

1. Family responsibilities at the heart of decent work and gender equality: Context and recent developments 74
2. Objectives of the instruments 76
3. Definitions and scope of application 77
3.1. Definitions 77
Dependent children 78
Other members of the immediate family 79
3.2. A broad scope of application 81
4. Making equality for workers with family responsibilities a priority in national policy 83
4.1. General features of national policy measures 83
4.2. Engaging in employment without discrimination 85
4.3. Engaging in employment without conflict between work and family responsibilities 86
5. Means of application 87

Chapter 3. Convention No. 183 and Recommendation No. 191: Setting forth a comprehensive approach to maternity protection that enables gender equality 91

1. Objectives and purpose of the maternity protection standards 92
1.1. Maternity protection: A fundamental need and a human right 92
1.2. Maternity protection as a precondition for gender equality and non-discrimination at work 95
1.3. Ensuring the health, safety and income security of women and children 97
1.4. Maternity protection: A joint responsibility of governments and society 99

2. Scope of protection **102**
2.1. Definition of woman and child 102
2.2. Coverage of all women in employment and dependent work 103
2.3. Limited possibility to exclude certain categories of women workers from the scope of application of Convention No. 183 107
2.4. Current challenges in ensuring effective coverage 108
2.5. Protection extended to fathers and adoptive parents 110

Chapter 4. The formulation of national policies on gender equality and measuring progress in the achievement of policy objectives **113**

1. The importance of an enabling environment for gender equality **114**
2. Monitoring and reviewing national policies and legal frameworks **116**
3. The fundamental role of social dialogue and tripartite participation **120**

Part II. Achieving gender equality at work through labour rights and policies **125**

Chapter 5. Protecting against discrimination and ensuring equality at all stages of employment and occupation **127**

1. Accessing more and better jobs to achieve gender equality: The continuing challenge **129**
1.1. Access to education and training: Setting the basis for equal opportunities for men and women 130
Girls' equal access to universal, compulsory and free education 131
Challenges for men and women workers with family responsibilities to access lifelong learning 132
Addressing gender segregation in vocational training 134
1.2. Equal access to vocational guidance and equality in placement and employment services 136
1.3. Gender equality in recruitment procedures and job advertisements 139
Challenges in accessing jobs due to pregnancy and maternity 141
Challenges in accessing jobs due to family responsibilities 143
Prohibition of pregnancy testing or inquiries during the recruitment process 144
2. Ensuring equal opportunities to advance in employment and occupation **147**
2.1. Promotion procedures 148
2.2. Skilling, reskilling and upskilling to access higher positions 150
3. Remuneration and conditions of work **151**
3.1. Remuneration 151
3.2. Social security measures and welfare facilities and benefits 153

4. Returning to work **154**
4.1. Right to return to the same or equivalent position after maternity and parental leave 154
Right to return to work following maternity and other leave arrangements 154
Maintaining employment-related entitlements and rights during maternity leave 157
4.2. Returning to work after other types of care-related leave 159
5. Protection against termination of employment **161**
5.1. Termination of employment based on sex and gender 161
5.2. Prohibition of dismissal for reasons related to maternity 162
Period of protection against wrongful dismissal 164
Dismissals during the protected period: Grounds considered to be unrelated to pregnancy and maternity 166
Burden of proof 168
Compensation and other remedies in case of dismissal 169
5.3. Termination of employment based on marital status, family situation and family responsibilities 170

Chapter 6. Maternity Protection **175**

1. Maternity health protection in the workplace **177**
1.1. Dangerous or unhealthy work 178
General provisions prohibiting dangerous or unhealthy work for pregnant or breastfeeding women 179
Identifying health risks for pregnant and breastfeeding women at work 181
Determination of dangerous or unhealthy types of work by the competent authority 182
Workplace risk assessments 184
Alternative measures in cases of work determined to be dangerous or unhealthy 186
1.2. Working time arrangements 188
Night work 189
Time off for medical examinations 192
2. Maternity-related leave and benefits **194**
2.1. Maternity leave 194
Entitlement to maternity leave 195
Duration of maternity leave 196
Mandatory postnatal leave 198
Distribution of the maternity leave period before and after childbirth 199
Extension of maternity leave 200
Late childbirth 200
Illness, complications or risk of complications 200
Multiple births 201
Leave in the event of miscarriage or stillbirth 201
Transfer of maternity leave to the father 202

2.2. Maternity benefits 203
Maternity cash benefits 203
Adequacy of maternity cash benefits 203
Qualifying conditions 206
Social assistance benefits 208
Categories of workers excluded from coverage by cash benefits 208
Medical care benefits 210
Financing maternity benefits 213
3. Measures to facilitate nursing and other working arrangements 214
3.1. Nursing breaks 215
Duration of entitlement to nursing breaks 215
Number and duration of nursing breaks or the reduction of working hours 216
Nursing breaks as paid working time 218
Extension of the right to nursing breaks to fathers 219
3.2. Nursing and childcare facilities 220

Chapter 7. Reconciling work and family responsibilities 223

1. Types of leave to meet family responsibilities 225
1.1. Parental leave 225
Coverage 226
Entitlement 227
Duration 228
Distribution of parental leave periods 229
Adequacy of parental leave cash benefits and source of financing 230
1.2. Leave in the event of the illness of a family member 232
Leave of absence in case of illness of a dependent child 232
Long-term leave to care for dependents 233
1.3. Paternity leave 234
Duration 235
Source of financing 236
1.4. Adoption leave 237
2. Working-time and workplace arrangements 238
2.1. Reduction of working hours to accommodate workers with family responsibilities 239
Progressive reduction of daily hours of work 239
Reduction of overtime 240
2.2. Flexible working arrangements 241
Working schedules 241
Holidays 242
2.3. Other working conditions 243
Shift and night work 243
Transfer to a different workplace 244

2.4. Part-time work, temporary work and home work 245
Part-time work 245
Temporary work 246
Home work 247
Flexibility regarding the place of work: Telework 248

3. Childcare, family services and facilities, and other help in the exercise of family responsibilities 249

3.1. Community planning 250
3.2. Childcare services and facilities 251
Statutory provisions on childcare services and facilities 251
Source of funding 254
3.3. Family services and facilities 255
Statutory provisions on long-term care services and facilities 256
Provision of long-term care services and facilities 256
Source of funding 257
Challenges in the provision of childcare and family services and facilities 258
3.4. Other facilities to lighten household duties 260

4. Other social security measures 261

4.1. Child benefits 261
4.2. Recognition of periods spent caring for children or other family members 264
4.3. Tax relief measures 265
4.4. Family needs and unemployment benefits 265

Chapter 8. Enforcing and safeguarding rights 269

1. Enforcement mechanisms 271

2. Number of reported cases of discrimination and improving access to enforcement mechanisms 273

3. Effective redress and sanctions 274

Part III. Achieving the potential of the instruments 277

1. Gender equality as a catalyst for sustainable development 277

2. Ratification of ILO Conventions Nos 111, 156 and 183: Prospects and challenges 278

Convention No. 111 279
Convention No. 156 279
Convention No. 183 279

3. Proposals for ILO Action 280

Provision of technical assistance 280
Proposals for standards-related action 281

Concluding remarks **283**

Convention No. 111 285
Convention No. 156 287
Convention No. 183 288

Appendices **293**

Appendix I. Ratification status (Conventions Nos 111, 156 and 183) 294
Appendix II. Governments that provided reports 299
Appendix III. Workers' and employers' organizations that provided reports 300



Introduction



I. Background and scope of the General Survey

1. In accordance with article 19 of the ILO Constitution, at its 337th Session (October–November 2019),[1] the Governing Body decided that the General Survey to be prepared by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) in 2021 and submitted to the International Labour Conference in 2022 would examine the following six instruments:

- the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958;
- the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981; and
- the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000.

2. Following this decision, the Governing Body requested the Office to prepare a draft report form for the General Survey concerning the above-mentioned instruments. The preparation of the General Survey was subsequently postponed to 2022 following the outbreak of the COVID-19 pandemic and the corresponding programme adaptations.[2] At its 341st Session (March 2021), the Governing Body adopted the report form to be used by Member States for their reports under article 19 of the ILO Constitution for the preparation of the General Survey, which will be submitted to the Conference in 2023.[3]

3. The Governing Body discussions in October 2019 and March 2021 emphasized the timeliness of this General Survey in light of the recent renewed focus on gender equality in many countries, the persistent challenges regarding the implementation of the instruments under review, and the need to identify lacunae in gender equality and to work towards the elimination of discrimination against women in employment.[4] The Committee has therefore examined the six instruments from a gender equality perspective. It considers that these instruments are of central importance for the realization of the fundamental principle of equality of opportunity and treatment between men and women workers[5] and for addressing major aspects of gender inequality in the world of work. In this regard, it recalls that Convention No. 111 is recognized as a fundamental Convention, both within and outside the ILO, for the elimination of discrimination in respect of employment and occupation.[6]

4. While this is the first occasion on which the topics of gender discrimination, maternity protection and the situation of workers with family responsibilities have been considered together in a General Survey,[7] Convention No. 111 and Recommendation No. 111 on discrimination in employment and occupation, as well as Convention No. 156 and Recommendation No. 165

1 ILO, *Choice of Conventions and Recommendations on which Reports should be Requested under Article 19, Paragraphs 5(e) and 6(d), of the ILO Constitution in 2021*, GB.337/LILS/2, 2019 para. 25.

2 ILO, *Minutes of the Meetings of the Screening Group held in Preparation of Decisions made by Correspondence by the Governing Body between March and October 2020*, Minutes (Rev. 5), 2020, para. 353(a).

3 ILO, *Proposed form for reports to be requested under articles 19(5)(e) and 19(6)(d) of the ILO Constitution in 2022 on the instruments concerning equality of opportunity and treatment*, GB.341/LILS/2(Rev.1), 2021.

4 GB.337/LILS/2, para. 17; ILO, *Minutes of the Legal Issues and International Labour Standards Section*, GB.337/LILS/PV, 2019, paras 36, 46 and 50.

5 GB.337/LILS/2, paras 6 and 14.

6 The Governing Body has identified ten Conventions, including Convention No. 111, as being fundamental to the rights of human beings at work, irrespective of the level of development of individual Member States. These rights are a precondition for all the others in that they provide a necessary framework from which to strive freely for the improvement of individual and collective conditions of work. The principles set out in the ILO's fundamental Conventions are also contained in decisions adopted by the International Labour Conference. See ILO, Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 86th Session, 1998; ILO, Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work, International Labour Conference, 110th Session, 2022; ILO, *The International Labour Organization's Fundamental Conventions*, InFocus Programme on Promoting the Declaration, 2003, 7 .

7 GB.337/LILS/2, para. 17.

on workers with family responsibilities, were the subject of a number of General Surveys carried out between 1963 and 2012.[8] However, this is the first time that Convention No. 183 and Recommendation No. 191 on maternity protection have been examined.

5. The Committee acknowledges the wealth of ILO standards (Conventions, Recommendations and Protocols) that, in addition to the instruments examined in the present Survey, explicitly address issues relevant to gender equality.[9] These standards, which cover a wide range of topics, establish rights and safeguards that are instrumental to gender equality. These concern, in particular, the following thematic areas: wage setting and equal remuneration for men and women for work of equal value;[10] the elimination of violence and harassment in the world of work, including gender-based violence and harassment;[11] maternity protection and social protection benefits;[12] women's empowerment during crises and disasters;[13] the increased decent work deficits faced by women in the informal economy;[14] the empowerment of women and girls as a key factor in the global response to HIV and AIDS;[15] women's participation in the labour market and employment policies;[16] aspects of occupational safety and health specific to women;[17] equal learning opportunities;[18] and women's equal participation in social dialogue and labour administration processes.[19] The Committee considers that all ILO standards are, in practice, instrumental to the achievement of gender equality at work, regardless of whether or not they refer explicitly to gender equality. This is particularly true of instruments that concern sectors, occupations, work arrangements and situations in which

8 Convention No. 111 was the subject of General Surveys in 1963, 1971, 1988 and 1996, as well as in 2012 as one of the fundamental Conventions. In addition, in 1993, the Committee undertook a General Survey for the first time on Convention No. 156.

9 The Equal Remuneration Convention, 1951 (No. 100), is also one of the fundamental Conventions and, together with its accompanying Recommendation No. 90, is inextricably linked to gender discrimination. These instruments were nevertheless not included by the Governing Body within the scope of the present General Survey with a view to limiting the reporting obligations of Member States and allowing for a more focused General Survey. See GB.337/LILS/PV, paras 43 and 51–64.

10 The Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951; the Plantations Recommendation, 1958 (No. 110); and the Night Work Recommendation, 1990, (No. 178).

11 The Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019, and the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

12 The Social Security (Minimum Standards) Convention, 1952 (No. 102); the Plantations Convention, 1958 (No. 110); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Social Protection Floors Recommendation, 2012 (No. 202); the Safety and Health in Agriculture Convention, 2001 (No. 184); the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); the Income Security Recommendation, 1944 (No. 67); the Medical Care Recommendation, 1944 (No. 69); and the Domestic Workers Convention, 2011 (No. 189).

13 The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205).

14 The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204); and the Night Work Convention, 1990 (No. 171).

15 The HIV and AIDS Recommendation, 2010 (No. 200).

16 The Employment Relationship Recommendation, 2006 (No. 198); the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169); the Employment Service Recommendation, 1948 (No. 83); the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189); and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168).

17 For instance, the Work in Fishing Recommendation, 2007 (No. 199); the Safety and Health in Agriculture Recommendation, 2001 (No. 192); the Chemicals Recommendation, 1990 (No. 177); the Nursing Personnel Recommendation, 1977 (No. 157); the Hygiene (Commerce and Offices) Recommendation, 1964 (No. 120); and the Reduction of Hours of Work Recommendation, 1962 (No. 116).

18 The Human Resources Development Recommendation, 2004 (No. 195).

19 The Promotion of Cooperatives Recommendation, 2002 (No. 193); the Rural Workers' Organisations Recommendation, 1975 (No. 149); the Labour Inspection Recommendation, 1947 (No. 81); and the Income Security Recommendation, 1944 (No. 67).

women predominate,[20] as well as the instruments addressing forced labour,[21] minimum wages,[22] social protection,[23] social dialogue and collective bargaining,[24] and labour administration, including labour inspection.[25]

6. The Committee has also been mindful throughout the preparation of this General Survey of the call made by ILO constituents, when selecting the instruments to be reviewed and adopting the questionnaire,[26] for the Survey to focus on gender equality. The Committee has therefore focused its examination on the aspects of the instruments that are primarily related to this topic, rather than conducting an exhaustive examination of all of the dimensions that they cover. This applies in particular to Convention No. 111 and Recommendation No. 111, which have a broad scope of application covering all forms of discrimination based on the seven grounds explicitly set out in Article 1(1)(a) of Convention No. 111 (race, colour, sex, religion, political opinion, national extraction or social origin), as well as all forms of discrimination based on additional grounds determined by ratifying Member States on the basis of Article 1(1)(b) of Convention No. 111, such as age, disability, or real or perceived HIV status.[27] In light of the above, this General Survey therefore examines discrimination based on sex, gender, family responsibilities and maternity regarding women and men in employment and occupation. The Committee recalls that sex discrimination includes distinctions based on the biological characteristics, as well as unequal treatment arising from socially constructed

20 For instance, ILO standards concerning specific sectors, occupations and work arrangements (such as the Labour Relations (Public Service) Convention, 1978 (No. 151); the Working Conditions (Hotels and Restaurants) Convention (No. 172) and Recommendation (No. 179), 1991; the Part-Time Work Convention (No. 175) and Recommendation (No. 182), 1994; the Home Work Convention, 1996 (No. 177); the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011; the Reduction of Hours of Work Recommendation, 1962 (No. 116); the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977; the Plantations Convention (No. 110) and Recommendation (No. 110), 1958, and the Protocol of 1982 to the Plantations Convention)), as well as regarding workers' situations or personal characteristics (such as the Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949; the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151); the Vocational Rehabilitation and Employment (Disabled Persons) Convention (No. 159) and Recommendation (No. 168), 1983; and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the Indigenous and Tribal Populations Recommendation, 1957 (No. 104)).

21 See the Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Protocol of 2014 to the Forced Labour Convention, 1930.

22 The Minimum Wage Fixing Convention (No. 131) and Recommendation (No. 135), 1970. The Committee notes that the ILO *Global Wage Report 2020–21* stresses that women are over-represented among minimum and sub-minimum wage earners and that the literature suggests that minimum wages can make a significant contribution towards narrowing gender pay gaps. See ILO, *Global Wage Report 2020-21: Wages and Minimum Wages in the Time of COVID-19*, 2020, 68.

23 See, in particular, the Social Protection Floors Recommendation, 2012 (No. 202), which recognizes that social security is an important tool for, inter alia, gender equality (Preamble) and includes non-discrimination, gender equality and responsiveness to special needs among the principles that should be applied by Members when giving effect to the Recommendation (Para. 3(d)).

24 Such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

25 The Labour Inspection Convention, 1947 (No. 81); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Labour Administration Convention, 1978 (No. 150).

26 See, respectively, GB.337/LILS/2; GB.337/LILS/PV; and GB.341/LILS/2(Rev.1).

27 For more information on discrimination based on other grounds covered by Convention No. 111 and Recommendation No. 111, see ILO, *Discrimination in respect of Employment and Occupation: General Conclusions on the Reports relating to the Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in respect of Employment and Occupation, 1958*, Report III (Part IV), Part Three, International Labour Conference, 47th Session, 1963 (hereinafter "1963 General Survey"); ILO, *Equality in Employment and Occupation: General Survey of the Reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958*, Report III (Part 4B), International Labour Conference, 75th Session, 1988 (hereinafter "1988 General Survey"); ILO, *Equality in Employment and Occupation: Special Survey on Equality in Employment and Occupation in respect of Convention No. 111*, Report III (Part 4B), International Labour Conference, 83rd Session, 1996 (hereinafter "1996 Special Survey"); ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (Part 1B), International Labour Conference,101st Session, 2012 (hereinafter "2012 General Survey").

roles and responsibilities assigned to a particular sex (gender).[28] Although gender equality cannot be achieved without addressing multiple and intersecting forms of discrimination based on other grounds, in the interests of concision, such other grounds of discrimination are referred to only when they intersect with or relate to the achievement of gender equality. The Committee nevertheless wishes to emphasize that the fact that these other grounds of discrimination are not subject to extended analysis in the present General Survey does not imply any sort of hierarchy in terms of the prohibited grounds of discrimination set out in Convention No. 111 or Recommendation No. 111.

II. Methodology of the General Survey

7. This General Survey is based on the reports communicated under articles 19 and 22 of the ILO Constitution by governments on the measures taken to give effect to the provisions of the Conventions and Recommendations examined, as well as on the observations submitted by organizations of employers and workers under article 23 of the ILO Constitution. The Committee has also taken into account available information on relevant law and practice. The present Survey builds on the analysis contained in previous General Surveys on instruments concerning equality of opportunity and treatment,[29] workers with family responsibilities,[30] social protection,[31] as well as the fundamental Conventions.[32] The most recent and relevant ILO publications have also been referred to, and particularly the reports prepared within the framework of the ILO Women at Work Centenary Initiative, the *Work for a Brighter Future* report, the *Global Wage Report 2018–19*, the *World Social Protection Report 2020–22* and the 2022 report *Care at work: Investing in care leave and services for a more gender equal world of work*.[33]

8. The Committee notes that 114 Governments provided reports under article 19 of the ILO Constitution on the position of national law and practice in respect of matters dealt with in the instruments examined, including: 26 reports from Africa, 26 from the Americas, 5 from the Arab States, 16 from Asia and the Pacific and 41 from Europe and Central Asia. Full indications on the reports received are contained in Appendix II. According to its usual practice, the Committee has also taken into account the observations submitted by 9 employers' and 47 workers' organizations.

28 2012 General Survey, para. 782.

29 1988 General Survey; 1996 Special Survey.

30 ILO, *Workers with Family Responsibilities: General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981*, Report III (Part 4B), International Labour Conference, 80th Session, 1993 (hereinafter "1993 General Survey").

31 ILO, Social Security and the Rule of Law: *General Survey concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 100th Session, 2011 (hereinafter "2011 General Survey"); ILO, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, Report III (Part B), International Labour Conference, 108th Session, 2019 (hereinafter "2019 General Survey").

32 2012 General Survey.

33 ILO, *Work for a Brighter Future*, Global Commission for the Future of Work, 2019; ILO, *Global Wage Report 2018/19: What Lies behind Gender Pay Gaps*, 2018; ILO, *World Social Protection Report 2020–22: Social Protection at the Crossroads – In Pursuit of a Better Future*, 2021; ILO, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work*, 2022.

III. Gender equality at the heart of the ILO's mandate and normative action

Gender equality from the foundation of the ILO to the present

9. As part of its broad mandate to promote social justice and decent work, the ILO has been concerned, since its inception, with the furtherance of protection at work for children, young persons and women. The Preamble to the ILO Constitution, adopted in 1919, calls for the improvement of conditions of labour through, inter alia, the protection of children, young persons and women, and the recognition of the principle of equal remuneration for work of equal value. The same year, the **first International Labour Conference** adopted two Conventions focused specifically on the situation of women at work.[34] Maternity protection was addressed by the ILO as early as 1919, the year when the Maternity Protection Convention, 1919 (No. 3), was adopted, making it the first international instrument recognizing the right of women workers to paid maternity leave, irrespective of age, nationality or marital status, funded either out of public funds or by insurance, with free attendance by a doctor or certified midwife, the right to employment protection and the right to breastfeed at the workplace. From the adoption of Convention No. 3 until the 1950s, emphasis was placed on the protection of women workers in view of the particular risks they face with respect to health, especially in pregnancy and childbearing, as well as the discrimination they encounter. Also, while the rationale behind the first instruments relating to night work was a purely protective approach concerning the employment of women, a major shift over time has occurred towards promoting genuine equality between men and women and eliminating discriminatory legislation and practices.[35]

10. Reflecting the developments in the concept of equality at the international and national levels, the **Declaration of Philadelphia, adopted in 1944, which forms part of the ILO Constitution**, affirms that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and that "the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy". The Declaration further qualifies this aim as a "fundamental objective" and provides that all national and international policies and measures should be judged in this light.[36] At the same time, it calls on the ILO: "to further among the nations of the world programmes which will achieve ... provision for child welfare and maternity protection".[37]

11. This was followed in the 1950s by a greater preoccupation with promoting rights-based equality at work for women. In those years, the ILO adopted landmark instruments that would become key to the promotion of gender equality: the Equal Remuneration Convention (No. 100), and its accompanying Recommendation (No. 90), 1951; the Maternity Protection

34 Maternity Protection Convention, 1919 (No. 3) and Night Work (Women) Convention, 1919 (No. 4).

35 George Politakis, "Night Work of Women in Industry: Standards and Sensibility", *International Labour Review* 140, No. 4 (2001): 403–428. "When the Organisation was first set up, the essential problem was to protect women from exploitation and to safeguard their health in relation to maternity. The Conference thus laid down the basic standards required to provide women workers with maternity protection, to prohibit or regulate night work by women and to obviate their employment in unduly hazardous or unhealthy occupations presenting special risks for women. With the changes in the participation of women in economic and social life and in their role and status in society generally, it became evident that a promotional effort was needed to improve their prospects in the world of work and to ensure them equality of opportunity and treatment". See ILO, *Women Workers in a Changing World*, Report VI (Part I), International Labour Conference, 48th Session, 1964, 1; 1996 Special Survey, paras 35 and 131; 2012 General Survey, para. 838. A similar evolution has been seen in relation to underground work; for more information see para. 83 and footnote 232 of this Survey.

36 ILO, Declaration concerning the aims and purposes of the International Labour Organisation ("Declaration of Philadelphia"), International Labour Conference, 26th Session, 1944, Part II.

37 ILO, Declaration of Philadelphia, Part III(h).

Convention (Revised), 1952 (No. 103), which significantly expanded the scope and level of protection set out in Convention No. 3; and the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958. In 1965, the Employment (Women with Family Responsibilities) Recommendation (No. 123) was adopted in recognition that family responsibilities should not be an obstacle to promoting equal opportunities for women in employment. Ten years later, during the general discussion that took place at the International Labour Conference in 1975,[38] this instrument was considered to be perpetuating the notion that such responsibilities should fall only on women. The Conference pointed out that any change in the traditional role of women should be accompanied by a change in the traditional role of men, which should be reflected in their greater participation in family life and household duties. It was considered that men and women should have equal responsibilities towards their children and other members of their family and, consequently, that all services and arrangements developed in this respect should be available equally for all. This paradigm shift in the perception of gender equality would lead to the adoption of Convention No. 156 in 1981.[39]

12. In 1975, the Conference also adopted the **Declaration on Equality of Opportunity and Treatment for Women Workers,** which links the prohibition of discrimination against women on the grounds of pregnancy and childbirth with the right to employment protection during pregnancy and maternity leave, as well as the specific protections provided in Convention No. 103.[40] Through this Declaration, ILO Member States expressed their belief that equality of opportunity and treatment for women workers could only be achieved through a combination of measures: the elimination of discrimination against women workers on the grounds of pregnancy and childbirth; employment security throughout pregnancy; the right to maternity leave as well as cash and medical benefits; and the right to return to work without loss of acquired rights. The special protection afforded to women workers during pregnancy and after childbirth was not seen as an exception to equal treatment, but rather a condition for non-discrimination in employment. The adoption of Convention No. 156 in 1981 marked a significant evolution in the understanding that family responsibilities and the related care work should be shared between men and women, thereby attributing more visibility to the situation and needs of workers with family responsibilities, regardless of whether they are men or women and regardless of whether the care is for children or other members of the family.

13. The decades that followed saw increased normative action on key matters relating to gender equality and women at work, including the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Night Work Convention, 1990 (No. 171), the Part-Time Work Convention, 1994 (No. 175), the Home Work Convention, 1996 (No. 177), and the Social Protection Floors Recommendation, 2012 (No. 202). The **ILO Declaration on Fundamental Principles and Rights at Work (1998),** as amended in 2022, recognizes the "elimination of discrimination in respect of employment and occupation" as a fundamental principle and elevates Conventions Nos 100 and 111 to the rank of fundamental ILO Conventions. In 2000, the Maternity Protection Convention, 1952 (No. 103), was revised to reflect the evolving situation and recognition of women's rights in the world of work. The ILO has since continued to adopt relevant instruments, including the HIV and AIDS Recommendation, 2010 (No. 200), the Domestic Workers Convention, 2011 (No. 189), the Protocol of 2014 to the Forced Labour Convention, 1930, the

38 The Committee notes that, also in 1975, the first World Conference of the International Women's Year identified three objectives in relation to equality, peace and development for the decade: (1) full gender equality and the elimination of gender discrimination; (2) the integration and full participation of women in development; and (3) an increased contribution by women towards strengthening world peace.

39 Recommendation No. 123 was superseded in 1981 by the Workers with Family Responsibilities Recommendation (No. 165).

40 ILO, Declaration on Equality of Opportunity and Treatment for Women Workers, International Labour Conference, 60th Session, 1975, Art. 8(1) and (3).

Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), and the Violence and Harassment Convention (No. 190) and Recommendation (No. 206), 2019.

14. The realization of gender equality represents one of the main areas for action in the elimination of discrimination in employment and occupation, as gender inequalities remain pervasive and omnipresent around the globe and continue to hinder humanity's pursuit of well-functioning economies and decent work for all. Gender inequalities affect all persons in the world of work, as they are linked to gender stereotypes and norms imposed on men and women, as well as to forms of discrimination on the basis of sexual orientation or gender identity.

15. Gender equality has also remained a central issue for the Organization and its mandate through the reports examined and the resolutions and declarations adopted by the International Labour Conference. The **resolution concerning the promotion of gender equality, pay equity and maternity protection**,[41] adopted in 2004, calls on all governments and social partners to actively contribute to eliminating all forms of gender discrimination in the labour market and to promoting gender equality between women and men. In 2005, the Governing Body mandated the inclusion of gender equality considerations in all aspects of ILO technical cooperation through its **decision on gender mainstreaming in technical cooperation**.[42] In 2007, the **Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work** highlighted the need for new approaches to achieve gender equality, particularly through a set of short- and long-term policies that recognize and take into account the interlinkages between the need to balance work and family demands and gender inequality.[43] The **ILO Declaration on Social Justice for a Fair Globalization (2008)**, as amended in 2022, affirms that "developing and enhancing measures of social protection … which are sustainable and adapted to national circumstances" and "respecting, promoting and realizing the fundamental principles and rights at work" are two of the four inseparable, interrelated and mutually supportive strategic objectives of the ILO, and that the failure to promote any one of them would harm progress towards the others.[44] Consequently, gender equality has remained at the top of the ILO's policy agenda, with a wide range of initiatives and projects being implemented to this end. The recommendations and conclusions stemming from the 2009 Conference report *Gender equality at the heart of decent work*[45] reviewed the ILO's progress in assisting constituents to achieve gender equality in the world of work, provided a basis for scaling up measures in all regions and recognized that gender equality is a matter of social justice and is anchored in both a rights-based and an economic efficiency approach.

41 ILO, Resolution concerning the promotion of gender equality, pay equity and maternity protection, International Labour Conference, 92nd Session, 2004.

42 ILO, *Minutes of the 292nd Session,* ILO Governing Body, GB.292/PV, 2005, para. 223.

43 ILO, *Equality at Work: Tackling the Challenges. Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report 1(B), International Labour Conference, 96th Session, 2007, paras 278 and 459.

44 ILO, Declaration on Social Justice for a Fair Globalization, International Labour Conference, 97th Session, 2008, Parts A and B.

45 ILO, *Gender Equality at the Heart of Decent Work*, Report VI, International Labour Conference, 98th Session, 2009.

16. Later, in 2013, the 19th International Conference of Labour Statisticians (ICLS) recognized that, among other tasks, childcare and instruction and caring for the elderly, dependants or other household members should be considered "own-use production work" for the purposes of statistical measurement. In 2018, the 20th ICLS adopted a new International Classification of Status at Work (ICSaW-18) that includes the own-use production of services.[46] Also in 2013, the ILO launched the **Women at Work Initiative** as one of the Director-General's seven Centenary Initiatives,[47] with the aim of better understanding and addressing why progress in delivering on decent work for women has been so slow and what needs to be done to secure a better future for women at work. The report based on the findings of the Initiative concluded that barriers to women's participation in the world of work remain firmly intact, and that a quantum leap is necessary to prevent the future of work for women from simply replicating the past, including by making caregiving responsibilities and work integral to the reality of both women and men.[48]

17. Looking to the future, and based on its 100 years of experience, in June 2019, the International Labour Conference adopted the **Centenary Declaration for the Future of Work** (Centenary Declaration), which calls on the ILO to direct its efforts to achieving gender equality at work through a transformative agenda which: (i) ensures equal opportunities, equal participation and equal treatment; (ii) enables a more balanced sharing of family responsibilities; (iii) provides scope for achieving better work–life balance; and (iv) promotes investment in the care economy. The Conference also called upon all Members to further develop their human-centred approach to the future of work by strengthening the capacities of all people to benefit from the opportunities of a changing world of work through the effective realization of gender equality in opportunities and treatment. Most recently, in 2021, the Conference adopted the **Global Call to Action for a human-centred recovery from the COVID-19 crisis**,[49] which reinforces the call for a transformative gender agenda and a transformative agenda for equality, diversity and inclusion aimed at eliminating violence and harassment in the world of work and discrimination on all grounds, as well as a resolution calling for action by Members to reduce inequalities in the world of work[50] and a resolution asking Members to pursue gender-responsive social protection policies and promote gender equality in social security systems, including by providing care credits in social insurance and by fostering income security during maternity, paternity and parental leave, where applicable, as well as to invest in the care economy to facilitate access to affordable and quality childcare and long-term care services.[51]

46 ILO, Resolution concerning statistics of work, employment and labour underutilization, 19th ICLS, 2013, para. 22; ILO, Resolution concerning statistics on work relationships, 20th ICLS, 2018, para. 63. See also ILO, *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, 2019, 79.

47 ILO, *Towards the ILO Centenary: Realities, Renewal and Tripartite Commitment*, Report I(A), International Labour Conference, 102nd Session, 2013.

48 ILO, *A Quantum Leap for Gender Equality*, 102. Similarly, the Director-General's Report to the International Labour Conference in 2018 emphasized that a new push for equality was an urgent and central priority for the ILO as it approached and looked beyond its Centenary. See ILO, *The Women at Work Initiative: The Push for Equality*, Report I(B), International Labour Conference, 107th Session, 2018, paras 83–86.

49 ILO, Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, International Labour Conference, 109th Session, 2021.

50 ILO, Resolution concerning inequalities and the world of work, International Labour Conference, 109th Session, 2021.

51 ILO, Resolution concerning the second recurrent discussion on social protection (social security), International Labour Conference, 109th Session, 2021.

IV. Global context of gender equality at work

An international framework for the achievement of gender equality

18. At the heart of the human rights discourse lies the principle of equality and non-discrimination. Equality is at the heart of the United Nations' objectives as stipulated by the United Nations Charter (Articles 3 and 55) and is the first element addressed by the United Nations Universal Declaration of Human Rights, which recognizes in Articles 1 and 2, respectively, that "[a]ll human beings are born free and equal in dignity and rights" and that "[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". This vision also anchors the core international human rights treaties.[52] In this regard, the Committee notes that the two International Covenants on human rights[53] share an equivalent Article 3, which provides that States parties undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights and all economic, social and cultural rights set forth in those Covenants. States are under the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights without discrimination, including in relation to the right to enjoy just and favourable conditions of work.[54] This is of particular relevance, as many of these rights are necessary to achieve gender equality at work.[55] In addition, and more particularly in relation to discrimination against women, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recalls the determination of the States as parties to adopt the measures required for the elimination of discrimination against women in all its forms and manifestations[56] and recognizes in Article 11 a number of obligations on the part of States to take measures to eliminate discrimination against women in the field of employment, including in relation to the right to work, to the same employment opportunities as men, to the free choice of profession and employment, to promotion, job security and all benefits and conditions of service, to receive vocational training and retraining, to equal remuneration and treatment in respect of work of equal value, to equality of treatment in the evaluation of work, to social security and to the protection of health and safety in working conditions.

19. The right of women to maternity protection is also enshrined in several international human rights instruments. The United Nations Universal Declaration of Human Rights sets out the right to social security and special care and assistance for motherhood and childhood.[57] The International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes the right of mothers to special protection during a reasonable period before and after childbirth, including prenatal and postnatal healthcare and paid leave or leave with adequate social

52 The nine core United Nations human rights treaties are: the International Covenant on Civil and Political Rights (ICCPR) (1966); the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT) (1984); the Convention on the Rights of the Child (CRC) (1989); the Convention on the Rights of Persons with Disabilities (CRPD) (2006); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) (1990); and the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) (2006).

53 ICCPR, 1966, and ICESCR, 1966.

54 ICCPR, Arts 2 and 3; ICESCR, Arts 2, 3 and 7. See also Committee on Economic, Social and Cultural Rights, General comment No. 23 on the right to just and favourable conditions of work, E/C.12/GC/23, 2016.

55 Including the right to work and to the enjoyment of favourable conditions of work, the right to freedom of association and to form and join trade unions, the right to social security, including social insurance, the right of everyone to education, the right not to be subject to slavery and compulsory or forced labour, the right to life, the right to the enjoyment of the highest attainable standard of physical and mental health, the right to freedom of movement, the right to equality before courts and tribunals, and the right to equality before the law (ICCPR Arts 6, 8, 12, 14, 22 and 26; ICESCR Arts 6, 7, 8, 9, and 13).

56 CEDAW, Preamble.

57 United Nations Universal Declaration of Human Rights, Art. 25.

security benefits.[58] Furthermore, it also requires, under the right to the enjoyment of the highest attainable standard of physical and mental health, the adoption of measures for the reduction of the stillbirth rate and infant mortality and for the healthy development of the child.[59] The CEDAW also calls for the adoption of special measures to ensure maternity protection, which is proclaimed as an essential right intrinsic to all areas of the Convention.[60]

20. With regard to family life and responsibilities, the ICESCR provides for the right to protection and assistance for the family, particularly for its establishment and during the care and education of dependent children.[61] The CEDAW also calls for the adoption of measures to ensure "the recognition of the common responsibility of men and women in the upbringing and development of their children",[62] and requires States parties to "encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities".[63]

21. At the global level, the push for gender equality has gained unprecedented momentum over the past 25 years. The adoption of the Beijing Declaration and Platform for Action in 1995, and the review of its implementation in 2020, have provided a global forum for the promotion of gender equality. In recent years, gender equality, discrimination and unpaid care work have also been in the international spotlight through the operationalization of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs):



The health aspect of maternity protection is also encompassed by **Goal No. 3 on good health and well-being**, which aims to reduce global maternal mortality (target 3.1) and neonatal mortality (target 3.2), and to achieve universal health coverage (target 3.8).



Goal No. 5 on gender equality includes target 5.1 to "End all forms of discrimination against all women and girls everywhere" and target 5.4 to "Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate".



Goal No. 8 on decent work and economic growth includes target 8.5 to "achieve full and productive employment and decent work for all women and men".

22. In 2020, on the occasion of the 75th anniversary of the United Nations, the global community acknowledged that persistent "gender inequalities and abuse … have deprived us of a more just and better world" and reflected on action for a better future. This includes taking the 2030 Agenda as a road map, as well as a number of commitments, including placing women and girls at the centre of the international policy agenda.[64] The United

58 ICESCR, Art. 10(2).

59 ICESCR, Art. 12.

60 CEDAW, Arts 4(2), 5(b) and 11(2).

61 ICESCR, Art. 10. Also, the ICCPR recognizes the protection of the family as the natural and fundamental group unit of society and calls on States parties to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. See ICCPR, Art. 23.

62 CEDAW, Art. 5(b).

63 CEDAW, Art. 11(2)(c).

64 United Nations General Assembly, Declaration on the commemoration of the seventy-fifth anniversary of the United Nations, A/75/L.1 (2020), para. 11.

Nations Secretary-General emphasizes in his 2021 report *Our Common Agenda* that humanity's greatest resource is perhaps "our own collective capacity, half of which has historically been constrained as a result of gender discrimination [and that] no meaningful social contract is possible without the active and equal participation of women and girls". He urged Member States and other stakeholders to consider facilitating women's economic inclusion, including through large-scale investment in the care economy and equal pay, and more support for women entrepreneurs.[65]

23. In 2021, the United Nations Commission on the Status of Women (CSW) urged governments to take action to address the root causes of gender inequality and eliminate barriers to women's full and equal participation, including by: (i) ensuring women's economic empowerment and their right to work and rights at work; (ii) eliminating occupational segregation; (iii) taking all appropriate measures to recognize, reduce and redistribute women's and girls' disproportionate share of unpaid care and domestic work; and (iv) ensuring that pregnant women and mothers with infants and young children can continue participating in public life and decision-making through policies that allow them to remain in the workplace safely, including by guaranteeing access to maternity protection and adequate social protection benefits, and emphasizing men's responsibilities as fathers and caregivers.[66]

24. Inter-governmental and multi-stakeholder coalitions have also provided new forums for action and the cross-fertilization of policies, such as the Biarritz Partnership on Gender Equality, the Equal Pay International Coalition (EPIC), the 2021 Generation Equality Forum and its Action Coalitions,[67] the UN Global Compact, the International Network on Leave Policies and Research and the Global Alliance for Care.

Current trends, challenges and opportunities

Significant progress achieved; yet discrimination and inequalities persist

25. The last century has been marked by tremendous advances for women and men workers, who in many countries have come to enjoy more equal opportunities and treatment at work in a constantly changing world. Women have increasingly entered sectors and managerial jobs that were once thought to be reserved for men. Maternity protection measures are increasingly present in many countries, and efforts are being made to promote the reconciliation of work with family responsibility. Measures to address discrimination based on sexual orientation and gender identity are also being taken in a number of jurisdictions, where non-discrimination protection has been introduced on the grounds of sexual orientation,

65 United Nations, *Our Common Agenda: Report of the Secretary-General*, 2021, para. 31.

66 Among measures to recognize, reduce and redistribute women's and girls' disproportionate share of unpaid care and domestic work, the Commission on the Status of Women (CSW) includes promoting the reconciliation of work and family life, support for breastfeeding mothers and the equal sharing of responsibilities between women and men and men's equitable sharing of responsibilities with respect to care and household work, challenging gender stereotypes and negative social norms in order to create an enabling environment for women's empowerment, as well as implementing and promoting legislation and policies, such as maternity, paternity, parental and other leave schemes, as well as accessible, affordable and quality social services, including childcare and care facilities for children and other dependants. See Commission on the Status of Women, Women's full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and empowerment of all women and girls: Agreed conclusions, 65th Session, E/CN.6/2021/L.3, 2021, paras (vv), (ww), (yy) and (zz).

67 The Generation Equality Forum was held in Mexico City from 29 to 31 March 2021 and in Paris from 30 June to 2 July 2021. The Forum launched a five-year journey to accelerate ambitious action and the implementation of global gender equality. The Forum's five-year journey is built around a Global Acceleration Plan – a global road map for gender equality that aims to fulfil the promise of the Beijing Platform for Action and achieve the Sustainable Development Goals.

gender identity and expression, and intersex status or sexual characteristics, sometimes by interpreting the discrimination ground of "sex" or "gender".[68]

26. Furthermore, situations in which gender intersects with other grounds of discrimination, such as migration and refugee status, ethnicity, disability, age, race, religion and HIV status, have also gained relevance and attention, which has contributed to bringing to light the fact that women are not a homogenous group, and that multiple discrimination further exacerbates the likelihood of victims facing diverse and mutually reinforcing obstacles to the enjoyment of effective equality.

27. Yet, progress in closing gender inequalities in the world of work has stalled in recent decades, with a frustratingly slow evolution of indicators that should be showing much more progress, and gender gaps that have not narrowed in any meaningful way for over 20 years.[69] In this regard, estimates of when the closure of gender gaps at work could be achieved are worrying; for instance, it has been estimated that the gender gap for time spent in unpaid care will not close until 2228.[70] This slow -paced progress is even more worrying when it is considered that, according to ILO findings, both women and men want women to work in paid jobs, contrary to claims that women do not want to work or do not find work meaningful.[71] Moreover, even where employment and education indicators show quantitative progress, that does not necessarily translate into improved quality of work and employment for women.[72]

28. The gender gaps illustrated by the available data suggest that, irrespective of their status or personal situation, women overall continue to face obstacles that prevent them from reaching their full potential at work, from the moment they seek to start working until they retire. With regard to accessing the labour market, ILO data estimates for 2022 show labour force participation rates[73] for persons aged 15 and older of 72.3 per cent for men and 47.4 per cent for women, resulting in a gender gap of 24.9 percentage points.[74] This gender gap is even wider for men and women aged 25 and older, for whom estimates for 2022 indicate a labour force participation rate of 79.1 per cent for men and 51.2 per cent for women, pointing to a gap of 27.9 percentage points.[75] In a global context in which women want to work outside their home,[76] the gender employment gap has decreased by less than 2 percentage points over the past 27 years.[77] Furthermore, even when women enter paid work, gender equality is still far from being achieved. Women are still more likely than men to work in non-standard forms of employment (including when finding themselves limited to part-time or on-call work so that they can combine work with family responsibilities), or in sectors or occupations traditionally

68 For examples see ILO, *Information Paper on Protection against Sexual Orientation, Gender Identity and Expression and Sexual Characteristics (SOGIESC) Discrimination,* 2019, para. 70. See also United States Supreme Court, *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. 15 June 2020).

69 ILO, Resolution concerning inequalities and the world of work, para. 7; ILO, *A Quantum Leap for Gender Equality,* 12, 20 and 22; ILO, *Work for a Brighter Future,* 34.

70 ILO, *A Quantum Leap for Gender Equality,* 13.

71 Seventy per cent of women and 66 per cent of men surveyed would prefer women to work in paid jobs. See: ILO and Gallup, *Towards a Better Future for Women and Work: Voices of Women and Men*, 2017, 15.

72 For instance, a greater participation of women in employment may be accompanied by women's entry into part-time work, temporary jobs or jobs and occupations that are traditionally considered "female", which often offer lower earnings and poorer job security and career prospects. See Mark Lansky et al., eds, *Women, Gender and Work (Vol. 2): Social Choices and Inequalities* (ILO, 2017), 15 and 18.

73 The labour force participation rate indicates the share of the working-age population who are active in the labour market, either by having a job or by seeking one.

74 ILO, "Labour Force Participation Rate by Sex and Age – ILO Modelled Estimates, November 2021 (%)", ILOSTAT database, accessed 31 December 2022.

75 ILO, "Labour Force Participation Rate by Sex and Age". See also Rosina Gammarano, "Having Kids Sets Back Women's Labour Force Participation more so than Getting Married", *ILOSTAT Blog*, 3 March 2020; Rosina Gammarano, "International Day of Families: How Marital Status Shapes Labour Market Outcomes", *ILOSTAT Blog*, 15 May 2020.

76 ILO, *A Quantum Leap for Gender Equality,* 12.

77 ILO, *A Quantum Leap for Gender Equality,* 22.

considered "female" and characterized by low-skilled work, lower pay and poor working conditions, such as home work or domestic work.[78] In a majority of countries, women are more exposed than men to informal employment.[79] As a result, women have more limited access to social security coverage, which compromises their income, access to health and long-term care services, and therefore their level of well-being in old age. Similarly, discrimination places women in a disadvantaged position regarding equal opportunities in advancing in their careers and difficulties in accessing management and leadership positions. Women are also penalized in relation to their pay and face challenges in obtaining equal remuneration for work of equal value, often because: (i) the sectors and occupations they are concentrated in are undervalued and characterized by lower pay; (ii) they are penalized in their pay and career advancement by labour market interruptions or a reduction of working time due to maternity or family responsibilities; (iii) they need to work in more family-friendly jobs, which are lower paying, or simply; (iv) they are subject to discrimination in remuneration in comparison with their male colleagues or, for women with children, with female colleagues who do not have children.[80]

29. To achieve effective equality, it is essential to identify the structural inequalities that disadvantage women and exclude them from acceding to the labour market and to quality jobs, or from enjoying decent work, such as vertical and horizontal occupational segregation and their over-representation in non-standard forms of employment.[81] These include stereotypes about the respective roles of men and women in society, their capabilities and aspirations, which permeate women's and men's experience in the world of work by influencing factors such as: the kind of education and training women, men, girls and boys should pursue, or whether they should have access to it; gender bias regarding women's and men's competencies and potential; and the unequal distribution of unpaid care work and the expectations placed on women and men to carry it out.[82] Alongside these stereotypes, other phenomena that perpetuate gender inequalities at work need to be addressed, such as: the gender remuneration gap; access to managerial positions, leadership and decision-making roles; the right to organize and participate in social dialogue; the difficulty for women to access productive resources and assets, such as credit, capital and land; and violence and harassment in the world of work. The unequal distribution of unpaid care work and its links to motherhood and family responsibilities remains, in this regard, one of the key elements to be addressed, as it is the main reason for women remaining outside the labour force.[83]

Unequal shares of unpaid care work and family responsibilities: Hindering women's progress in the world of work

30. To the extent that people with family responsibilities perform unpaid care work, their capacity to take up paid employment, pursue it without hindrance and develop their careers is reduced. This falls overwhelmingly on women. According to ILO research, unpaid care work

78 ILO, *A Quantum Leap for Gender Equality*, 12; ILO, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects*, 2016, 14, 75 and 117–34.

79 Globally, the share of women in informal employment is lower than the share of men, but there are actually more countries (55.4 per cent) where the share of women in informal employment exceeds the share of men. Women are more exposed to informal employment in emerging economies. ILO, *A Quantum Leap for Gender Equality*, 26.

80 ILO, *Global Wage Report 2018/19*, xvii.

81 Specific jobs, sectors or occupations are often characterized by a concentration of men or women in the workforce. This is referred to as "occupational segregation" between men and women and is partly due to archaic attitudes and stereotypes relating to work that is considered "male" or "female" and assumptions concerning the productivity of men and women for specific tasks or work. Occupational gender segregation may be horizontal (referring to segregation across sectors, occupations or jobs) and vertical (referring to segregation between different job levels, such as entry-level, senior-level and management positions).

82 Organisation for Economic Co-operation and Development (OECD), *The Pursuit of Gender Equality: An Uphill Battle*, 2017, 24.

83 ILO, *A Quantum Leap for Gender Equality*, 12; ILO, *Work for a Brighter Future*, 34.

is the main reason why women remain outside the labour force and plays the biggest role in hindering women's progress in the world of work.[84]

31. To date, women are continuing to undertake a major proportion of unpaid care work and family responsibilities. According to ILO estimates, across the world, 606 million working-age women (21.7 per cent) perform unpaid care work on a full-time basis, compared with 41 million men (1.5 per cent). Similarly, women globally account for over three-quarters of the total time spent in unpaid care work: women dedicate, on average, 4 hours and 25 minutes a day to unpaid care work, in comparison to 1 hour and 23 minutes for men, and these rates have barely changed between 1997 and 2012.[85] Yet, while women and men recognize the challenges,[86] men are still not taking on their fair share of unpaid work. According to ILO data for 2020, the labour force participation rate of men does not change according to their family situation as much as that of women.[87] Moreover, men who take on, or wish to take on more family responsibilities may encounter difficulties in realizing this aspiration due to gender stereotypes and the related societal expectations, according to which men are seen as "breadwinners". This dynamic underpins the fact that men do not enter or are under-represented in occupations related to social care,[88] and that they do not always avail themselves of care-related entitlements, where these are available, such as paternity and parental leave and flexible working arrangements, including part-time work, which would enable them to assume their fair share of care work. Men who make use of the available legal entitlements related to care may be stigmatized due to the prevailing social context and employment culture. As a result, the unequal division of paid and unpaid work between men and women remains entrenched, and social and labour protection systems in many countries continue to be designed based on the assumption that women will shoulder the bulk of unpaid care work in addition to their labour market participation.[89]

32. The unequal division of paid and unpaid work is a major cause of gender inequality in the labour market. On the one hand, it prevents women from entering the labour market, as they tend to perform more unpaid care work on a full-time basis than men. Even when women have access to the same level of education as men, they account for 69.1 per cent of the population that is "neither in employment nor in education or training" (NEET), mainly because of care responsibilities.[90] At the same time, unpaid care work substantially determines where and how women and men work. In order to cope with care responsibilities, a higher proportion of women than men have to work in diverse forms of employment, such as part-time work, on-call work, casual jobs or as own-account workers.[91] Greater care responsibilities and enterprise cultures that predominately require "anytime, anywhere" availability have an unfair impact on women and other caregivers.[92] They prevent carers from having access to managerial positions and other highly paid occupations which require long working hours, presenteeism and work-related mobility. Depending on the region and the care infrastructure available, women are also more prone to engage in work in the informal economy,

84 ILO, *A Quantum Leap for Gender Equality*, 34–37.

85 Between 1997 and 2012, the time that women devoted to housework and caregiving diminished by only 15 minutes a day, while for men it increased by just eight minutes a day. See ILO, *A Quantum Leap for Gender Equality*, 36; ILO, *Care Work and Care Jobs for the Future of Decent Work*, 2018, 68.

86 Almost universally, men and women mention the "balance between work and family" as one of the top challenges that working women in their countries face. ILO and Gallup, *Towards a Better Future for Women and Work*, 7.

87 Gammarano, "Having Kids Sets Back Women's Labour Force Participation more so than Getting Married".

88 Globally, women care workers outnumber men two to one, and women make up 65 per cent of the total care workforce. See ILO, *Care Work and Care Jobs for the Future of Decent Work*, 2018, 322.

89 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020, para. 2. See also ILO, *A Quantum Leap for Gender Equality*, 37; ILO, *World Social Protection Report 2020–22*.

90 ILO, *A Quantum Leap for Gender Equality*, 24.

91 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020, para. 2.

92 ILO, *Women in Business and Management: The Business Case for Change*, 2019, xiii.

or in specific sectors where they find it easier to juggle work and family responsibilities.[93] While such working arrangements offer the necessary flexibility to reconcile work and family life, they often penalize women in terms of income, career development and social security entitlements, contributing to higher levels of poverty for women in comparison with men throughout the life cycle.[94] According to ILO estimates, the global gender pay gap is around 19 per cent.[95] At the same time, unequal pay causes the unequal distribution of unpaid care work: when time is required to fulfil care needs and responsibilities, the systematically lower earnings of women in the household, in comparison with men, often lead to the economic choice of reducing, or interrupting, women's working time. The *World Social Protection Report 2020–22* shows that social norms and structural inequalities, such as persistent gender pay gaps, continue to compel women to be the main caregivers and men to work longer hours as the main earners of household income.[96]

The impact of pregnancy and motherhood on women's employment and occupational opportunities: The motherhood penalty

33. Harmful social norms linked to motherhood, care systems that are not gender responsive and "motherhood penalties" are some of the main structural barriers that hinder women's progress in the world of work across and within regions[97] in the three main areas of: employment, wages and career advancement.

34. Mothers with young children are less likely to be employed than women without children or men with or without children. Indeed, having children brings down women's labour force participation rate more than getting married.[98] ILO estimates in 2015, covering 51 countries, showed that 45.8 per cent of mothers with children under 6 years old were in employment compared to 53.2 per cent of women without children in this age range. Rather than decreasing, the motherhood employment penalty increased by 38.4 per cent between 2005 and 2015.[99] Women with children also receive lower wages and are less likely than women without children, or men with or without children, to work in managerial or leadership positions.[100] While women in general are exposed to pay penalties when in employment, mothers tend to earn less than women without children (the "motherhood pay gap"), while, conversely, fathers are more likely to receive better pay than men without children (the "fatherhood pay gap"). The motherhood pay gap can be explained by several factors, such as career breaks for paid and unpaid maternity or parental leave, employment in lower-paying jobs (some mothers are compelled to take jobs with fewer responsibilities), reduced hours of work and gender-biased hiring, training and promotion decisions at the enterprise level, and the absence of childcare or other work–family measures, all of which penalize the careers of

93 For instance, working as an own-account informal worker allows women to keep their young children with them while they work. ILO, *A Quantum Leap for Gender Equality*, 24–25; ILO and Women in Informal Employment: Globalizing and Organizing (WIEGO), *Quality Childcare Services for Workers in the Informal Economy*, Policy Brief No. 1, 2020.

94 ILO, *A Quantum Leap for Gender Equality*, 76. CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020, para. 2.

95 ILO, *Global Wage Report 2018/19*, xv.

96 ILO, *World Social Protection Report 2020–22*, 111.

97 ILO, *A Quantum Leap for Gender Equality*; OECD, *The Pursuit of Gender Equality: An Uphill Battle*, 17; ILO, *Inequalities and the World of Work*, Report IV (Rev.), International Labour Conference, 109th Session, 2021, para. 80.

98 Gammarano, "Having Kids Sets Back Women's Labour Force Participation more so than Getting Married".

99 ILO, *A Quantum Leap for Gender Equality*, 14.

100 ILO, *World Social Protection Report 2020–22*, 111.

mothers (the "wage penalty").[101] Finally, mothers of children aged 0–5 years have the lowest participation rates in managerial and leadership positions (25.1 per cent of managers with children under 6 years of age are women) compared with both their male counterparts (74.9 per cent of managers with children under 6 years of age are men) and with men and women without young children (68.6 per cent of managers without children are men and 31.4 per cent are women) (the "leadership penalty").[102] The *World Social Protection Report 2020–22* reaffirms these findings and points out that, as a consequence, women are less likely to be fully or partially covered by social insurance.[103]

The impact of the COVID-19 pandemic: A deepening crisis

35. The impact of the COVID-19 pandemic has stalled, and even reversed progress in fighting poverty, social exclusion and gender inequality. The pandemic has had a drastic impact on the world of work; its consequences have affected women and men differently, leading to a regression in gender equality.[104] Unlike previous economic recessions, the employment losses have been more severe for women than for men, particularly for women who are pregnant, mothers, or women of childbearing age.[105] According to the latest data from the ILO and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the number of mothers of small children participating in the labour force fell by 1.8 per cent in 2020 relative to 2019, nearly twice the rate of decline observed among fathers (1.0 per cent). This data confirms that the unequal division of care and domestic responsibilities in the home is a strong driver of inequalities in labour market participation.[106] More recent data also shows that recovery efforts have not closed the gender gap in the number of hours worked – indeed, newly available estimates show a setback for gender equality in terms of hours worked, despite significant improvements in 2021[107] – and that women, particularly those in informal employment, continue to be disproportionately affected by the crisis.

36. The greater impact of the pandemic on women's employment can be explained by the fact that measures to prevent the spread of the disease, including lockdown measures, have affected sectors in which women are over-represented, such as the garment, hospitality and services sectors, as well as in the informal economy. Similarly, in developing economies, women's employment largely relies on supply chains, which were disrupted during the pandemic.[108] Women are also more likely to work in non-standard forms of employment, including part-time work, as well as in jobs in the informal economy, which are more likely to be cut in the context of cost reduction measures, offer lower levels of social protection, and are less likely

101 ILO, *A Quantum Leap for Gender Equality*, 39–41; Damian Grimshaw and Jill Rubery, *The Motherhood Pay Gap: A Review of the Issues, Theory and International Evidence*, Conditions of Work and Employment Series No. 57, (ILO, 2015).

102 ILO, *A Quantum Leap for Gender Equality*, 41–42.

103 ILO, *World Social Protection Report 2020–22*, 113.

104 ILO, Resolution concerning inequalities and the world of work, para. 7; ILO, *World Employment and Social Outlook: Trends 2022*, 2022.

105 Globally, between 2019 and 2020, women's employment declined by 4.2 per cent, representing a fall of 54 million jobs, while men's employment declined by 3 per cent, or 60 million jobs. ILO, *Building Forward Fairer: Women's Rights to Work and at Work at the Core of the COVID-19 Recovery*, ILO Policy Brief, July 2021. See also the rapid gender assessment surveys produced by UN Women in 2021 for 58 countries: UN Women, *Women and Girls Left behind: Glaring Gaps in Pandemic Responses*, 2021, 3 and 5.

106 ILO and UN Women, "Over 2 Million Moms Left the Labour Force in 2020 According to New Global Estimates", *ILOSTAT* (blog), 8 March 2022.

107 Before the pandemic, the gap in hours worked in employment by women and by men was already large, with women aged 15–64 working an average of 19.8 hours a week, compared with 34.7 hours a week for men. The recovery has been insufficient to bring the gender gap in hours worked back to the pre-pandemic level. See ILO, "ILO Monitor on the World of Work. Ninth edition", 23 May 2022, 6.

108 ILO, *World Employment and Social Outlook: Trends 2022*.

to be covered by crisis response measures.[109] Measures to impose or encourage working from home have been among the main steps taken by governments to address the pandemic and have also given rise to a broader debate on the implications of home work. This has in turn accentuated the need for an integrated policy framework to protect the labour rights of homeworkers and the increasing numbers of teleworkers. These changes may also offer new opportunities to improve gender equality, as most homeworkers globally are women and they are mainly concentrated in the informal economy.[110]

37. Similarly, the closure of schools and day-care centres and the implementation of remote learning have increased childcare needs, forcing many parents, and particularly mothers as primary caregivers, into an almost impossible juggling exercise between work and increased care responsibilities, both for children and for other family members needing care.[111] This has led women to either forgo their paid work or carry it out under poorer conditions.[112] On the other hand, women are also over-represented in high-risk sectors, such as care work and the health professions, which have seen an exponential rise in demand. Women constitute over 70 per cent of workers in health and care institutions worldwide.[113] During the pandemic, these women were often required to work excessive hours in extremely difficult working conditions, while continuing to shoulder the lion's share of the increased family responsibilities and unpaid care work. These factors have also exacerbated pre-existing decent work deficits for women belonging to ethnic and racial minorities, migrant women workers, women in the informal economy, women living with disabilities, as well as those living with HIV or AIDS.[114]

38. Pregnant women, in particular, have become more vulnerable to income shocks and impoverishment, and have experienced an increased risk of loss of employment and livelihoods. The COVID-19 pandemic has also compromised access to maternal and other health services, already scarce in many countries even before the pandemic, owing to the significant disruption of health systems, including pre- and postnatal care, skilled delivery and neonatal care services. Nevertheless, maternity protection has to date received very little attention in COVID-19 response measures.[115] Recent findings reveal that very few governments have introduced specific maternity-related measures in their COVID-19 social protection response packages. Out of some 1,600 measures introduced in over 200 countries or territories, only ten measures (0.6 per cent) were linked to maternity, placing this issue second-to-last among those addressed by response measures. In some cases, barriers have even been created for pregnant women, rather than the reverse.[116] All of the above, in addition to the damage caused by the COVID-19 pandemic, have reaffirmed the importance of social and health protection in ensuring income security for women and men of working age.

---

109 Coping with the increased care demands generated by the pandemic while remaining in paid employment have required arrangements that are generally not available to informal workers, such as telework or leave. This has particularly affected women working in the informal economy. See ILO, "ILO Monitor on the World of Work. Ninth edition", 11.

110 ILO, *Promoting Employment and Decent Work in a Changing Landscape: Addendum to the 2020 General Survey*, International Labour Conference, 109th Session (hereinafter "Addendum to the 2020 General Survey").

111 Kate Power, "The COVID-19 Pandemic Has Increased the Care Burden of Women and Families", *Sustainability: Science, Practice and Policy* 16, No. 1 (2020): 67–73.

112 ILO, *The COVID-19 Response: Getting Gender Equality Right for a Better Future for Women at Work*, ILO Policy Brief, May 2020; ILO, *Building Forward Fairer*; ILO, *An Uneven and Gender-unequal COVID-19 Recovery: Update on Gender and Employment Trends 2021*, ILO Policy Brief, October 2021.

113 Umberto Cattaneo and Emanuela Pozzan, "Women Health Workers: Working Relentlessly in Hospitals and at Home", COVID-19: Protecting workers in the workplace, ILO, 7 April 2020.

114 ILO and UN Women, "Assessing the Gendered Employment Impacts of COVID-19 and Supporting a Gender-responsive Recovery: A Country-level Policy Tool", ILO and UN Women Policy Tool, 2021; Cattaneo and Pozzan, "Women Health Workers: Working Relentlessly in Hospitals and at Home".

115 ILO, *World Social Protection Report 2020–22*, 107 and 109.

116 ILO, *World Social Protection Report 2020–22*, 109.

V. Content and structure of the General Survey

39. The Committee welcomes the timeliness of this General Survey, as it continues the work that has been carried out by the ILO and contributes to address one of the key issues raised in the Centenary Declaration – advancing a transformative agenda for gender equality. It also aims to contribute to the recent Global Call to Action for a human-centred recovery from the COVID19 crisis,[117] which places emphasis on the need for a gender-responsive recovery that includes policies providing adequate paid care leave and promoting a more balanced sharing of work and family responsibilities, as well as the removal of legal and other types of barriers to the entry to and advancement in education, training, employment and careers, including by combating gender stereotypes. This Survey also echoes the call by the Conference in 2021 for action by Members to reduce inequalities in the world of work.[118] It will feed into the Conference recurrent discussion on fundamental principles and rights at work in 2023, the review of the maternity protection instruments by the Standards Review Mechanism and, more broadly, the transformative policies called for in the 2030 Agenda for Sustainable Development, particularly in SDGs Nos 1 (No poverty), 3 (Good health and well-being), 5 (Gender equality) and 8 (Decent work and economic growth).[119] At this critical juncture, the Survey seeks to provide action-oriented policy recommendations on how to pursue a human-centred approach with gender equality at the centre and that encompasses transformative strategies that support the creation of decent work for all, leaving no one behind.

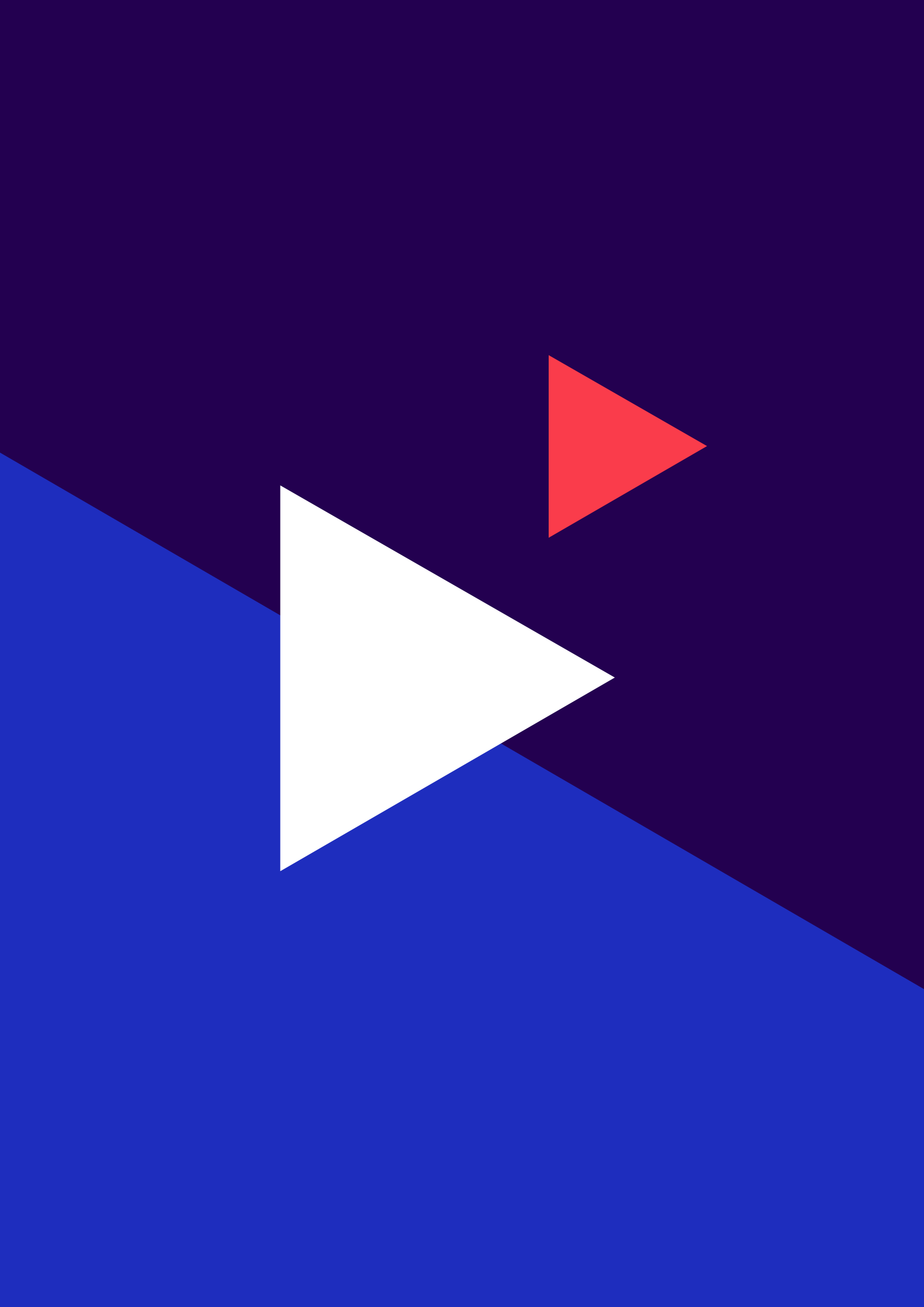
40. This General Survey is organized in three parts. **Part I** sets the stage on the legal and institutional framework required to achieve gender equality at work, as set out in the instruments under examination. It describes the object and purpose of the instruments and introduces their main concepts, the principles on which they rest, as well as their scope of application. It also explores the action needed to promote a culture of equality and raise awareness on matters related to gender equality. **Part II** examines in detail the various measures implementing the labour and employment rights that are key to gender equality over the work cycle (and particularly training, recruitment, conditions of work and progress at work, maternity and care, return to work and termination). It also explores the implementation of rights and measures related to maternity protection and the reconciliation of work and family responsibilities with a view to ensuring protection, equal opportunities and treatment and the empowerment of carers, and the recognition, reduction and redistribution of unpaid care work, not only between women and men, but also between families, the State, the community, the market and the social economy sector.[120] It further emphasizes the importance of establishing a legal and institutional framework for the effective monitoring and enforcement of the measures and policies adopted and explores the various means through which this can be done. **Part III** presents the way forward to promote gender equality, equality for workers with family responsibilities, and maternity protection at work, in light of the main challenges and opportunities experienced in the implementation of the instruments by Member States. It also outlines proposals for future action by the Office and Member States to achieve the full potential of Conventions Nos 111, 156 and 183 and Recommendations Nos 111, 165 and 191.

117 ILO, Global Call to Action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient.

118 ILO, Resolution concerning inequalities and the world of work.

119 GB.337/LILS/2, paras 6, 14 and 17; GB.337/LILS/PV, paras 45, 46.

120 In this regard, SDG No. 5, target 5.4 provides for the recognition and valuing of unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate. See also the reference to the "5R Framework for Decent Care Work": ILO, *Care Work and Care Jobs for the Future of Decent Work*, 288 ff.



Part I. Legal and institutional framework for gender equality and non-discrimination

41. The Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, which enshrine the principle of equality and non-discrimination in employment and occupation provide the overarching framework to move towards gender equality at work. This framework also includes other instruments such as the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981, and the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000, which are inextricably linked to it and to the principle of equality set out in the ILO Constitution.

42. In a constantly evolving world of work that is transformed by new forces, such as technological advances, environmental imperatives and demographic changes, the framework provided by ILO standards is key to deliver on equality of opportunity and treatment, including gender equality, and social justice. In this regard, the formulation of national equality policies with a gender-transformative family-friendly orientation in collaboration with employers' and workers' organizations and in line with the instruments examined is crucial. This part of the General Survey examines the legal and institutional framework that gives effect to these instruments, and explores their main objectives, concepts and scope of application.



1 Framework for gender equality and non-discrimination: Convention No. 111 and Recommendation No. 111



43. The core and undeniable objectives of Convention No. 111 and Recommendation No. 111 are to eliminate and protect against discrimination, as defined in the instruments, and to promote equality of opportunity and treatment in respect of all aspects of employment and occupation.[121] During the discussions that led up to the adoption of these instruments over 60 years ago, ILO constituents unanimously agreed that discrimination in employment and occupation is unacceptable and incompatible with other international milestones, such as the Universal Declaration of Human Rights, and that social justice cannot be achieved without eliminating this scourge.[122] ***While substantive progress has been achieved since the adoption of the Convention and the Recommendation, the Committee reiterates that no society is free from discrimination, and continuous action and perseverance are required to address discrimination in employment and occupation, which exists everywhere and is constantly evolving.***[123]

44. The Committee acknowledges that gender equality cannot be achieved without the elimination of discrimination in employment and occupation. In this regard, the Committee emphasizes that gender equality in employment and occupation concerns all men and women, and that action at all levels, including in the design of legislative frameworks and the construction of a gender-transformative culture, is necessary to ramp up and promote change towards gender equality.

1. The need for precise and comprehensive definitions and prohibitions of discrimination

Convention No. 111, Articles 1 and 5
Recommendation No. 111, Paragraph 1

45. The definition of discrimination contained in Convention No. 111 and Recommendation No. 111 is formed of three elements: a factual element (a distinction, an exclusion or a preference); an effect (an objective result); and a ground on which this fact is based (a personal characteristic).

46. With regard to the factual element, the Committee recalls that the reference to "distinction, exclusion or preference"[124] includes both acts and omissions and is couched in the broadest terms possible to take into account the manner in which equality of opportunity and treatment may be affected by attitudes that are more or less apparent. It therefore aims to embrace the widest range of situations: those where equality is nullified completely, and more subtle instances where it is impaired. These distinctions, exclusions or preferences may arise in law

121 ILO, *Giving Globalization a Human Face, General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (Part 1B), International Labour Conference, 101st Session, 2012 (hereinafter "2012 General Survey"), para. 732; ILO, *Equality in Employment and Occupation, General Survey of the Reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111)*, Report III (Part 4B), International Labour Conference, 75th Session, 1988 (hereinafter "1988 General Survey"), para. 17.

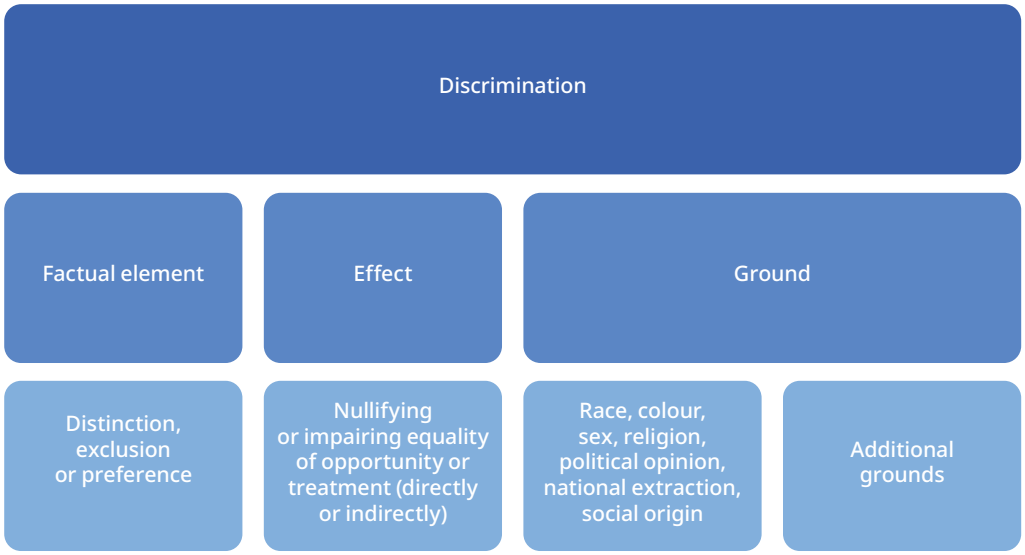
122 ILO, *Record of Proceedings*, International Labour Conference, 40th Session, 1957, 27th and 28th sittings, 438–467; ILO, *Record of Proceedings*, International Labour Conference, 42nd Session, 1958, 26th and 27th sittings, 402–427; 1988 General Survey, para. 2. See also Convention No. 111, Preamble.

123 2012 General Survey, paras 731 and 845.

124 ILO, *Record of Proceedings*, International Labour Conference, 42nd Session, 1958, Appendix VI, para. 12.

or practice. The Committee recalls that statutory provisions or administrative instructions affecting equality of opportunity and treatment are only one aspect of the problems covered by the instruments, which find their expression mainly in practice.[125]

47. The second key element is the "effect of nullifying or impairing equality of opportunity or treatment" as the outcome of a distinction, exclusion, or preference. Through this element, Convention No. 111 and Recommendation No. 111 cover all situations which may affect equality of opportunity and treatment.[126] This reflects the aim of the instruments to extend beyond formal legal frameworks and to tackle the real impact of discrimination in practice. It also implies that, when discrimination occurs, it does so irrespective of the intention of the author or the presence of an identifiable author.[127]



48. Finally, the definition provided in the Convention requires discrimination to be on the basis of a specific ground. In this regard, Article 1(1)(a) of Convention No. 111 establishes seven grounds expressly covered by the instruments: race, colour, sex, religion, political opinion, national extraction and social origin. The Committee notes that sex is the ground of discrimination that is most frequently covered by the national equality policies implementing the instruments, in particular in legislation, and that, where national frameworks only cover one ground, it tends to be sex or gender.[128] Article 1(1)(b) of Convention No. 111 and Paragraph 1(1)(b) of Recommendation No. 111 provide for the possibility for each Member to extend its national policy on non-discrimination to any other ground which it may deem appropriate after consultation with representative employers' and workers' organizations, where such exist, and other appropriate bodies.[129] This provision responds to the clear and widespread

125 ILO, *Discrimination in respect of Employment and Occupation: General Conclusions on the Reports relating to the Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in respect of Employment and Occupation, 1958*, Report III (Part IV), Part Three, International Labour Conference, 47th Session, 1963 (hereinafter "1963 General Survey"), paras 36 and 37; 1988 General Survey, para. 22.

126 ILO, *Equality in Employment and Occupation, Special Survey on Equality in Employment and Occupation in respect of Convention No. 111*, Report III (Part 4B), International Labour Conference, 83rd Session, 1996 (hereinafter "1996 Special Survey"), para. 23.

127 2012 General Survey, para. 745; 1988 General Survey, para. 26; Mark Lansky et al., eds, *Women, Gender and Work (Vol. 2): Social Choices and Inequalities* (ILO, 2017), 62.

128 For example, CEACR, Convention No. 111: *China*, observation, 2021; *Lebanon,* observation, 2018.

129 1963 General Survey, para. 31; 1988 General Survey, para. 44. In relation to the mechanism followed for this purpose, see also 2012 General Survey, para. 808; ILO, *Information Paper on Protection against Sexual Orientation, Gender Identity and Expression and Sexual Characteristics (SOGIESC) Discrimination*, 2019, para. 124.

intention expressed during the standard-setting discussions to deal with as many forms of discrimination in employment and occupation as practicable within the conditions prevailing in each country and to be able to adapt to new grounds of discrimination that may appear in future, thereby ensuring that the Convention and Recommendation are forward-looking instruments that remain as relevant today as they were when they were adopted.[130]

49. The Committee notes that the International Organisation of Employers (IOE) expresses the view that Article 1(1) of Convention No. 111 does not adequately cover equality of opportunity and treatment irrespective of personal characteristics such as disability, sexual orientation and gender identity, age and other grounds which have progressively and universally gained prominence, and that Member States need to offer protection more comprehensively against discrimination for vulnerable groups or groups in vulnerable situations.

50. The Committee notes that challenges persist in certain countries in adopting a definition of discrimination in employment and occupation that encompasses the three elements mentioned above. In some cases, legislative provisions defining and prohibiting discrimination are not sufficiently precise,[131] or have not yet been adopted.[132]

51. ***The Committee recalls that clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many forms and manifestations in which it may occur, and thus in effectively implementing the Convention.***[133]

52. Convention No. 111 also specifies, in Articles 1(2), 4 and 5, what is not deemed to be discrimination: (i) treatment based on an inherent requirement of the job (Article 1(2)); (ii) measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State (Article 4); and (iii) special measures of protection and assistance for specific groups (Article 5).

53. There are two kinds of special measures. On one hand, there are those provided for in other ILO standards, for instance measures adopted for persons with disabilities, indigenous peoples, workers with family responsibilities, as well as maternity protection measures adopted when implementing the maternity protection standards.[134] Their inclusion in the Convention was intended to ensure that its ratification is not in conflict with the ratification or implementation of other ILO instruments providing for special measures of protection and assistance.

130 ILO, *Discrimination in the Field of Employment and Occupation*, Report VII(2), International Labour Conference, 40th Session, 1957, 105.

131 For example, CEACR, Convention No. 111: *Afghanistan*, observation, 2018; *Bangladesh*, observation, 2019; *Democratic Republic of the Congo*, observation, 2020; *Dominica,* direct request, 2021; *Haiti,* direct request, 2021; *Jamaica*, direct request, 2020; *Lao People's Democratic Republic*, observation, 2020. In some cases, the legislative provisions do not fully cover the seven grounds of discrimination expressly indicated in the instruments. For example, see CEACR, Convention No. 111: *Antigua and Barbuda*, observation, 2019; *Armenia*, direct request, 2016; *Bangladesh*, observation, 2019; *Cabo Verde*, observation, 2019; *Canada*, observation, 2018; *Chad*, observation, 2021; *China*, observation, 2021; *Comoros*, direct request, 2020; *Cuba*, observation, 2019; *Dominica*, direct request, 2021; *Ghana*, observation, 2021; *Guinea*, observation, 2020; *Haiti*, direct request, 2021; *Iceland*, observation, 2020; *Jordan*, observation, 2020; *Kazakhstan*, observation, 2020; *Kuwait*, observation, 2020; *Libya*, observation, 2020; *Nepal*, observation, 2019; *Paraguay*, direct request, 2018; *Saint Vincent and the Grenadines*, observation, 2021; *Saudi Arabia*, observation, 2021; *Senegal*, direct request, 2021; *Sri Lanka*, observation, 2018; *Sweden*, observation, 2021; *Switzerland*, observation, 2021.

132 For example, CEACR, Convention No. 111: *Chad*, observation, 2021; *China*, observation, 2021; *Eswatini*, observation, 2019; *Haiti*, direct request, 2021; *Honduras*, direct request, 2021; *Hungary,* observation, 2020; *Jamaica,* direct request, 2020; *Jordan*, observation, 2020; *Kuwait*, observation, 2020; *Lebanon*, observation, 2018; *Libya*, observation, 2020; *Nigeria*, observation, 2019; *Republic of Korea*, direct request, 2020; *Saint Kitts and Nevis*, direct request, 2019; *Saint Vincent and the Grenadines*, observation, 2021; *Seychelles*, direct request, 2021; *Sudan*, direct request, 2019; *Suriname*, direct request, 2020; *United Arab Emirates*, observation, 2021; *Yemen,* direct request, 2019.

133 See also 2012 General Survey, para. 743.

134 2012 General Survey, para. 836.

54. On the other hand, special measures include those designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognized as requiring special protection or assistance.[135] This term is intended to cover the widest possible range of measures concerning different categories of workers and often includes affirmative action, such as quota systems.[136] The clarification that such measures do not constitute discrimination was included in Convention No. 111 so as to avoid conflict between national equality policies and other measures which might give rise to certain "distinctions, exclusions or preferences", but which are justified because their purpose is to provide special protection or assistance.[137]

55. The CEDAW differentiates two types of special measures: (i) permanent measures that provide non-identical treatment of women and men, at least until such time as scientific and technological knowledge would warrant a review, and (ii) temporary measures aimed at accelerating de facto equality and to correct past and present discrimination.[138] In this regard the Committee recalls that, similarly, it had previously noted that in relation to Convention No. 111 there are two main kinds of special measures intended to meet the particular needs of women: those intended to protect their maternity and health risks (and that should be reviewed according to the advancement of health protection and technological advancement), and those more closely related to preferential treatment regarding training, access to employment and conditions of work.[139]

1.1. Discrimination as an evolving phenomenon

Direct and indirect discrimination

56. The Committee has for many years explained that the definition of discrimination endorsed by Convention No. 111 and Recommendation No. 111, which focuses on the discriminatory effect or consequences of a given situation, includes both direct and indirect discrimination.[140]

57. In this regard, the Committee recalls the definitions it has previously provided of direct and indirect discrimination. Direct discrimination occurs when "less favourable treatment is explicitly or implicitly based on one or more prohibited grounds". Indirect discrimination refers to "apparently neutral situations, regulations or practices which in fact result in unequal treatment of persons with certain characteristics. It occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on some persons on the basis of characteristics such as race, colour, sex or religion, and is not closely related to the inherent requirements of the job".[141]

---

135 In addition to the reasons referred to in Art. 5 for the adoption of special measures (sex, age, disability, family responsibilities and social or cultural level), the Committee has previously noted that other reasons may justify the adoption of special measures. See 1988 General Survey, para. 147.

136 2012 General Survey, para. 837. See also section 3.2 below on affirmative action.

137 1963 General Survey, para. 51. This is also recognized in Para. 6 of Recommendation No. 111.

138 Committee on the Elimination of Discrimination against Women, General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004, paras 15–17.

139 2012 General Survey, para. 840; 1988 General Survey, para. 148; 1996 Special Survey, para. 138.

140 1988 General Survey, para. 28; 2012 General Survey, paras 744 and 745. The Committee also notes that the *United States of America* refers to discrimination having a "disparate impact" to refer to situations similar to indirect discrimination.

141 2012 General Survey, paras 744–745. For examples of indirect discrimination, see 2012 General Survey, para. 788; ILO, *Women, Gender and Work*, 49; ILO, *Equality at Work: The Continuing Challenge – Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report 1(B), International Labour Conference, 100th Session, 2011, paras 3 and 197.

58. The Committee also notes that where the less favourable treatment is based on a number of factors, only one of which is a prohibited ground, some States deem this to be direct discrimination depending on the circumstances.[142]

59. The Committee has previously noted that, despite advances in many countries, the concept of indirect discrimination does not appear to be clear and recognized in some regions and countries, but that this concept is imperative to identify and address situations where treatment is extended equally to everybody, but leads to discriminatory results for one particular group,[143] or a disproportionately harsh impact on some persons on the basis of certain characteristics.[144]

60. Over the years, the Committee has noted that manifestations of discrimination have acquired subtle and less visible forms,[145] and that indirect discrimination is often more difficult to detect.[146] By 1988, a number of countries had reported that protection against discrimination included acts of indirect discrimination.[147] In this regard, the Committee considers that it is especially important for there to be a clear framework for addressing indirect discrimination, in view of its subtle and less visible nature.[148] The elimination of direct discrimination is essential, but not sufficient to ensure substantive equality and to close persisting gender gaps.[149]

61. This is because indirect discrimination is often a result of the interaction between apparently neutral conduct and structural barriers that produce unequal outcomes.[150] These structural barriers may be linked to gender stereotypes or to phenomena such as occupational segregation. Women are most commonly affected by sex-based discrimination and, more especially, indirect discrimination.[151] Examples of such discrimination may include: promotions awarded on the basis of workers' available hours; pay increases depending on the hours of service; lower minimum wage levels in sectors or occupations where women predominate; lower wages for informal homeworkers who undertake piecework and whose wages are calculated on a piece-rate basis (who are predominantly women) in comparison to workers with wages calculated on a time-rate basis; or collective agreements and laws excluding part-time workers from certain bonuses.[152] Similarly, a policy under which work-related training is undertaken at the end of the day may constitute indirect discrimination as it may inadvertently place workers with childcare responsibilities in a more vulnerable position, because they may need to choose between attending training or picking-up children from school (or finding someone to provide childcare while they participate in the training). ***The Committee notes that indirect discrimination is a more subtle and less visible form of discrimination and emphasizes the importance of clearly defining and prohibiting it to achieve gender equality.***

62. The Committee has also noted on several occasions that the exclusion of specific categories of workers from the scope of application of general labour law may lead to indirect discrimination. For instance, the exclusion of domestic workers – a sector primarily made up

142 For example, in the *United Kingdom of Great Britain and Northern Ireland,* see *Owen and Briggs v. James* [1982] IRLR 502, CA; *O'Neill v. Governors of St Thomas More Roman Catholic Voluntary Aided Upper School* [1996] IRLR 372, [1997] ICR 33, EAT; *O'Donoghue v. Redcar and Cleveland Borough Council* [2001] EWCA Civ 701; and *Nagarajan v. London Regional Transport* [1999] IRLR 572. In the *United States of America*, legislation makes clear that an employment practice is unlawful if sex (or other prohibited characteristics) "was a motivating factor, … even though other factors also motivated the practice" (1991 Civil Rights Act: 42 USC sec.2000e-2(m)).

143 2012 General Survey, para. 746.

144 See ILO, *Women, Gender and Work*, 49; ILO, *Equality at Work: The Continuing Challenge*, paras 3 and 197.

145 2012 General Survey, para. 731.

146 ILO, *Women, Gender and Work*, 62.

147 1988 General Survey, paras 28–29.

148 2012 General Survey, paras 744–746.

149 ILO, *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, 2019, 104.

150 ILO, *A Quantum Leap for Gender Equality*, 104.

151 1996 Special Survey, para. 35.

152 2012 General Survey, para. 694; ILO, *A Quantum Leap for Gender Equality*, 71.

of women workers – from the coverage of general labour law, in the absence of any equivalent specific legal coverage, could constitute indirect discrimination based on sex or race, colour or national extraction, as this apparently "neutral" treatment (the exclusion of domestic workers from the scope of labour law) may disproportionately affect women, including those of a particular race, colour or national extraction. Eradicating gender-specific barriers, as well as other forms of discrimination with which they intersect, requires a concerted effort from all stakeholders to address indirect forms of discrimination and the structural barriers that have the effect, if not the intention, of producing unequal outcomes.[153]

63. The Committee notes that more countries are explicitly defining and/or prohibiting indirect discrimination in their legislation.[154] However, challenges still remain to explicitly include indirect discrimination in some national legislative frameworks.[155] Where the legislation is unclear, the Committee has asked governments to amend vague or general legislative provisions to explicitly prohibit both direct and indirect discrimination.[156]

Discrimination-based harassment

64. Within the framework of Convention No. 111, discrimination-based harassment has been addressed by the Committee particularly in relation to sexual harassment,[157] sex-based harassment[158] and racial harassment.[159] Provisions also sometimes exist, often in anti-discrimination legislation, which address harassment based on other grounds.[160]

65. In 2019, the International Labour Conference adopted the Violence and Harassment Convention No. 190 and its accompanying Recommendation No. 206. In its Preamble, Convention No. 190 reaffirms the relevance of the ILO fundamental Conventions and acknowledges that "an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work". It follows from Articles 5 and 6 of Convention No. 190 that ensuring the right to equality and non-discrimination in employment and occupation, including for women workers is essential to prevent and eliminate violence and harassment in the world of work. These instruments should therefore be seen as mutually complementary with Convention No. 111 and Recommendation No. 111: while the more recent instruments provide an overall framework to specifically address violence and harassment in the world of work, including gender-based and other forms of discrimination-based violence and harassment, Convention No. 111 and Recommendation No. 111 offer a long-standing framework for action to eliminate all discrimination, including harassment-based on one or more prohibited grounds, in respect of

153 2012 General Survey, para. 739; ILO, *A Quantum Leap for Gender Equality*, 104.

154 For example, *Armenia*, *Azerbaijan*, *Burundi*, *Colombia*, *El Salvador*, *Georgia*, *Iraq*, *Japan*, *Kyrgyzstan, Maldives*, *Thailand*, *Türkiye*, *Sao Tome and Principe*, *South Sudan* and *Uruguay*.

155 For example, CEACR, Convention No. 111: *Cabo Verde*, observation, 2019; *Egypt*, observation, 2016; *Nepal*, observation, 2019; *Uzbekistan*, observation, 2021.

156 For instance, where legislation refers to "any type" of discrimination, or where direct and indirect discrimination are referred to in general terms, the Committee has asked Governments to take steps to amend and explicitly prohibit and clearly define direct and indirect discrimination. For example, CEACR Convention No. 111: *Cuba*, observation, 2020; *Eritrea*, observation, 2019; *Guinea-Bissau*, observation, 2020; *Lao People's Democratic Republic*, observation, 2020; *Saint Vincent and the Grenadines*, observation, 2020; *Seychelles*, direct request, 2021; *Tajikistan*, observation, 2020; *Timor-Leste*, direct request, 2020; *Turkmenistan*, direct request, 2021; *United Arab Emirates*, observation, 2021; *Uzbekistan*, observation, 2021; *Yemen*, direct request, 2021.

157 CEACR, General observation – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 2003.

158 CEACR, Convention No. 111: *Australia*, direct request, 2017; *Belgium*, observation, 2017.

159 CEACR, General observation on discrimination based on race, colour and national extraction, 2019.

160 For example, *Albania*, *Georgia*, *Portugal*, *Slovenia* and *South Africa*. See also ILO, *Ending Violence and Harassment against Women and Men in the World of Work*, Report V(1), International Labour Conference, 107th Session, 2018 (hereinafter "Law and practice report on Convention No. 190"), para. 135.

all aspects of employment and occupation. ***The Committee observes that discrimination-based harassment in employment and occupation is a serious phenomenon with consequences for people's health and well-being, businesses, the economy and the labour market as a whole.***[161]

Multiple and intersectional discrimination

66. The Committee recalls that there is a fine line between the various grounds of discrimination, and that discrimination may occur in relation to more than one ground[162] and can create a cumulative disadvantage. Discrimination based on sex frequently interacts with other forms of discrimination or inequality, such as those based on race, national extraction, social origin or religion, as well as age, migration status, disability or health.[163] Similarly, gender roles and responsibilities are affected by age, race, class, ethnicity and religion, as well as by the geographical, economic, cultural and political environment.[164] Addressing multiple discrimination is key to revealing and addressing forms of discrimination that are less visible, and which particularly affect the most disadvantaged.[165]

67. The Committee has consistently emphasized that where persons belong to more than one disadvantaged group, multiple and intersectional discrimination tends to compound and exacerbate existing inequalities.[166] In this regard, the Committee observes that the United Nations Committee on Economic, Social and Cultural Rights highlighted that "some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration and remedying."[167] Similarly, the Committee on the Elimination of Discrimination against Women has addressed "intersectional discrimination" by referring to discrimination against women that is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity.[168] For instance, refusing employment to a female candidate of a specific age due to the assumption that she may have children in the future constitutes intersecting discrimination. It is not the addition, but the inextricable link between two grounds of discrimination – sex and age – that

161 See ILO, "ILO: Violence and harassment at work is an occupational risk factor and a source of major health problems", 8 March 2022; ILO, *Safe and Healthy Working Environments Free from Violence and Harassment*, 2020. See also Preamble to Convention No. 190.

162 1988 General Survey, para. 31; 1996 Special Survey, para. 29; 2012 General Survey, para. 748. See also CEACR, General observation on discrimination based on race, colour and national extraction, 2019.

163 2012 General Survey, para. 748. See also the Beijing Declaration and Platform for Action, 1995, para. 31; ILO, *Women, Gender and Work*, 68.

164 2012 General Survey, para. 782; ILO, *Gender Equality at the Heart of Decent Work*, Report VI, International Labour Conference, 98th Session, 2009, para. 9.

165 ILO, *Women, Gender and Work*, 68.

166 ILO, *Securing Decent Work for Nursing Personnel and Domestic Workers, Key Actors in the Care Economy: General Survey on the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011*, Report III(B), International Labour Conference, 110th Session, 2022 (hereinafter "2022 General Survey"), para. 676; Addendum to the 2020 General Survey, para. 225. Along the same line, the Committee notes that in the framework of the 2021 International Labour Conference, discussions on inequalities and the world of work pointed to the concept of "intersectionality" as capturing the complex way in which inequalities based on different personal characteristics overlap and accumulate. See ILO, *Inequalities and the World of Work*, Report IV(Rev.), International Labour Conference, 109th Session, 2021, para. 23.

167 Committee on Economic, Social and Cultural Rights, General comment No. 20 on non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2009, para. 17.

168 Committee on the Elimination of Discrimination against Women, General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 2010, para. 18; Committee on the Elimination of Discrimination against Women, General recommendation No. 33 on women's access to justice, CEDAW/C/GC/33, 2015, para. 8; Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, 2017, para. 12. For more information see also Council of Europe, "Intersectionality and Multiple Discrimination".

creates a unique disadvantage.[169] Similarly, dismissing a worker because she wears a hijab at work could constitute a situation of intersecting discrimination inextricably linking sex and religion.[170] Moreover, the discrimination faced by black women is not the same as that experienced by white women or black men.[171]

68. The addition and combination of discrimination based on different grounds can have a significant impact on women's ability to access and progress in employment and occupation. The Committee has addressed a number of situations of multiple discrimination, including access to education and employment by women and girls of African descent,[172] women and girls with disabilities,[173] rural women and indigenous women,[174] and women of specific castes.[175] It has also addressed specific issues relating to the working conditions of migrant or foreign women domestic workers,[176] migrant women workers and refugees,[177] and women from minority groups.[178]

69. The Committee recalls that addressing multiple discrimination remains a challenge, as legal approaches tend to treat each ground of discrimination separately and it is often not possible to submit claims of discrimination on multiple grounds.[179] The Committee welcomes the fact that the legislation in a number of countries defines or prohibits multiple discrimination[180] or discrimination based on more than one ground.[181] The Committee also notes that in *Albania*, article 3(3) of Law No. 10 221, as amended in 2020, explicitly includes intersectional discrimination as a "form of discrimination, whereby several grounds operate and interact with each other simultaneously in such a way that they are inseparable and produce distinct forms of discrimination". In *Slovenia,* the Advocate of the Principle of Equality has recommended the explicit inclusion of intersectional discrimination in the legislation.

70. In some countries, multiple discrimination is taken into account in their respective enforcement procedures. For instance, in *Bulgaria*, cases of multiple discrimination are considered by an enlarged five-member panel of the Commission for Protection against Discrimination.[182]

169 For instance, OECD research had found that low rates of employment of young women in a specific country were explained by the fact that mothers tended to have their first child at a lower average age. Colleen Sheppard, *Multiple Discrimination in the World of Work*, Working Paper No. 66 (ILO, 2011), 7.

170 Susanna Burri and Dagmar Schiek, *Multiple Discrimination in EU Law: Opportunities for Legal Responses to Intersectional Gender Discrimination?* (European Commission, 2009), 15.

171 Sandra Fredman, *Intersectional Discrimination in EU Gender Equality and Non-Discrimination Law* (European Commission, 2016), 27–28.

172 For example, CEACR, Convention No. 111: *Costa Rica*, direct request, 2019; *Guyana*, observation, 2021; *Honduras*, direct request, 2020; *Mexico*, direct request, 2020; *Netherlands*, direct request, 2020; *Panama*, direct request, 2019; *Paraguay*, direct request, 2018; *Peru*, direct request, 2018; *Saudi Arabia*, observation, 2019; *Uruguay*, direct request, 2018.

173 For example, CEACR, Convention No. 111: *Ghana*, observation, 2021; *Greece,* observation, 2020; *Kazakhstan,* observation, 2020; *Lithuania,* direct request, 2020; *Niger*, direct request, 2020; *Nigeria*, direct request, 2019; *Peru*, direct request, 2018; *San Marino*, direct request, 2018; *Slovenia*, direct request, 2019; *Suriname*, direct request, 2020; *Tajikistan*, observation, 2020; *Uzbekistan*, direct request, 2021; *Viet Nam*, direct request, 2021.

174 For example, CEACR, Convention No. 111: *Argentina*, observation, 2018; *Chile*, direct request, 2018; *Costa Rica*, direct request, 2019; *Democratic Republic of the Congo*, observation, 2020; *Guatemala,* direct request, 2020; *Honduras,* direct request, 2020; *Liberia*, direct request, 2021; *Mexico,* direct request, 2020; *Namibia,* direct request, 2018; *Panama,* direct request, 2021; *Paraguay,* direct request, 2018; *Peru*, direct request, 2021; *Suriname*, direct request, 2020.

175 CEACR, Convention No. 111: *Bangladesh*, direct request, 2019; *Nepal*, direct request, 2019; *Pakistan*, observation, 2015.

176 CEACR, Convention No. 111: *Lebanon*, observation, 2018; *Mexico*, direct request, 2020; *Saudi Arabia*, direct request, 2021.

177 CEACR, Convention No. 111: *Bangladesh*, direct request, 2019; *Iraq*, observation, 2021; *Kuwait*, observation and direct request, 2020; *Libya*, observation, 2019.

178 CEACR, Convention No. 111: *Germany*, observation, 2018; *Saudi Arabia*, observation, 2019.

179 2012 General Survey, para. 748.

180 For example, *Albania*, *Georgia*, *Iceland*, *North Macedonia*, *Slovenia*, *Türkiye*, *Uruguay*. Legislative reviews that include such concepts are also envisaged; see CEACR, Convention No. 111: *Ukraine*, direct request, 2021; *Uzbekistan*, observation, 2021; *United Kingdom of Great Britain and Northern Ireland*, observation, 2019.

181 *Poland* (art. 18^{3a}, paras 3 and 4 of the Labour Code).

182 *Bulgaria* (art. 48(3) of the Protection Against Discrimination Act).

The Government of *Sweden* indicates that, even if the legislation does not explicitly cover the concept, complaints on multiple grounds of discrimination can be brought to enforcement bodies. In *Finland*, the Occupational Safety and Health Authority submits preliminary investigation notices to the police concerning cases involving multiple grounds of discrimination. In *Türkiye*, multiple discrimination is considered in the calculation of administrative fines for cases of discrimination.[183] The International Trade Union Confederation (ITUC) indicates in this regard that, while many laws define discrimination with respect to a multiplicity of grounds, few offer the possibility of filing complaints of discrimination on combined grounds. It also notes that few countries have attempted to address the concept of multiple discrimination in their legislation, and that this is an issue that needs to be addressed more comprehensively by governments and the social partners.

71. In some countries, multiple discrimination is taken into account in the design of policy measures. In *Spain*, the Strategic Plan for Effective Equality between Women and Men 2022–2025 includes the application of the principle of intersectionality in the promotion of women's rights in order to address factors of diversity, other than sex, that affect equality between women and men, and the Strategic Plan on Labour Inspection and Social Security 2021–23 encompasses action on gender equality for vulnerable groups, with particular reference to multiple and intersecting discrimination. In *Portugal*, the National Strategy for the inclusion of persons with disabilities 2021–25 recognizes that multiple and intersecting discrimination amplifies situations of vulnerability. In the Australian Capital Territory *(Australia)*, the Women's Plan 2016–26 includes a specific focus on women subject to multiple discrimination.

Increasing recognition of other specific forms of discrimination

72. The Committee also observes that other specific forms of discrimination are increasingly being prohibited in national law, including discrimination by association,[184] discrimination based on presumed grounds,[185] structural discrimination,[186] segregation,[187] denial or lack of reasonable accommodation,[188] incitement, order or encouragement to discriminate,[189] and repeated or prolonged discrimination.[190] Certain laws also identify some of these as severe or serious forms of discrimination.[191]

73. ***The definition of discrimination in employment and occupation includes all forms of discrimination, including direct and indirect discrimination, multiple discrimination, as well as discrimination-based harassment, on at least all the grounds enumerated in Article 1(1)(a) of the Convention with respect to all aspects of employment and occupation.***[192]

183 *Türkiye* (art. 25 of Law No. 6701).

184 For example, in *Ireland*, section 3(1)(b) of the Equal Status Acts refers to situations "… where a person who is associated with another person is treated, by virtue of that association, less favourably than a person who is not so associated is, has been or would be treated in a comparable situation …".

185 For example, in *Türkiye,* art. 2(m) of Law No. 6701 defines "discrimination based on assumed grounds".

186 For example, in *Albania*, "structural discrimination" is defined in art. 3(6) of Law No. 10.221 of 2010 as "the form of discrimination that refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that, intentionally or unintentionally, represent obstacles to groups or individuals in achieving the same rights and opportunities as others, and which contribute to less favourable results for them, compared to others".

187 For example, *Croatia* (art. 5 of the Anti-discrimination Act 2008).

188 For example, in *Belgium* (Flanders) (sections 15 and 16 of the Decree of 10 July 2008 establishing the framework for a Flemish equal opportunities and non-discrimination policy).

189 For example, *Denmark* (section 1(7) of the Act on Equal Treatment of Men and Women as regards access to Employment etc (Consolidation 2006) and section 1(5) of the Act on the Prohibition of Discrimination on the Labour Market etc (as amended in 2014)).

190 For example, in *Republic of Moldova*, art. 2 of Law No. 121 of 25 May 2012 on Ensuring Equality explicitly covers discrimination committed on two or more occasions.

191 For example, in *Albania*, *Croatia*, *Republic of Moldova, Slovenia*.

192 See also 2012 General Survey, para. 744.

74. ***The Committee notes that, in order to eliminate effectively all forms of discrimination, as defined in Convention No. 111, it is necessary to address discrimination on all and different grounds. In this regard, national equality policies should be sufficiently comprehensive to ensure effective protection and redress in cases of intersectional discrimination, including by permitting complaints of discrimination to be based on more than one ground. The adoption of targeted policies and measures covering specific groups also helps to address multiple forms of discrimination.***

1.2. Gender equality and the grounds of discrimination covered by the Convention

Discrimination based on sex

75. Discrimination based on sex includes distinctions that are made directly or indirectly to the disadvantage or benefit of one sex. In the 60 or more years since the adoption of the instrument, the information provided by constituents to the Committee shows that discrimination based on sex is a main focus of action for the implementation of the Convention. For instance, much of the information received by the Committee concerns the promotion of gender equality and the elimination of sex discrimination through national gender equality plans. The Committee recalls that, while the protection provided by Convention No. 111 against discrimination applies equally to either sex, discrimination based on sex tends to disproportionately affect women.[193]

76. The Committee recalls that consideration of "sex" as a prohibited ground of discrimination has evolved to include pregnancy and maternity, marital or civil status, and family situation and responsibilities,[194] as well as sexual harassment as a serious manifestation of sex discrimination.[195]

77. Over the years, the understanding of discrimination based on sex has also evolved to capture the concept of gender, understood as the socially constructed roles and responsibilities assigned to a particular sex.[196] The need to take into consideration social constructs around sex and gender when tackling sex discrimination was already acknowledged by the Committee in its 1963 and 1988 General Surveys, in which it recognized that discrimination based on sex, often affecting women, derives from strong traditional beliefs and archaic and stereotyped concepts that may differ according to the country, culture and customs.[197] ***Over time, the Committee has affirmed in this regard that sex discrimination goes beyond distinctions based on biological characteristics (sex), and also includes unequal treatment arising from socially constructed roles and responsibilities assigned to a particular sex (gender).***[198] The Committee welcomes the fact that an increasing number of countries explicitly refer to "gender" among the grounds of discrimination prohibited by national legislation.[199]

193 1988 General Survey, para. 38; 2012 General Survey, para. 783.

194 ILO, *Information Paper on Protection against SOGIESC Discrimination*, paras 115–116.

195 CEACR, General observation – Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 2003; 2012 General Survey, para. 789.

196 ILO, *Information Paper on Protection against SOGIESC Discrimination*, 117–118; 2012 General Survey, para. 782.

197 1963 General Survey, para. 24; 1988 General Survey, para. 38.

198 2012 General Survey, para. 782.

199 For example, *Albania*, *Botswana*, *Bulgaria*, *Cambodia*, *Colombia*, *Comoros*, *Croatia*, *Cuba*, *Czechia*, *Dominican Republic*, *Georgia*, *Ghana*, *Guatemala*, *Ireland*, *Lithuania*, *Malaysia*, *Maldives*, *Mauritius*, *Mexico*, *Montenegro*, *North Macedonia*, *Pakistan*, *Saudi Arabia*, *Slovakia*, *Slovenia*, *South Africa*, *Tajikistan* and *Zimbabwe*.

Discrimination based on maternity, including pregnancy

78. Discrimination based on maternity, including pregnancy and breastfeeding, are the most evident forms of discrimination based on sex as they can only, by definition, affect women.[200] They persist as a common experience for many women, in which they are either not recruited, dismissed, moved into lower-paid roles, denied advancement opportunities or become subject to subtly hostile behaviours.[201] Discrimination based on maternity is addressed in both Conventions Nos 111 and 183 (Article 9). These instruments should therefore be seen as complementary in this regard.

79. In its previous General Surveys on equality and non-discrimination, the Committee observed that a number of countries had explicitly introduced maternity and pregnancy in national legislation as prohibited grounds of discrimination.[202] It welcomes the fact that this trend has continued in many countries in recent years, sometimes also including childbirth.[203] The Committee however notes that discriminatory practices relating to maternity and pregnancy, such as pregnancy testing, still persist in a number of countries.[204]

80. The Committee further notes that other maternity-related grounds of discrimination are sometimes explicitly considered in national legislation, such as lactation or breastfeeding.[205] In some jurisdictions, discrimination based on the enjoyment of maternity leave, parental leave and adoption leave is also prohibited.[206] In *Belgium*, following recent amendments to the Act of 10 May 2007, the prohibited grounds of discrimination include adoption, medically assisted procreation and co-maternity. The Committee notes that grounds of discrimination related to maternity are sometimes explicitly categorized or considered as discrimination based on sex.[207] Moreover, in *Latvia*, less favourable treatment due to the granting of prenatal and maternity leave is considered to be direct discrimination based on gender.[208]

81. The Committee also welcomes the introduction into the legislation in some countries of grounds of discrimination related to the probability or possibility of pregnancy and maternity. In *Lithuania,* the intention to have children is considered as a prohibited ground of discrimination.[209] Similarly, in *Australia*, the possible pregnancy of a woman is considered as a prohibited ground of discrimination[210] and, in the *Maldives*, the law prohibits discrimination based on the possibilities of pregnancy, childbirth or breastfeeding.[211]

82. ***The Committee welcomes the measures taken by Member States to prohibit in law discrimination stemming from the maternal function of women, which is of crucial importance in ensuring equality of opportunity and treatment for women.***

200 2012 General Survey, para. 784.

201 ILO, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work*, 2022, 83.

202 1988 General Survey, para. 65; 2012 General Survey, para. 784.

203 For example, *Albania*, *Australia*, *Belize*, *Burkina Faso*, *Chile*, *Czechia*, *Ecuador*, *El Salvador*, *France*, *Greece*, *Honduras*, *Hungary*, *Mauritius*, *Mexico*, *Montenegro*, *Netherlands*, *North Macedonia*, *Samoa*, *Serbia*, *Slovakia*, *Suriname* and *Viet Nam*.

204 See Ch. VI of Part II.

205 For example, *Australia*, *Bahrain*, *Belgium*, *Chile*, *Cyprus* and *Maldives*.

206 For example, *Greece*, *Latvia* and *Sweden*.

207 For example, *Belgium*, *Canada*, *Cyprus*, *Netherlands* and *United States of America.*

208 *Latvia* (section 29(5) of the Labour Act of 1994).

209 *Lithuania* (section 26 of Act No. XII-2470 of 21 June 2016 to establish and implement the Labour Code).

210 *Australia* (section 10 of the Maternity Leave (Commonwealth Employees) Act of 1973).

211 *Maldives* (section 9(a) of the Gender Equality Act No. 18/2016).

Discrimination based on physical, mental and professional abilities and capabilities and other characteristics attributed to a particular sex or gender

83. In some countries, laws and practices limit the recruitment of women in general in specific sectors, jobs or occupations or their access to specific work arrangements, such as the police, the armed forces, night work, heavy work or underground work. The Committee has previously expressed its concern regarding this phenomenon.[212] ***The Committee notes that blanket limitations on work aimed at protecting women generally because of their sex or gender are based on stereotypical perceptions about their capabilities and appropriate role in society, are contrary to Convention No. 111 and constitute obstacles to the recruitment and employment of women.***[213] Such limitations or restrictions may also feed into gender inequalities, as they perpetuate traditional views of men's and women's roles, reduce women's opportunities in the labour market and often hamper women's access to higher paying jobs.[214]

84. Stereotyped perceptions about the capabilities and other characteristics of men and women may interfere when determining the different impact of occupational hazards and risks for each gender. For instance, approaches on manual handling of loads used to establish different maximum limits for men and women, which were probably based on a perceived physical weakness of women. Modern regulations have departed from such distinctions and have evolved towards a preventive and risk assessment approach based on technical standards and medical opinion, that takes into account various individual factors including gender, general health, age, work experience, and prior injuries.[215] It is therefore essential to ensure the absence of gender bias when identifying gender differences in occupational health and safety risks. Education, training and awareness-raising leading to the dismantling of stereotypical understandings of what are considered to be "male" and "female" jobs, as well as new technological developments and other demographic and social trends, will likely contribute to a more equal participation of men and women in all sectors and occupations.

85. Blanket prohibitions on women working in hazardous or difficult conditions have often been presented as a measure to protect their occupational safety and health (OSH).[216] Working in hazardous or difficult conditions may entail risks affecting the health of any worker, regardless of their gender. Sometimes, the same risks may affect women and men's physical and psychological health differently.[217] Similarly, there are many workplace hazards that can affect the reproductive health of both sexes (including pesticides, metals, dyes and solvents, noise and vibration, radiation and infectious diseases) and, at the same time, some may affect differently the genital organs and reproductive health and faculties of men and women.[218] In this regard, the Committee recalls that measures aimed at protecting maternity in the strict sense (i.e. pregnancy and nursing) come within the scope of Article 5 of Convention

212 2012 General Survey, para. 788.

213 2012 General Survey, para. 839.

214 ILO, *Care at Work*, 177.

215 Valentina Forastieri, *Women Workers and Gender Issues on Occupational Safety and Health*, (ILO, 2010), 5; ILO and International Ergonomics Association (IEA), *Principles and Guidelines for Human Factors/Ergonomics (HFE) Design and Management of Work Systems*, 2021, 44; ILO, *Instruments concerning Maximum Weight*, Technical Note 8, Third Meeting of the SRM Tripartite Working Group, 2017, 4.

216 For example, CEACR, Convention No. 111: *Niger*, direct request, 2020; *Syrian Arab Republic*, direct request, 2019.

217 See, for instance, regarding the gender differences in exposure to musculoskeletal disorder risks or psychosocial risks: ILO, *10 Keys for Gender Sensitive OSH Practice – Guidelines for Gender Mainstreaming in Occupational Safety and Health*, 2013, 9–13.

218 ILO, *10 Keys for Gender Sensitive OSH Practice;* Forastieri, *Women Workers and Gender Issues on Occupational Safety and Health*; ILO, *Exposure to Hazardous Chemicals at Work and Resulting Health Impacts: A Global Review*, 2021.

No. 111, and it refers to Chapter VI of Part II of this report that explores maternity protection measures with more detail.[219]

86. ***Provisions relating to the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking account of gender differences with regard to specific risks to their health. Lists of types of work or occupations prohibited because of the danger they pose to health, including reproductive health, should be determined on the basis of an assessment based on scientific evidence and progress, as well as technological developments, showing that there are specific risks to the health of women and, if applicable, of men. Restrictions to employment beyond maternity protection in the strict sense are contrary to the principle of equality of opportunity and treatment between men and women, unless they are genuine protective measures to protect the health of men and women***.[220]

87. Another major area where blanket prohibitions of the participation of women existed is night work. While ILO instruments initially adopted the view that night work should be prohibited for women for their own protection, this policy has evolved to the point where it became clear that it was contrary to the principle of equality between men and women and that it inhibited the equal access of women to certain jobs. This evolution is seen in the ILO's instruments related to night work. While the Night Work (Women) Convention (Revised), 1948 (No. 89), prohibits the employment of women during the night in industrial undertakings, the 1990 Protocol to Convention No. 89 opens up the possibility for women to work at night under certain circumscribed conditions. The most recent, the Night Work Convention, 1990 (No. 171), does not prohibit night work for women, but rather broadens the scope of measures required so that they apply to nearly all workers and all occupations.[221] It demonstrates a major shift from a purely protective approach concerning the employment of women to one based on promoting genuine equality between women and men and eliminating discriminatory law and practice.[222]

88. The Committee observes that some of the countries that have instituted a general prohibition of night work for women have ratified Convention No. 89, which calls for such a prohibition. However, even in such cases, the Committee has referred to its comments under Convention No. 111 and recalled that protective measures applicable to women's employment at night which go beyond maternity protection and are based on stereotyped perceptions regarding women's professional abilities and role in society, violate the principle of equality of opportunity and treatment between men and women.[223]

---

219 In relation to the limitation of women's work in specific sectors to prevent risks of violence and harassment, see Recommendation No. 206, para. 12.

220 In this regard, the Committee has previously noted, in relation to the implementation of Convention No. 89, that protective measures applicable to women's employment at night which go beyond maternity protection and are based on stereotyped perceptions regarding women's professional abilities and role in society violate the principle of equality of opportunity and treatment between men and women. See ILO, *Ensuring Decent Working Time for the Future: General Survey Concerning Working-Time Instruments*, Report III (Part B), International Labour Conference, 107th Session, 2018 (hereinafter "2018 General Survey"), para. 545. See also CEACR, Convention No. 111: *Qatar,* direct request, 2018.

221 For an overview of the evolution of international labour standards on night work for women, see ILO, Night Work of Women in Industry: General Survey of the Reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, Report III (Part B), International Labour Conference, 89th Session, 2001, paras 34–64.

222 2018 General Survey, para. 418.

223 For example, CEACR, Convention No. 89: *Burundi*, direct request, 2019; *Lebanon*, direct request, 2021; *Mauritania*, direct request, 2021; *Tunisia,* direct request, 2019; *United Arab Emirates,* direct request, 2020.

89. ***Accordingly, the Committee invites countries to examine their legislative provisions prohibiting night work for all women in light of the principle of equality of opportunity and treatment of men and women in employment and occupation.***[224] ***The Committee encourages these Governments to consider denouncing Convention No. 89 at the time of the next denunciation window.***[225] ***It also encourages these Governments to consider ratifying Convention No. 171 or, if this is not possible, the Protocol of 1990 to Convention No. 89.***

90. Removing legal restrictions on women's access to paid work in particular sectors, occupations and work arrangements is an essential step in accelerating women's participation in employment and in higher paying jobs.[226] The Committee welcomes the fact that, in line with the trend already identified in its 1988 General Survey,[227] a number of countries have repealed legislative provisions prohibiting certain jobs or occupations for women.[228] However, it is concerned that discriminatory laws and practices still exist, according to ILO data, in a large number of countries,[229] including in relation to night work,[230] underground work,[231] and heavy labour.[232]

91. Even where legal prohibitions on women and men's employment do not exist, the Committee recalls that archaic and stereotyped concepts and social and cultural constructs relating to the capacities, skills and roles of men and women may indirectly orient them to specific fields of education and employment. This may lead to a concentration of men and women in particular occupations or sectors, which is also known as "horizontal occupational segregation".[233] The Committee however notes that limitations on the work of women are often based on gender norms and stereotypes linked to the roles attributed by society to men and women, concerns or prejudices relating to women's morals, as well as social views of what skills are considered to be acceptable for women or to be typically "male" or "female". In this regard, the Committee highlights that undertaking awareness-raising activities to address gender stereotypes and promoting change towards cultures and societies based on gender equality is as necessary as the removal of legal obstacles to women's access to specific sectors, occupations and work arrangements.[234]

---

224 For example, CEACR, Convention No. 89: *Mauritania,* direct request, 2021; CEACR, Convention No. 171: *Montenegro*, direct request, 2021. See also ILO, *Maternity and Paternity at Work: Law and Practice across the World*, 2014, 90–92.

225 As the previous denunciation window was between 27 February 2021 and 27 February 2022, the next denunciation window will occur from 27 February 2031 until 27 February 2032.

226 ILO, *A Quantum Leap for Gender Equality*, 63.

227 1988 General Survey, para. 101.

228 For example, CEACR, Convention No. 111: *Cyprus*, direct request, 2019; *Republic of Moldova*, observation, 2020; *Mongolia*, direct request, 2021; *Saudi Arabia*, observation, 2021; *Tajikistan*, direct request, 2020; *Viet Nam*, observation, 2021.

229 ILO, *A Quantum Leap for Gender Equality,* 64–65. See, for example, CEACR, Convention No. 111: *Afghanistan*, observation, 2018; *Albania*, direct request, 2020; *Bahrain*, observation, 2017 and 2018; *Benin*, direct request, 2019; *Democratic Republic of the Congo*, direct request, 2020; *Georgia*, direct request, 2020; *Iraq*, observation, 2021; *Lao People's Democratic Republic*, direct request, 2020; *Madagascar,* direct request, 2016; *Mauritius*, direct request, 2020; *Nigeria*, direct request, 2021; *Papua New Guinea*, direct request, 2021; *Russian Federation*, observation, 2018; *Ukraine*, direct request, 2018.

230 For example, CEACR, Convention No. 111: *Bahrain*, observation, 2017; *Belize*, direct request, 2021; *Guinea*, direct request, 2020; *Iraq*, observation, 2021; *Madagascar*, direct request, 2021; *Nigeria*, direct request, 2021; *Papua New Guinea*, direct request, 2021; *United Arab Emirates*, direct request, 2021.

231 For example, CEACR, Convention No. 111: *Bahrain*, observation, 2017; *Nigeria*, direct request, 2021. The Committee notes that Convention No. 45, which prohibited underground work for women, has been classified as outdated by the SRM and its abrogation is proposed for discussion before the International Labour Conference at its 113th Session in 2024. See ILO, *Instruments concerning Occupational Safety and Health in Mining*, Technical Note 1.1, Fourth Meeting of the SRM Tripartite Working Group, 2018.

232 CEACR, Convention No. 111: *Papua New Guinea*, direct request, 2021.

233 1988 General Survey, para. 38.

234 See ILO, *A Quantum Leap for Gender Equality,* 64; ILO, Discrimination in the Field of Employment and Occupation, Report VII(1), International Labour Conference, 40th Session, 1957 (hereinafter "Law and practice report on Convention No. 111"), 13.

92. ***The Committee recalls that men and women should have the right to work under safe and healthy conditions and to pursue freely any job or occupation, and that provisions excluding men or women should not rely on stereotypes and prejudices concerning their roles.***[235] ***The principle of gender equality requires protection measures not to have the effect in practice of excluding people from certain jobs or occupations or constituting an obstacle to their recruitment or promotion, based on stereotypical assumptions regarding their sex or gender, their role and capabilities, or what is "suitable to their nature"***.

93. ***In this regard, the Committee welcomes the resolution of the International Labour Conference in 2022 to include a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work.***[236]

Discrimination based on civil or marital status and family situation and responsibilities

94. While Convention No. 111 provides in Article 5 for the adoption of special measures for persons who, for reasons such as family responsibilities, require special protection or assistance, it does not expressly include civil status, marital status, family situation or family responsibilities as prohibited grounds of discrimination in Article 1, which is one of the reasons why Convention No. 156 was developed.[237] Despite the absence of such grounds in the text of the instruments, the Committee has previously acknowledged that discrimination on grounds of sex includes distinctions based on civil status, marital status, family situation and family responsibilities when they have a particular effect or consequence in relation to individuals of a particular sex.[238] While discrimination based on such grounds may affect both men and women, historically it has disproportionately affected women, as it is often related to the expected role of men and women in society and in the family. In most societies, women are attributed the role of carers in the family, either due to social attitudes linked to gender, or the fact that women generally earn less (hence, staying at home represents a smaller loss of family revenue if they need to stop or reduce work to fulfil care responsibilities).[239]

95. In relation to civil and marital status, the preparatory work for Convention No. 111 noted that discrimination against married women may originate, for instance, from viewing them as unstable members of the labour force due to their conflicting domestic commitments, or considering that married women are economically supported by their husbands (i.e. do not really need to work), and should not take jobs which could provide support for other heads of households and unmarried persons.[240] These views generally lead to discriminatory provisions that affect married women, such as prohibitions or limitations on working, different treatment in respect of working conditions and benefits, or the possibility of terminating employment in the event of marriage. Examples include legislative provisions requiring a husband's permission before his wife can accept certain jobs, legislation banning married women from the civil service or restricting the right of married women to access, own and

235 2012 General Survey, para. 788.

236 ILO, Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work, International Labour Conference, 110th Session, 2022.

237 The Preamble to Convention No. 156 indicates that: "Recalling that [Convention No. 111] does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect".

238 2012 General Survey, para. 787; 1996 Special Survey, para. 38; 1988 General Survey, para. 41.

239 ILO, *Care at Work*, 83.

240 Law and practice report on Convention No. 111, 13.

control property, resources and assets, and contractual clauses providing for the termination of women's employment when they marry.[241]

96. The Committee welcomes the progress made in recent years in eliminating such practices and repealing legal provisions. For example, in the *Democratic Republic of the Congo*, the Committee noted with satisfaction the adoption of Act No. 008 of 15 July 2016 amending the Family Code and the adoption of Act No. 16/013 of 15 July 2016 issuing the staff regulations for State civil servants, as both measures extinguished the requirement for the permission of their husbands for women to work in the public service.[242] In *Gabon*, the Family Code has been amended so that married women can be heads of household and exercise a profession of their choice.[243] In *Côte d'Ivoire*, section 67 of the Civil Code prohibiting married women from exercising an occupation distinct from that of their husband if the court considered it to be "contrary to the interest of the family" has been repealed. The Committee however notes that such provisions still remain in force in a number of countries.[244]

97. Similarly, the requirement of marriage or other civil partnerships to access certain work arrangements or benefits (for instance, benefits for the worker's spouse) may also lead to indirect discrimination based on sexual orientation and gender identity, particularly in countries where same-sex couples are not allowed to legally formalize their union.[245] The Committee recalls in this regard the indications by the Committee on the Elimination of Discrimination against Women that States parties are obligated to address the sex- and gender-based discriminatory aspects of all the various forms of family and family relationships, and that certain forms of relationships, such as , same-sex relationships are not legally, socially or culturally accepted in a considerable number of States parties.[246]

98. Discrimination based on family situation and family responsibilities is often linked to sex discrimination due to the fact that the family situation and responsibilities of women particularly affect their employment, advancement and situation in the world of work. This mainly stems from the unequal distribution of unpaid care work in the household, including caring for children and other members of the family, which is at the same time linked to social and gender norms that define the intra-household division of labour.[247] The lack of policies and services to promote the redistribution of unpaid care work also disproportionately places family responsibilities on women.

99. While the prohibition of discrimination based on marital status, civil status, family situation and family responsibilities was originally mainly linked to discrimination based on sex, partly because this was one of the grounds of discrimination explicitly enumerated in Convention

241 2012 General Survey, para. 787; Law and practice report on Convention No. 111, 13; ILO, *A Quantum Leap for Gender Equality*.

242 CEACR, Convention No. 111: *Democratic Republic of the Congo*, observation, 2018.

243 Paula Tavares, "Gabon Revises Legislation to Protect Women and Increase their Economic Role", *World Bank Blogs* (blog), 2 March 2022. See also, CEACR, Convention No. 111: *Gabon*, observation, 2020.

244 For example, CEACR, Convention No. 111: *Islamic Republic of Iran*, observation, 2021; *Syrian Arab Republic*, direct request, 2019. See also World Bank, *Women, Business and the Law 2022*, 2022, 22, which indicates that in 18 economies a husband can legally prevent his wife from working.

245 ILO, *Inclusion of Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ+) Persons in the World of Work: A Learning Guide*, 2022, 25.

246 Committee on the Elimination of Discrimination against Women, General recommendation No. 29 on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (Economic consequences of marriage, family relations and their dissolution), CEDAW/C/GC/29, 2013, paras 18 and 24.

247 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 2018.

No. 111, marital status,[248] civil status,[249] family situation (or family circumstances)[250] and family responsibilities[251] are increasingly being recognized in national legislation as explicitly prohibited grounds of discrimination. Sometimes, other similar terminology is used, such as "family status"[252] or related concepts.[253] The Committee also notes that specific matters relating to family responsibilities are recognized as prohibited grounds of discrimination in the law in some countries. For instance, in *Belgium, Czechia* and *Hungary,* the legislation explicitly refers to discrimination based on paternity;[254] in *Greece*, it refers to child raising or childminding and foster care leave,[255] and in *Sweden,* unfavourable treatment is prohibited for reasons relating to parental leave.[256]

100. The Committee welcomes these developments, as the recognition of such stand-alone grounds broadens the protection afforded against discrimination that occurs merely on the basis of the civil or marital status, or the family situation or responsibilities of a person, irrespective of whether such discrimination has consequences for individuals of a particular sex or gender. It therefore provides greater legal certainty for workers to be able to avail themselves of their right to non-discrimination.

101. With regard to the specific circumstances covered by each and every ground, the Committee recalls that, while there is explicit reference to family responsibilities in Convention No. 111 (Article 5) and Convention No. 156, as well as to marital status and family situation in Recommendation No. 165, these instruments do not provide definitions of such terms. Instruments on workers with family responsibilities only indicate in relation to whom family responsibilities are covered. National legislation seldom provides a definition of "marital status", "civil status", "family situation" or "family responsibilities" as grounds of discrimination and, where it does, perspectives and terms are sometimes used interchangeably. For instance, in *Guyana, Ireland, New Zealand, Republic of Korea, South Africa* and *Trinidad and Tobago*, civil and marital status include a number of situations related to relationships (being single, married, separated, divorced, widowed, being in a civil partnership or a former civil partner, as well as being in de facto partnerships or marriages). More particularly, *Guyana* and *New Zealand*, explicitly cover responsibilities towards dependent family members under the terms "family responsibilities" and "family situation" respectively.[257] In *Bulgaria,* "marital status" includes both the status of the relationship as well as care for a descendant, ascendant or relative

248 For example, *Albania*, *Algeria*, *Australia*, *Bahamas*, *Belize*, *Botswana*, *Bulgaria*, *Burkina Faso, China*, *Croatia*, *Czechia*, *Dominica*, *Eswatini*, *Georgia*, *Greece*, *Grenada*, *Guatemala*, *Guyana*, *Latvia*, *Lao People's Democratic Republic*, *Lithuania*, *Maldives*, *Mauritius*, *Mongolia*, *Montenegro*, *Morocco*, *Netherlands*, *North Macedonia*, *Portugal*, *Samoa*, *Sao Tome and Principe, Serbia*, *Slovakia*, *South Sudan*, *Timor-Leste*, *Trinidad and Tobago*, *Türkiye*, *Turkmenistan*, *Viet Nam*, *Zambia* and *Zimbabwe*.

249 For example, *Angola*, *Belgium*, *Chile*, *Costa Rica*, *Ecuador*, *El Salvador*, *Guatemala*, *Honduras*, *Ireland*, *Mexico*, *Netherlands*, *Panama*, *Portugal*, *Switzerland* and *Bolivarian Republic of Venezuela*.

250 For example, *Azerbaijan*, *Cabo Verde*, *Cambodia*, *France*, *Honduras*, *Netherlands*, *Mexico*, *Portugal*, *Senegal*, *Switzerland* and *Togo*.

251 For example, *Australia, Azerbaijan, Belize, Benin, Plurinational State of Bolivia, Bosnia Herzegovina, Czechia, Estonia, Grenada, Guyana, Luxembourg, Mali, Mexico, Nicaragua, Samoa, Seychelles, South Africa, South Sudan, Viet Nam* and *Zambia.*

252 For example, *Bosnia and Herzegovina* (Brcko District), *Bulgaria*, *Canada*, *Central African Republic*, *Croatia*, *Czechia*, *Ireland*, *Lithuania*, *Mauritius*, *Montenegro*, *New Zealand*, *North Macedonia*, *Russian Federation*, *Sao Tome and Principe*, *Serbia* and *Slovakia*.

253 For example, regarding "family obligations": *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Maldives* and *Serbia*; and regarding "carer's responsibilities": *Australia*.

254 *Belgium* (art. 4 of the Act of 10 May 2007, as amended in 2020), *Czechia* (art. 18 of the Labour Code), *Hungary* (section 8 of Act No. CXXV of 2003).

255 *Greece* (art. 18 of Law No. 38/96/2010).

256 *Sweden* (section 16 of the Parental Leave Act of 1995).

257 *Guyana* (section 2 of the Prevention of Discrimination Act, Cap. 90:08) and *New Zealand* (art. 21(1)(b) of the Human Rights Act 1993).

in the collateral line up to the third degree who is dependent due to age or disability.[258] In *Latvia*, the Government informs that the term "marital status" used in sections 7 and 29 of the Labour Law covers both marital status and family situation, while family responsibilities could be covered by the term "other circumstances" in the non-exhaustive list of grounds of discrimination.

102. With regard to the difference between family situation and family responsibilities, the Committee recalls that in its Special Survey of 1996 it referred to "family situation (especially in relation to responsibility for dependent persons)",[259] which would seem to imply that family situation is a broader concept including, but not being limited to, family responsibilities. Beyond defining "marital status" (see paragraph above), legislation in *South Africa*, further defines "family status" as "membership in a family and the social, cultural and legal rights and expectations associated with such status" and "family responsibilities" as "responsibility in relation to [the] person's spouse, partner, dependant, child or other members of his or her family in respect of whom the said person is liable for care and support".[260] The Committee further refers to Part I, Chapter II, below.

Sexual orientation, gender identity and intersex status

103. The Committee recalls that, as early as 1988, it noted that a few countries had adopted legislation prohibiting discrimination on the ground of sexual orientation. This trend was further noted by the Committee in 1996, as well as in 2012 in relation to sexual orientation and gender identity. Since then, the Committee has noted a clear trend towards the inclusion in national legislation and policies of additional prohibited grounds of discrimination, including sexual orientation and gender identity, in accordance with Article 1(1)(b) of the Convention. More recently, the Committee has commented, under Article 1(1)(a), on the measures taken in several countries with regard to discrimination based on sexual orientation and gender identity.[261] The Committee notes that measures are increasingly being taken at the national level to prevent and prohibit discrimination based on sexual orientation and gender identity.[262] At the international level, there have also been developments in this respect in the work of the United Nations human rights treaty bodies[263] and the Human Rights Council.[264]

104. The Committee takes note of the glossary of definitions provided for in the ILO learning guide *Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work*, which includes the following concepts:

258 *Bulgaria* (item 13 of the Additional Provisions of the Protection Against Discrimination Act).

259 1996 Special Survey, para. 37.

260 *South Africa* (section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act).

261 CEACR, Convention No. 111: *Chile*, observation, 2018; *Cyprus*, direct request, 2019; *Georgia*, observation, 2020; *Guyana*, observation, 2020; *Jamaica*, direct request, 2020; *Namibia*, direct request, 2020; *Portugal*, direct request, 2019; *Spain*, direct request, 2018.

262 ILO, *Information Paper on Protection against SOGIESC Discrimination*, para. 86.

263 Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work, E/C.12/GC/23, 2016, para. 11; Committee on Economic, Social and Cultural Rights, General comment No. 20 on non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2009, para. 11; Committee on the Elimination of Discrimination against Women, General recommendation No. 28, CEDAW/C/GC/28, 2010, para. 18.

264 The special mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was created in 2016 and renewed in 2019. See United Nations General Assembly, Resolution adopted by the Human Rights Council on 30 June 2016 No. 32/2: Protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/RES/32/2, 2016; and Resolution adopted by the Human Rights Council on 12 July 2019 No. 41/18: Mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, A/HRC/RES/41/18, 2019.

Gender	The socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for individuals based on the sex they were assigned at birth. Gender is fluid and changes with time and cultures; for example, what is considered masculine and feminine evolves.
Gender identity	Each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth or the gender attributed to them by society. This includes the personal sense of one's body.
Trans/ Transgender	Used by some people whose gender identity differs from what is typically associated with the sex they were assigned at birth. Umbrella term describing an internal sense of gender that differs from the sex assigned at birth and/or the gender attributed to the individual by society.
Transsexual	Older term largely used in the Americas that is preferred by some whose gender identity differs from their assigned sex. For some it indicates those who have undergone medical or surgical modification. Unlike "transgender", "transsexual" is not an umbrella term.
Gender expression	Way in which a person expresses their gender. May include behaviour and outward appearance (such as clothing, hair, make-up, body language and voice), and a person's chosen name and pronouns.
Sexual orientation	Each person's enduring capacity for profound romantic, emotional and/ or physical feelings for or attraction to other people. Encompasses hetero-, homo-, bi-, pan- and asexuality, as well as a wide range of other expressions.
Sex	Classification of a person as having female, male and/or intersex sex characteristics. While infants are usually assigned the sex of male or female at birth based on the appearance of their external anatomy, a person's sex is a combination of a range of bodily sex characteristics.
Sex characteristics	Each person's physical features relating to sex, including chromosomes, gonads, sex hormones, genitals and secondary physical features emerging from puberty.
Intersex	People born with sex characteristics that do not fit typical definitions of male and female bodies. Intersex is an umbrella term used to describe a wide range of natural bodily variations. There are more than 40 intersex variations.

Source: ILO, *Inclusion of lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons in the world of work: A learning guide*, 2022, Appendix 1.

105. The Committee notes that the legislation in some countries explicitly covers both sexual orientation and gender identity as prohibited grounds of discrimination.[265] In others, only discrimination based on sexual orientation is covered.[266] Protection against such discrimination has sometimes been elevated to the constitutional level, for example in: *Mexico* for the ground of sexual preferences; *South Africa* and *San Marino* for sexual orientation; the *Plurinational State of Bolivia, Cuba*, and *Ecuador* for sexual orientation and gender identity; and *Fiji* for sexual orientation, gender identity and gender expression.[267] In other countries, draft legislation is under consideration in this regard.[268]

106. Discrimination is prohibited in some countries on other grounds related to sexual orientation and gender identity, such as gender or sexual expression,[269] transgender or transexual identity,[270] sex change,[271] gender reassignment,[272] sexual preferences or tendencies,[273] and sexuality.[274] In relation to this wide variety of concepts, the Committee recalls that, while definitions of the ground of "sexual orientation" are fairly consistent in the legislation of the various countries, definitions of "gender identity" and "gender expression" vary to a large extent, but are generally considered to include, but not to be limited to, instances in which gender reassignment or sex reassignment surgery has taken place.[275]

107. The Committee recalls that, on some occasions, discrimination based on the grounds referred to above has been addressed as a form of sex-based or gender-based discrimination.[276] The United Nations Human Rights Committee has similarly indicated in several communications that discrimination based on sexual orientation and gender identity is included within discrimination based on sex.[277] As regards national practice, discrimination based on sex has been considered to include discrimination based on change of sex or gender reassignment in *Belgium*, *Greece, Luxembourg* and *Malta,*[278] discrimination based on gender identification

265 For example, *Australia*, *Belgium*, *Plurinational State of Bolivia*, *Canada, Chile*, *Ecuador*, *Finland*, *France*, *Honduras*, *Hungary*, *Iceland*, *Montenegro*, *North Macedonia*, *Portugal* and *Serbia*.

266 For example, *Albania*, *Argentina*, *Plurinational State of Bolivia*, *Bosnia and Herzegovina*, *Botswana*, *Bulgaria*, *Canada, Colombia, Costa Rica*, *Croatia*, *Cuba*, *Cyprus*, *Czechia*, *Denmark*, *Estonia*, *Georgia*, *Ireland*, *Latvia*, *Lithuania*, *Luxembourg*, *Mauritius*, *Mongolia*, *Poland*, *Republic of Moldova*, *Seychelles*, *Slovakia*, *South Africa*, *Sweden*, *United Kingdom of Great Britain and Northern Ireland* and *Bolivarian Republic of Venezuela*. *Mexico* prohibits homophobia as a form of discrimination.

267 For example, *Plurinational State of Bolivia* (art. 14 of the Constitution); *Cuba* (art. 42 of the Constitution of 2019); *Ecuador* (art. 11(2) of the Constitution); *Fiji* (art. 26(3) of the 2013 Constitution); *Mexico* (art. 1 of the Political Constitution); *San Marino* (art. 4 of the Declaration of Citizen Rights of 1974, as amended in 2019); *South Africa* (section 9 of the Constitution).

268 CEACR, Convention No. 111: *Guyana*, direct request, 2021; *India*, direct request, 2019; *Spain*, direct request, 2021.

269 For example, *Belgium* (Flanders), *Bosnia and Herzegovina*, *Canada*, *Iceland*, *Finland*, *Malta*, *Mongolia*, *Netherlands*, *Norway*, *Portugal* and *Slovenia*.

270 *Australia* (New South Wales) (discrimination on transgender grounds), *Belgium* (Flanders) (discrimination based on transsexuality) and *Sweden* (discrimination based on transgender identity or expression).

271 For example, *Belgium* and *Luxembourg*.

272 For example, *Malta* and *United Kingdom of Great Britain and Northern Ireland*.

273 For example, *Mexico* and *Israel* (sexual tendencies).

274 For example, *Australia* (Queensland).

275 ILO, *Information Paper on Protection against SOGIESC Discrimination*, paras 88–95. See, for example, *Argentina* (section 2 of Act No. 26.743); *Plurinational State of Bolivia* (section 3 of Act No. 807 of 2016).

276 ILO, *Information Paper on Protection against SOGIESC Discrimination*, paras 76–85; 2012 General Survey, para. 824.

277 *Toonen v. Australia*, Communication No. 488/1992, CCPR/C/89/D/1361/2005; *Edward Young v. Australia*, Communication No. 941/2000, CCPR/C/78/D/941/2000; *X v. Colombia*, Communication No. 1361/2005, CCPR/C/89/D/1361/2005, referred to in Inter-American Court of Human Rights in Consultative opinion OC-24/17 requested by Costa Rica, 24 November 2017, para. 74 and footnote 177.

278 *Belgium* (section 4(2) of the Act of 10 May 2007); *Greece* (art. 3 of Law No. 3896/2010); *Luxembourg* (section L.241-1 of the Labour Code); *Malta* (art. 3(1) of the Equal Treatment in Employment Regulations). See also Decision of the Court of Justice of the European Union (CJEU) (*P v. S and Cornwall County Council*, C-13/94 ECR I-2143); European Union, Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), Recital 3.

in *Czechia*,[279] and discrimination based on sexual or gender identification in *Slovakia*.[280] The Government of the *United States of America* also indicates that the prohibition of discrimination based on sex in Title VII of the Civil Rights Act of 1964 includes sexual orientation and gender identity. Case law from the US Supreme Court has held that discrimination based on sex includes discrimination based on homosexuality or transgender status.[281] In *Belgium* (Flanders), discrimination based on transsexuality is equated to discrimination based on gender.[282] In *Guyana*, the criminalization of men cross-dressing was considered a violation of article 149(1) of the Constitution, which prohibits discrimination based on sex and gender.[283]

108. On the other hand, discrimination based on sexual orientation and gender identity have sometimes been considered to be covered by international treaties under other grounds of discrimination. The European Court of Human Rights has indicated in a number of decisions that sexual orientation and gender identity are included in the European Convention for the Protection of Human Rights and Fundamental Freedoms through the term "any ground" of Article 14.[284] The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have also considered that discrimination based on such grounds is covered by the term "any other social condition" contained in Article 1.1 of the American Convention on Human Rights.[285]

109. The Committee further notes that over the last 20 years, a number of jurisdictions have introduced protection against discrimination on the grounds of intersex status or sex characteristics, either by recognizing these grounds of discrimination in national legislation,[286] or through the ground of sex or gender.[287]

110. Furthermore, policy measures and action plans have been adopted to promote equality of opportunity and treatment and non-discrimination on the basis of sexual orientation or gender identity.[288] The Committee also notes that the progressive legal recognition in a number of countries of the marriage or cohabitation of same-sex couples reflects a growing awareness

279 *Czechia* (art. 16 of the Labour Code).

280 *Slovakia* (art. 6 of the Antidiscrimination Act).

281 United States Supreme Court, *Bostock v. Clayton County, Georgia*, No. 17-1618 (S. Ct. 15 June 2020); *Altitude Express, Inc. et al. v. Zarda et al.,* No. 17-1623 (26 February 2018); *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC et al.,* No. 18-107 (7 March 2018). Lower court decisions had endorsed similar points; see United States Equal Employment Opportunity Commission (EEOC), "Preventing Employment Discrimination Against Lesbian, Gay, Bisexual or Transgender Workers (brochure)", referred to in ILO, *Information Paper on Protection against SOGIESC Discrimination*, paras 78–80.

282 *Belgium* (Flanders) (section 16(5) of the Decree of 10 July 2008 establishing the framework for a Flemish equal opportunities and non-discrimination policy, as amended in 2014).

283 Caribbean Court of Justice (CCJ), *McEwan et al. v. The Attorney General of Guyana,* 2018 CCJ 30 (AJ).

284 European Court of Human Rights (ECHR), *Salgueiro da Silva Mouta v. Portugal*, No. 33290/96, 21 December 1999, para. 28; *L. & V. v. Austria*, Nos 39392/98 and 39829/98, 9 January 2003, para. 45; *S.L. v. Austria*, No. 45330/99, 9 January 2003, para. 37; *E.B. v. France*, N° 43546/02, 22 January 2008, para. 50; *Identoba & al. v. Georgia*, No. 73235/12, 12 May 2005, para. 96, and *Goodwin v. United Kingdom*, No. 28957/95, 11 July 2002, para. 108; referred to in Inter-American Court of Human Rights, Consultative opinion OC-24/17 requested by Costa Rica, 24 November 2017, para. 77 and footnote 186.

285 Inter-American Commission on Human Rights, Sexual Orientation, Gender Identity and Gender Expression: Some Terminology and Relevant Standards, 23 April 2012, para. 29; Inter-American Court of Human Rights, Consultative opinion OC-24/17 requested by Costa Rica, 24 November 2017, paras 66–70.

286 For example, *Australia* (intersex status), *Albania*, *Belgium*, *Bosnia and Herzegovina, Iceland* and *Malta* (sex or sexual characteristics), and *Montenegro* (intersexual characteristics).

287 For example, in *Finland* in relation to discrimination based on gender identity and gender expression (see CEACR, Convention No. 111: *Finland*, observation, 2016) and in *South Africa*, in relation to sex discrimination (section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000).

288 For example, the Flemish Equal Opportunities and Equal Treatment Policy 2008 in *Belgium* (Flanders); the Gender-based Analysis Plus process in *Canada*; the National Development Strategy 2030 in *Croatia* as well as the Programme 2020–2024 of the Government of the Republic of Croatia; the promotion of the mandate of the National Commission for the Promotion of Equality in *Malta*; the National Strategy for Equality and Non-discrimination "Portugal + Igual 2018-2030" in *Portugal*; and the preparation of a Draft Policy Position Paper on Employment Standards by the Industrial Relations Advisory Committee in *Trinidad and Tobago*.

of the need to provide employment rights and benefits derived from legally recognized marriages or partnerships, and is a key step in preventing discrimination which, primarily based on civil or marital status, indirectly affects persons in same-sex couples. Where cases of discrimination in employment and occupation based on sexual orientation and gender identity have been brought to the Committee's attention, it has requested Governments to review discriminatory legislative provisions[289] and to indicate the measures taken to address such cases.[290] In 2020, according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 28 Member States of the United Nations recognized same-sex marriage and 34 recognized partnerships of same-sex couples. [291]

Sexual harassment

111. In the implementation of Convention No. 111, sexual harassment has been treated by the Committee as a serious form of discrimination based on sex.[292] While there has been recent progress in defining and prohibiting sexual harassment in employment and occupation,[293] the Committee notes that challenges are still being encountered in a number of countries in adopting the necessary measures. The Committee regrets that in some countries there is no specific legislation explicitly addressing sexual harassment in employment and occupation.[294] In other countries, the legislation prohibits sexual harassment without providing a clear definition.[295] As consistently emphasized by the Committee, without a clear definition of sexual harassment in employment and occupation, it remains doubtful whether the legislation effectively addresses all its forms and effects.[296] In this regard, the Committee recalls that the prohibition or criminalization of specific acts, such as rape or attempted rape, or sexual assault, does not address the full range of behaviours that constitute sexual harassment in employment and occupation.[297]

112. Sometimes, where a definition is provided in legislation, it does not explicitly cover all forms of sexual harassment.[298] In this regard, the Committee recalls its previous guidance regarding the elements that are included in sexual harassment:[299]

- **"Quid pro quo"[300] sexual harassment** includes any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of a person, which is unwelcome, unreasonable and offensive to the recipient; and a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job. For instance, requesting sexual favours (for oneself or a third person) from a job candidate in exchange for a job appointment.

289 For example, CEACR, Convention No. 111: *Haiti,* direct request, 2021.

290 For example, CEACR, Convention No. 111: *Jamaica*, direct request, 2017; *Papua New Guinea*, direct request, 2016; *Thailand,* direct request, 2021.

291 ILGA, *State-Sponsored Homophobia: Global Legislation Overview Update*, Updated edition, 2020, 277 and 291. Same-sex marriage has also been approved by law in *Chile* (section 31 of the Civil Code as amended by Law No. 21.400 of 2021) and *Switzerland* (section 94 of the Civil Code, as amended by the 2020 Federal Act "Marriage for all").

292 See 2012 General Survey, paras 789–794.

293 For example, CEACR, Convention No. 111: *Sao Tome and Principe*, observation, 2021; *Saudi Arabia*, direct request, 2021; *South Sudan*, direct request, 2021; *Timor-Leste*, direct request, 2021.

294 For example, CEACR, Convention No. 111: *Belize*, direct request, 2021; *Congo*, observation, 2017; *Djibouti*, direct request, 2017; *Lebanon*, observation, 2021; *Sri Lanka*, observation, 2021; *Sudan*, observation, 2021; *Syrian Arab Republic*, direct requests, 2015 and 2019; *Trinidad and Tobago*, direct request, 2021; *Turkmenistan*, direct request, 2021.

295 For example, CEACR, Convention No. 111: *Bahrain*, observation, 2018.

296 2012 General Survey, para. 791.

297 2012 General Survey, para. 792.

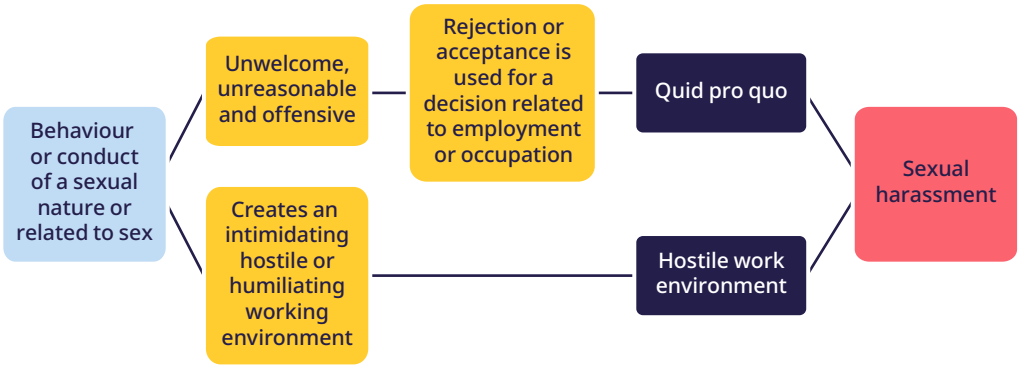
298 For example, CEACR, Convention No. 111: *China*, direct request, 2021; *Mongolia*, direct request, 2021; *Ukraine*, direct request, 2021; *United Arab Emirates*, observation, 2021.

299 See also 1988 General Survey, para. 45.

300 "Quid pro quo" is a Latin term that refers to something that is given in return for something else.

- **"Hostile work environment"** sexual harassment includes conduct that creates an intimidating, hostile or humiliating working environment for the recipient. For instance, the showing of pornographic materials at a place of work, making sexual jokes or remarks, etc.

113. ***For the full implementation of Convention No. 111, it is essential for sexual harassment in employment and occupation to be clearly defined and prohibited, including both quid pro quo and hostile work environment sexual harassment.***



114. A number of Governments refer to ongoing processes for the adoption of legislative provisions defining and prohibiting sexual harassment in employment and occupation.[301] When examining the presence of specific provisions in national legislation, the Committee observes that in some countries sexual harassment is still only prohibited through criminal law.[302] The Committee is bound to reiterate the comments that it made in this regard in its 2012 General Survey.[303]

115. A recurrent issue encountered by the Committee concerns legislation that only addresses "quid pro quo" sexual harassment. The Committee wishes to emphasize that covering both elements is necessary to address the full phenomenon of sexual harassment: while "quid pro quo" sexual harassment mostly concerns behaviour directed to a particular person and captures a reciprocal but coercive exchange following the pattern "this for that" (a person's rejection of, or submission to, sexual harassment is used in exchange for a decision affecting their employment); sexual harassment causing a "hostile working environment" may encompass situations that are not directed at a particular individual, that do not show this kind of reciprocal exchange, or that are more subtle in nature (not linked to a decision affecting the victim's work).[304] In addition, the Committee notes that some legal frameworks still only prohibit repeated acts of sexual harassment,[305] which could have the effect of limiting protection.

116. Other difficulties identified when defining and prohibiting sexual harassment in employment and occupation concern the personal scope of the respective provisions. In relation to the harasser, provisions sometimes only cover sexual harassment when it is perpetrated by a co-worker,[306] or by an employer or a person in a position of authority.[307] The Committee notes that the ILO Tripartite Meeting of Experts on Violence against Women and Men in the

301 CEACR, Convention No. 111: *Barbados,* observation, 2017; *Honduras*, direct request, 2021; *Namibia*, direct request, 2021; *Nigeria*, direct request, 2021; *Papua New Guinea*, direct request, 2016; *Suriname*, direct request, 2020.

302 CEACR, Convention No. 111: *Haiti*, direct request, 2021; *Tunisia,* direct request, 2021; *Uzbekistan*, direct request, 2021.

303 2012 General Survey, para. 792.

304 In relation to hostile environment sexual harassment, see the Law and practice report on Convention No. 190, para. 42.

305 CEACR, Convention No. 111: *Haiti*, direct request, 2021.

306 CEACR, Convention No. 111: *Bahrain*, observation, 2018; *Tunisia*, direct request, 2021.

307 CEACR, Convention No. 111: *Burundi*, observation, 2018; *Islamic Republic of Iran*, observation, 2021; *Sri Lanka*, direct request, 2018; *Togo*, observation 2021; *Ukraine*, direct request, 2021.

World of Work recognized in 2016 that violence and harassment can be horizontal (directed towards one's peers) and vertical (by or against individuals exercising the authority, duties or responsibilities of an employer), as well as from internal and external sources.[308] In this regard, the Swedish Confederation for Professional Employees (TCO), the Swedish Confederation of Professional Associations (SACO) and the Swedish Trade Union Confederation (LO) *(Sweden)* indicate that third party sexual harassment is more common in specific sectors, such as work in retail, tourism and cafes or restaurants, and jobs with close contact with patients and clients such as teaching, police, healthcare or social work. The Committee therefore notes that limited definitions of the perpetrators of sexual harassment hamper the full coverage of the different dynamics of its occurrence. In relation to the victim, the Committee notes that some provisions only address sexual harassment against women[309] and that, while women are often disproportionately affected by sexual harassment, protection against this phenomenon should cover both men and women. Similarly, in some countries, sexual harassment is only prohibited in relation to specific stages of employment and occupation, such as recruitment or termination of employment.[310] ***In order to tackle and put an end to all forms of sexual harassment in employment and occupation, clear and comprehensive legal provisions aimed at preventing, prohibiting and addressing sexual harassment need to protect all workers, men and women, and cover harassment perpetrated by a person in a position of authority, a colleague, a subordinate or by a person with whom workers have contact as part of their job (a client, supplier, etc.). The scope of protection against sexual harassment should cover all workers, with respect to all spheres of employment and occupation, including vocational education and training, internships, access to employment and conditions of employment.***

117. The Committee also takes note of research indicating an increase in violence and harassment, and particularly sexual harassment, through information and communication technologies.[311] Text messages, pictures or video clips, phone calls, emails, websites, online chat rooms and online forums, and social network sites may all be used in ways that are directed at particular individuals or groups or deployed generally to create a culture of exclusion. Whether occurring at the workplace, or arising out of or linked to it, the potential pervasiveness of the harassment and discrimination enabled by such technologies makes it particularly insidious. Specific forms of sexual harassment, often circulating via new technologies, are also emerging in relation to LGBTIQ+ persons. ILO research identifies, in this regard, cases of sexual harassment against lesbian women with the aim to "correct" their sexual orientation, as well as against trans women.[312] ***Therefore, the Committee emphasizes the need for governments, in consultation with the social partners, to ensure that both the policies addressing discrimination and sexual harassment and the legislative and regulatory measures implementing them, are regularly reviewed and updated in order to effectively address the new challenges posed by information and communication technologies in a way that secures, in a sustainable way, the full implementation of the Convention.***

308 ILO, *Final Report: Meeting of Experts on Violence against Women and Men in the World of Work*, MEVWM/2016/7, 2016, Appendix, para. 4; ILO, *Violence and Harassment in the World of Work: A Guide on Convention No. 190 and Recommendation No. 206*, 2021, 10.

309 CEACR, Convention No. 111: *Uzbekistan*, direct request, 2021.

310 CEACR, Convention No. 111: *Mexico*, observation, 2016; *Lebanon*, observation, 2021.

311 Valerio De Stefano et al., "'System Needs Update': Upgrading Protection against Cyberbullying and ICT-Enabled Violence and Harassment in the World of Work", ILO Working Paper, 2020, 19; Phoebe V. Moore, *The Threat of Physical and Psychosocial Violence and Harassment in Digitalized Work* (ILO, 2018), 12.

312 ILO, *ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina*, 2015; ILO, *ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica*, 2016.

Sex-based and gender-based harassment

118. The Committee welcomes the fact that harassment based on sexual characteristics ("sex-based harassment") or on socially constructed roles and responsibilities assigned to a particular sex ("gender-based harassment") has been further defined and prohibited in some countries.[313] The Committee notes that this trend may be partly due to the recent adoption and increasing number of ratifications of Convention No. 190, which explicitly addresses gender-based harassment in Article 1(1)(b), as a broader category that includes sexual harassment.[314] Gender-based harassment therefore consists of a form of harassment that does not necessarily require, but may include, conduct of a sexual nature (sexual harassment).[315]

119. In this context, harassment may target pregnant women and persons returning from maternity, paternity or parental leave, or those who have childcare responsibilities. ILO research has noted in this regard the existence of "maternity harassment", or the practice of harassing a woman because of pregnancy, childbirth or a medical condition related to pregnancy or childbirth. In *Japan*, studies point to a high prevalence of maternity harassment (referred to as *matahara*).[316] The Human Rights and Equality Institution of *Türkiye* (TİHEK), in Board Decision No. 2020/267, examined allegations of gender-based mobbing at the workplace relating to pregnancy and breastfeeding.

120. This type of harassment may also occur regarding the broader family responsibilities of workers. For instance, peer pressure and stigma may dissuade fathers from taking paternity or parental leave or other measures intended to reconcile work and family life, or penalize them if they avail themselves of these possibilities.[317] A study in the *United Kingdom of Great Britain and Northern Ireland* found evidence of two forms of stigma linked to family responsibilities: the "flexibility stigma" suffered by workers who, by requesting or benefiting from flexible work arrangements, deviate from the model of the worker who works perpetually and without outside obligations; and the "femininity stigma" suffered by men who, through flexible work, deviate from the image of a masculine worker being a provider rather than a carer.[318]

121. Harassment can also be based on real or perceived sexual orientation or gender identity. In such cases, it may be linked to the non-conformity of an individual with preconceptions of how women and men are expected to behave.[319] Women who are perceived to be "masculine", or men who are perceived to be "feminine" in behaviour or appearance may suffer discrimination or harassment on this basis.[320]

---

313 For example, *Australia*, *Serbia* and *Spain* regarding "sex-based harassment"; and *Bosnia and Herzegovina* (Republika Srpska), *Estonia*, *Finland, Greece*, and *South Africa* regarding "gender-based harassment". The Government of the *United States of America* also indicates that sex-based harassment, understood as unwelcome and offensive comments or conduct based on sex, is included under the prohibition of sex discrimination in Title VII of the Civil Rights Act of 1964.

314 The preparatory work for Convention No. 190 and Recommendation No. 206 also refer to gender-based violence and harassment as being "directed at men or women because of their gender". See the Law and practice report on Convention No. 190, para. 37.

315 See, for instance, definitions of harassment based on sex or gender in *Finland* (section 7 of the Act on Equality between Women and Men), *Greece* (art. 4(2)(c) of Law No. 4808/2021), and the *United States of America* (California) (art. 1(j)(4)(C) of the Fair Employment and Housing Act).

316 ILO, *Women at Work: Trends 2016*, 2016, 57; Law and practice report on Convention No. 190, para. 45; ILO, *Care at Work*, 83.

317 ILO, *Care at Work*, 115–116 and 151–152.

318 House of Commons, *Fathers and the Workplace*, Women and Equalities Committee, First Report of Session 2017–19 (London, 2018), para. 91. See also *United States of America* (sections II.C and II.F of the Enforcement guidance on unlawful disparate treatment of workers with caregiving responsibilities of the Equal Employment Opportunity Commission).

319 See the Law and practice report on Convention No.190, para. 45; ILO, *Discrimination at Work on the Basis of Sexual Orientation and Gender Identity: Results of the ILO's PRIDE Project*, 2015; Gurchaten Sandhu, "'The Future of Work for LGBTI People'", in *The Future of Diversity*, eds Christiane Kuptsch and Éric Charest, (Geneva: ILO, 2021).

320 ILO, "Men and Masculinities: Promoting Gender Equality in the World of Work", Working Paper 3/2013, 2013, 17; Law and practice report on Convention No.190, para. 46.

122. ***The Committee welcomes the increasing trend in national law and practice that addresses harassment based on sexual characteristics ("sex-based harassment") and on socially constructed roles and responsibilities assigned to a particular sex ("gender-based harassment") and emphasizes the importance of preventing and eliminating this serious form of discrimination.***

1.3. Employment and occupation

Convention No. 111, Article 1(3)
Recommendation No. 111, Paragraph 1

123. The broad scope of Convention No. 111 makes it one of the key normative tools for the achievement of significant progress in gender equality in employment and occupation. Article 1(3) covers not only persons engaged in employment or a particular occupation, but also the possibility of accessing employment, occupation and training, including with regard to the publication of job advertisements.[321]

124. The Committee notes that gender inequality is seldom isolated at a single stage of employment and occupation. Indeed, gender gaps often begin at the early stages of a person's life and continue throughout their working life and in later years. The Committee refers, in this regard, to Part II of this General Survey, which explores measures to achieve gender equality in relation to the different aspects of employment and occupation, as well as to its previous General Surveys, which have examined the meaning of "employment and occupation".[322]

125. The Committee notes the progress made in some countries in ensuring that measures prohibiting discrimination cover *all* aspects of employment and occupation.[323] However, some national frameworks still do not ensure protection against discrimination in relation to all aspects of employment and occupation, as the prohibition of discrimination sometimes only covers one or some of the following areas: dismissal or termination of employment;[324] imposition of disciplinary measures;[325] search for employment;[326] wages;[327] and access to employment.[328] The Committee also notes that general references to discrimination "in employment" or "in the field of labour"[329] are not broad enough to cover all aspects of employment and occupation as defined by Convention No. 111, and particularly recruitment.

126. ***The Committee recalls that the Convention requires the elimination of discrimination against all workers with respect to all aspects of employment and occupation, including by ensuring that discrimination is prohibited in the national policy on equality and non-discrimination in employment and occupation.***

321 1988 General Survey, para. 76.

322 1963 General Survey, paras 32–35; 1971 General Survey, para. 59; 1988 General Survey, paras 76–123; 1996 Special Survey, paras 65–116; 2012 General Survey, paras 749–760.

323 For example, *Georgia*, *Iceland*, *Mauritius* and *Zambia*.

324 For example, CEACR, Convention No. 111: *Belize*, direct request, 2021; *Barbados*, observation, 2017; *Congo*, observation, 2017; *Dominica*, direct request, 2021; *Gambia*, observation, 2011; *Haiti*, direct request, 2021; *Kuwait*, observation, 2022.

325 For example, CEACR, Convention No. 111: *Belize*, direct request, 2021; *Gambia*, observation, 2011.

326 For example, CEACR, Convention No. 111: *China*, observation, 2021.

327 For example, CEACR, Convention No. 111: *Congo*, observation, 2017.

328 For example, CEACR, Convention No. 111: *Comoros*, direct request, 2020; *Congo*, observation, 2017; *Senegal*, observation, 2018.

329 For example, CEACR, Convention No. 111: *Ukraine*, direct request, 2021, *China*, observation, 2021.

2. Leaving no one behind in gender equality at work

127. The Committee has consistently recalled that there are no provisions in Convention No. 111 and Recommendation No. 111 that limit their scope with regard to the individuals and sectors or occupations covered.[330] No type of employment and no occupation, in the widest sense of these terms, are excluded.[331]

128. Gaps in coverage were identified in 2012 as one of the difficulties in applying Convention No. 111. Issues relating to its full application often arise where labour and social security legislation exclude certain categories of workers from their scope of application (such as public servants, domestic workers, certain agricultural workers, casual workers, self-employed workers, workers in the informal economy, non-citizens, and members of the judiciary, armed forces or law enforcement authorities, or other workers subject to specific regulations). The Committee recalls that, where such exclusions exist in national legislation, it is necessary to determine whether special laws or regulations apply to such groups, and whether they provide the same level of rights and protection, including against discrimination, as the general provisions.[332]

129. Differences in legislative coverage depending on the sector or occupation may have a particular impact on the achievement of gender equality, as they may inadvertently lead to the establishment of less favourable conditions of work in sectors or occupations with a predominantly female workforce, and therefore have an indirect and disproportionate effect on women.[333] In this regard, it is important to recall that women are often concentrated in sectors and occupations that are vulnerable to decent work deficits.[334]

2.1. The public sector

130. Equality of opportunity and treatment in the public sector is essential to the achievement of gender equality overall, by reason of the size of public employment – particularly in countries with a less expanded private sector[335] – the composition of its workforce – which tends to be characterized by a high concentration of women – and its capacity to set an example for other employers in other sectors.[336] It is also indicative of public commitment to equality and non-discrimination.

131. Article 3(d) of Convention No. 111 requires Members to pursue the policy of equality and non-discrimination in respect of employment under the direct control of a national authority. Paragraphs 2(c) and 3(b) of Recommendation No. 111 also foresee the application of non-discriminatory policies by government agencies in all their activities, and the application of the principle of non-discrimination by state, provincial or local government authorities. Industries and undertakings operated under public ownership or control should be encouraged to ensure the application of the principle of non-discrimination.[337]

330 1988 General Survey, para. 17; 2012 General Survey, para. 733.

331 1988 General Survey, para. 2.

332 2012 General Survey, paras 738–742; 1988 General Survey, para. 87. For more information see also ILO, *Promoting Fair Migration: General Survey concerning the Migrant Workers Instruments*, Report III(1B), International Labour Conference, 105th Session, 2016 (hereinafter "2016 General Survey"); and 2022 General Survey, para. 709 ff.

333 2012 General Survey, para. 739.

334 ILO, *A Quantum Leap for Gender Equality*, 26.

335 1988 General Survey, para. 100.

336 For instance, the public sector share of female employment far exceeds its share of male employment in many countries in the Arab region; see ILO, *World Employment and Social Outlook: Trends 2022*, 2022, 59; CEACR, Convention No. 111: *Romania*, direct request, 2018.

337 1988 General Survey, para. 88.

132. Work in the public sector may be governed by general labour law or by specific legislation.[338] In some countries, anti-discrimination legislation applies both to the public and the private sectors.[339] The Committee notes that, where specific legislation or regulations exist, they may not define or prohibit discrimination in employment and occupation or, when they do, the prohibition may only relate to recruitment and access to employment.[340] The respective provisions also sometimes fail to include all the prohibited grounds of discrimination.[341] In some cases, the provisions of the Labour Code that apply to public employees supplement specific regulations, which may contribute to ensuring coherence of protection against discrimination in so far as there is no conflict between the different provisions.[342]

133. The Committee previously identified a tendency for the removal of restrictions on the access of women to certain jobs and agencies in the public sector.[343] ***As the public sector often has specific recruitment procedures, the Committee recalls that competitive examinations and physical tests for recruitment must be shown to be job-related and necessary for the proper performance of the duties and responsibilities of the job and should be reviewed periodically from the point of view of equality of opportunity. Guaranteeing equality of opportunity and treatment for access to employment in the public sector requires the application of rules against discrimination to candidates for employment***.[344] In this regard, governments have referred to transparency of recruitment in the public sector[345] and the broad publication of job vacancies.[346]

2.2. Domestic work

134. Domestic work is an important source of employment for women throughout the world. It is a sector with a highly feminized workforce, with women accounting for 76.3 per cent of all domestic workers.[347] In other words, domestic work represents 4.5 per cent of total female employment worldwide. Due to the composition of the workforce, the Committee notes that discrimination that has an impact on domestic workers may constitute indirect discrimination against women. Furthermore, where the domestic workforce consists of a majority of persons from a specific group, such as migrant women or women of a specific race, colour, national extraction or nationality, social origin, ethnicity or belonging to indigenous peoples, it may also amount to indirect and multiple and intersectional discrimination on those grounds. In this regard, the European Court of Justice, in Case 389/20, found that the exclusion of domestic workers from access to social security benefits constitutes indirect discrimination on the ground of sex, as it almost exclusively affects women.[348] The Committee recalls that Articles 3(2)(d) and 11 of the Domestic Workers Convention, 2011 (No. 189), refer to the elimination of discrimination in respect of employment and occupation for domestic workers.

338 2012 General Survey, para. 666. For instance, in *Bahamas* and *Botswana* general labour laws apply, whereas *Australia, Austria* and *Bahrain* have specific legislation.

339 For example, in *Australia, Azerbaijan, Belgium, Bulgaria* and *Canada.*

340 For example, see CEACR, Convention No. 111: *Afghanistan*, observation, 2021; *Congo*, observation, 2017.

341 For example, see CEACR, Convention No. 111: *Congo*, observation, 2017; *Guinea*, observation, 2020; *Madagascar*, observation, 2016; *South Sudan*, direct request, 2020.

342 CEACR, Convention No. 111: *Sao Tome and Principe*, observation, 2019; *South Sudan*, direct request, 2020; *Tajikistan*, direct request, 2020.

343 1988 General Survey, para. 101.

344 1988 General Survey, para. 102.

345 For instance, CEACR, Convention No. 111: *Fiji*, direct request, 2020.

346 For instance, in *Brazil* and *Sudan*.

347 2022 General Survey, para. 539.

348 European Court of Justice, Case C-389/20, decision of 24 February 2022 (ECLI:EU:C:2022:120).

135. In its 2022 General Survey, the Committee noted that domestic workers have been included in the scope of the general labour legislation in a growing number of countries,[349] while they are covered by specific laws or regulations in other countries.[350] In relation to the application of equality and non-discrimination provisions to domestic workers, the Committee also noted in its 2022 General Survey that many governments indicated that such workers are covered by the respective provisions contained in general labour legislation, but that in some countries domestic workers are still excluded from such laws, either explicitly or implicitly.[351] Indeed, the Committee observes that protection for domestic workers against discrimination is sometimes inexistent, for example where domestic workers are excluded from the application of general labour law and there are no other applicable provisions,[352] or where the specific regulatory frameworks are incomplete.[353] ***The Committee recalls that where domestic workers are excluded from the scope of general laws or measures providing for gender equality in employment and occupation, and equal protection is not provided in other specific laws or measures, the resulting gap in the coverage of laws and measures for the elimination of discrimination for all workers is contrary to the requirements of Convention No. 111.***

136. Domestic workers often face discrimination, particularly in relation to terms and conditions of work. Gaps persist in their effective enjoyment of rights and opportunities on an equal footing (such as in relation to normal hours of work, minimum wages, and access to social security and OSH).[354] For instance, according to ILO research, domestic workers earn 56.4 per cent of the average monthly wages of other employees, are commonly exposed to chemical, ergonomic, physical, psychological and biological hazards, are especially vulnerable to violence and harassment and have low access to social security (only one in five domestic workers enjoy employment-related social security coverage).[355] Their particular vulnerability is partly due to the fact that they undertake work in private households (hence, in isolation) and that, in some countries, the domestic workforce is mostly composed of workers in vulnerable situations, such as migrant workers and workers in the informal economy. According to ILO data, 81.2 per cent of domestic workers were in informal employment in 2019. Moreover, domestic workers earn 37.6 per cent of the monthly wages of formal employees.[356]

137. In examining the implementation of Convention No. 111, the Committee often notes instances of discrimination and abuse against domestic workers, including precarious conditions of employment, sexual harassment and sexual abuse, lack of social security affiliation, and work in the absence of a formal working relationship.[357] One aspect to which the Committee has paid special attention is the particular vulnerability of foreign domestic workers (most of whom are women migrant workers)[358] and of domestic workers belonging to indigenous peoples,[359] to violations of their rights, to discrimination, and to sexual harassment.

349 2022 General Survey, para. 710.

350 CEACR, Convention No. 111: *Guatemala*, direct request, 2020; *Jordan*, direct request, 2020; *Kuwait*, direct request, 2020; *Peru*, observation, 2021.

351 2022 General Survey, para. 680.

352 CEACR, Convention No. 111: *Bangladesh*, observation, 2019; *Gambia*, direct request, 2020; *Guinea-Bissau*, observation, 2020; *Ireland*, observation, 2020; *Lao People's Democratic Republic*, observation, 2020; *Mauritius*, direct request, 2020.

353 CEACR, Convention No. 111: *Morocco*, direct request, 2020.

354 2022 General Survey, paras 675 and 710.

355 ILO, *Making Decent Work a Reality for Domestic Workers: Progress and Prospects Ten Years after the Adoption of the Domestic Workers Convention, 2011 (No. 189)*, 2021, xx.

356 ILO, *A Quantum Leap for Gender Equality*, 27; 2022 General Survey, para. 959; ILO, *Making Decent Work a Reality for Domestic Workers*, 189–197.

357 CEACR, Convention No. 111: *Bangladesh,* observation, 2019; *Cabo Verde*, direct request, 2019.

358 CEACR, Convention No. 111: *Cyprus*, direct request, 2019; *Lebanon*, observation, 2018; *Mozambique*, direct request, 2020; *Mexico*, direct request, 2020.

359 CEACR, Convention No. 111: *Mexico*, direct request, 2020.

In this regard, the Committee recalls that in cases where domestic workers belong to more than one disadvantaged group, multiple and intersecting discrimination may compound their vulnerability to forced labour, increasing the risk of domestic servitude or slavery, as well as to other forms of discrimination. For example, women migrant domestic workers may face discrimination based on a combination of characteristics, including sex, race, ethnicity, national origin and social status.[360]

138. ***The Committee emphasizes that, in light of the particular vulnerability of this overwhelmingly female workforce, there is a pressing need to ensure that domestic workers enjoy equality of opportunity and treatment in all aspects of employment and genuine protection against discrimination, in particular with respect to terms and conditions of work, social security and access to training with a view to promotion or better job opportunities. Both legal and practical measures are needed to ensure their effective protection against all forms of discrimination. Moreover, when adopting legislation or other measures to address discrimination against domestic workers, it is necessary to take into account multiple and intersecting forms of discrimination and inequalities, including pervasive gender inequality.***[361] ***In relation to the situation of domestic workers, respect for private and family life should not be construed as protecting conduct that infringes the fundamental right to equality of opportunity and treatment in employment and occupation.***

2.3. Informal economy

139. Informal workers are often subject to precarious and arduous working conditions, including a higher risk of violence and harassment, a lack of social protection,[362] lower incomes and lower job tenure or stability. Convention No. 111 and Recommendation No. 111 apply to both the formal and informal economy. The Convention also covers contributing family workers.[363] The full and effective implementation of the instruments is therefore essential for securing the transition from the informal to the formal economy, given that discrimination acts both as a driver for, and a consequence of, informality. However, the Committee notes that the implementation of Convention No. 111 (as well that of other ILO Conventions) in the informal economy remains a serious challenge. According to ILO estimates, 60 per cent of global employment was informal in 2019, with this rate attaining 89.1 per cent in low-income developing countries.[364]

140. The concentration of women in the informal economy is of concern to the Committee in the context of the application of Convention No. 111. According to ILO research, where there is widespread informal work, women are somewhat more exposed than men to informal employment.[365] They also more often engaged in the most vulnerable types of work, such

360 2022 General Survey, para. 643.

361 2022 General Survey, para. 676

362 See ILO, *Extending Social Security to Workers in the Informal Economy: Key Lessons from International Experience*, ILO Brief, 2021.

363 Contributing family workers assist a family member or household member in a market-oriented enterprise operated by the family or household member, or in a job in which the assisted family or household member is an employee or dependent contractor. They do not receive regular payments, such as a wage or salary, in return for the work performed, but may benefit in kind or receive irregular payments in cash as a result of the outputs of their work through family or intra-household transfers, derived from the profits of the enterprise or from the income of the other person. They do not make the most important decisions affecting the enterprise or have responsibility for it. See ILO, Resolution concerning statistics on work relationships, 20th International Conference of Labour Statisticians (ICLS), 2018, para. 57. See also 1988 General Survey, para. 86; ILO, *Care Work and Care Jobs for the Future of Decent Work*, 41.

364 Juan Chacaltana, Florence Bonnet and Juan Manuel Garcia, "Growth, Economic Structure and Informality", ILO Working Paper 69, 2022, 12–13.

365 ILO, *Women and Men in the Informal Economy: A Statistical Picture – Third edition*, 2018, 21 and 25.

as domestic work, home-based work or contributing family work.[366] The presence of women in informal work is linked to a multiplicity of factors, which have been exacerbated by the COVID-19 pandemic, including their disproportionate shouldering of family responsibilities, leading to the need for flexible arrangements so that they can reconcile work and family life, particularly when public childcare services are scarce.[367] Women may also be led into informality to overcome obstacles in access to formal employment, such as gender stereotypes and discrimination, poor economic conditions, lack of access to productive resources, difficulties in accessing certain types of jobs (for instance, due to bans on women's employment), cultural norms constraining their mobility outside the home,[368] or obstacles related to living in rural or remote areas, such as engagement in productive activities for household consumption and subsistence.[369]

141. The Committee notes the indication by a number of Governments that they are envisaging or adopting different measures, such as: (i) promoting the access of informal workers to self-employment opportunities[370] and training[371]; (ii) collecting data on women in informal work;[372] and (iii) including the informal economy in national gender equality policies and the gender-related measures of other programmes.[373] Investment in care facilities is also key to ensuring that women are able to coordinate care obligations with formal salaried work.[374] The Committee recalls that, according to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), strategies and policies to facilitate the transition to the formal economy should take into account the promotion of gender equality and non-discrimination (Paragraphs 7(h) and 11(f)).

142. ***The Committee encourages governments to take targeted measures to ensure that women enjoy equal opportunities in the transition from the informal to the formal economy, including by promoting their access to training and skills development, as well as self-employment. In this regard, measures should be adopted to address some of the underlying causes of women's presence in the informal economy, such as the impossibility to integrate work with family responsibilities.***

366 ILO, *Women and Men in the Informal Economy*, 20–21. See also CEACR, Convention No. 111: *Cabo Verde*, direct request, 2019; *Congo*, direct request, 2017.

367 ILO and Women in Informal Employment Globalizing and Organizing (WIEGO), *Quality Childcare Services for Workers in the Informal Economy*, Policy Brief No. 1, 2020. See also Defensoría del Pueblo, "El impacto económico del trabajo doméstico no remunerado y de cuidados en el desarrollo de las mujeres", Documento de Trabajo No. 004-2019-DP/ADM (Peru, 2019), 31 ff.

368 ILO, "Empowering Women Working in the Informal Economy", Global Commission on the Future of Work, Issue Brief, Cluster 2, Bringing an End to Pervasive Global Women's Inequality in the Workplace, #4, 2018, 1.

369 CEACR, Convention No. 111: *Papua New Guinea*, direct request, 2021; *Sierra Leone*, direct request, 2021; *Timor-Leste*, direct request, 2020.

370 For example, *Grenada* (National Sustainable Development Plan 2020–2035 supporting the shift of small informal enterprises to the formal sector) and *Morocco* ("Min Ajliki" Programme addressed to women in the informal economy).

371 For example, *Pakistan* and *Panama*.

372 For example, in *Guatemala, Maldives*, *Panama, Russian Federation, Timor-Leste*, *Turkmenistan* and *Viet Nam*.

373 For example, *Suriname* (Gender Vision Policy Document 2021–2035). See also CEACR, Convention No. 111: *Barbados*, direct request, 2017; *Malawi*, observation, 2019; *Sao Tome and Principe*, observation 2019; *Senegal*, direct request, 2021; *Suriname*, direct request, 2020.

374 See ILO, *A Quantum Leap for Gender Equality*, 104.

2.4. Self-employment

143. The preparatory works for Convention No. 111 and Recommendation No. 111 clearly indicate that self-employment is covered by the term "employment and occupation" defined in the instruments; the Committee refers to the analysis contained in previous General Surveys in this regard.[375] Women tend to face particular obstacles to accessing self-employment and business creation opportunities, including more limited access to productive resources, such as credit, property and land, which is a key challenge.[376] ILO data further reveals that, even where women are self-employed, they tend to operate businesses in the informal economy and in sectors with low growth potential more frequently than men.[377] This may translate into a disadvantage for women in relation to their male peers, as they tend to generate less income and are more exposed to the decent work deficits which characterize the informal economy.

144. Measures are therefore necessary to ensure that women enjoy equal opportunities and treatment in self-employment. These may include the recognition by law of the right to an equal access to entrepreneurship,[378] specific support for women's entrepreneurship,[379] including through targeted financing and grants,[380] as well as measures to promote the access of women to material goods and services required to carry out an occupation, such as access to land and credit (for example, measures to promote the access of women in rural areas and women agricultural workers to land ownership).[381] Relevant training and education on entrepreneurship and related skills can also be provided.[382] Particular measures can also aim to promote women's self-employment and entrepreneurship in specific sectors.[383] In some countries, initiatives also exist to promote the access of women to self-employment in male-dominated professions, including through capacity building, advisory services and investment focused on women's entrepreneurship and innovation.[384] For example, in *Guyana*, training for women entrepreneurs is provided by the Small Business Bureau, and small business development grants and loans are awarded to women.

145. ***The Committee emphasizes that ensuring women's equal access to self-employment and entrepreneurship is necessary to realize the principle of equality and non-discrimination in employment and occupation provided by the Convention, including through training and measures to ensure their access to the material goods and services required to carry out an occupation, such as access to land and credit.***

375 ILO, *Discrimination in the Field of Employment and Occupation,* International Labour Conference, 42nd Session, Report IV(1), 1958 (hereinafter "Report IV(1) on Convention No. 111"), 6*;* 1988 General Survey, paras 86 ff.

376 World Bank data for 2020 reflects the difficulties that exist worldwide in ensuring the access of women to the ownership of assets and land, even in the presence of laws that guarantee equality. World Bank, *Women, Business and the Law 2022*, 106.

377 ILO, *A Quantum Leap for Gender Equality*, 90.

378 For instance, *Serbia* (art. 28 of the Law on Gender Equality) and *Turkmenistan* (art. 21 of the Equal Rights and Opportunities for Women and Men (State Guarantees) Act).

379 For instance, *Bulgaria, Burkina Faso, Egypt, Georgia, Jamaica, Morocco, Portugal, Serbia* and *Viet Nam.*

380 For instance, *Australia* (Victoria), *France* (access to public investment), *Guyana, Kazakhstan* and *Türkiye*.

381 For instance, *Burkina Faso, Croatia, Guyana, Morocco, Togo* and *Viet Nam* regarding access to loans; as well as *Guatemala*, *Honduras* (art. 57 of the Act on Equality of Opportunity for Women), and *Nicaragua* (Decree 52-2010) regarding access to land. See also 2012 General Survey, para. 756; and CEACR, Convention No. 111: *Honduras*, direct request, 2021; *Liberia*, direct request, 2021; *Senegal,* direct request, 2021; and *Togo*, direct request, 2021.

382 For instance, *Belgium* (Brussels Capital), *France, Georgia, Greece, Guyana, Honduras, Kazakhstan, Malaysia* and *Türkiye.*

383 For instance, *Australia* (Canberra) in the construction sector, *Belgium* (Flanders) in the digital sector, and *Greece* regarding agricultural cooperatives.

384 For instance, *Australia* (Victoria), *Austria*, *Egypt*, *Guyana* and *United States of America*.

2.5. Digitalization and work

146. Digitalization is opening a myriad of new possibilities for more flexible training, employment services and working arrangements.

147. It can also provide an opportunity to correct gender inequalities, including structural forms of inequality and stereotyping. Equal access to digital technology can increase opportunities for access to work for women, and can also assist in the development of gender-sensitive job advertisements.

148. The Committee observes, however, that recent developments in the digital economy may just as well perpetuate gender gaps. For instance, artificial intelligence using algorithms for job matching may lead to discriminatory outcomes for women such as generally showing them job offers with lower pay.[385] There is also a risk that automated applicant selection is based on characteristics that are proxies for gender.

149. The Committee recalls that the ILO Centenary Declaration for the Future of Work calls on Member States to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all through policies and measures that respond to challenges and opportunities in the world of work regarding the digital transformation of work, including platform work.[386] ***The Committee emphasizes the need to ensure that digital tools do not perpetuate gender inequality and that women have access to equal opportunity and treatment in the technology-enabled jobs of the future.*** In this regard, the Committee refers to Chapter V of this Survey, which addresses women's access to digital skills and resources.

▸ 3. Achieving gender equality through a national equality policy

Convention No. 111, Articles 2 and 3
Recommendation No. 111, Paragraph 2

3.1. General features of the national equality policy

150. The primary obligation provided for in Convention No. 111 is for States to declare and pursue a national equality policy. The Committee notes that such policy needs to be understood in the broadest terms as a multifaceted policy encompassing a combination of measures to promote equality in employment and occupation in the country. It is therefore different from specific time-bound policies or action plans, such as gender equality strategies. The NEP includes the legislative, regulatory, policy and awareness-raising measures adopted in the country in relation to the diverse forms and grounds of discrimination covered by the Convention. The Committee notes in this regard that discrimination based on sex and gender have been given particular attention by governments when adopting specific measures to implement the NEP, in comparison to other grounds of discrimination.[387]

385 ILO, *Work for a Brighter Future*, 2019; United Nations Educational, Scientific and Cultural Organization (UNESCO), *Artificial Intelligence and Gender Equality: Key Findings of UNESCO's Global Dialogue*, 2020; ILO, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work*, 2021.

386 ILO, Centenary Declaration for the Future of Work, International Labour Conference, 108th Session, 2019, Part III(C)(v).

387 1988 General Survey, para. 32.

151. The Convention provides flexibility on the means of pursuing the national equality policy, which is to be promoted "by methods appropriate to national conditions and practice". Paragraph 2 of the Recommendation refers to a number of means to apply the policy, including "legislative measures, collective agreements … or in any other manner consistent with national conditions and practice". The form of the national equality policy is not therefore subject to any particular requirements. However, the Committee recalls that this flexibility relates to the methods of implementation, not the principle to be applied. Therefore, the criterion for examining the application of the Convention is not the form of the measures adopted, but rather whether unequivocal results are achieved in pursuing equality of opportunity and treatment in employment and occupation. In this regard, certain elements are key to an effective national equality policy. It is essential to ensure that: (i) it clearly states its purpose of promoting equality of opportunity and treatment for all the categories of workers covered by the Convention, at all stages of employment and occupation; (ii) the measures adopted are concrete and specific; and (iii) these measures achieve effective results.[388]

152. In this regard, Article 3 of the Convention includes a number of specific measures when implementing the national equality policy, which have to be pursued by Member States both directly, by applying the policy regarding employment and employment-related services under the control of a national authority, and indirectly, by securing their acceptance in employment that is not under such control.[389] Furthermore, Article 3 gives a central role to social dialogue and collaboration with the social partners, thereby acknowledging that, even though the State bears the main responsibility to formulate and implement the national equality policy, employers' and workers' organizations also have an essential role to play in promoting the principle of equality.[390]

153. ***The Committee recalls that the implementation of the Convention presupposes a clear and comprehensive legislative and policy framework, as well as measures to ensure that the right to gender equality and non-discrimination is effective in practice. It draws attention to a number of elements identified in national practice that may make an effective contribution to addressing gender discrimination and promoting equality of opportunity and treatment in employment and occupation, including: (i) covering all workers, with specific attention to sectors or occupations in which more women are engaged; (ii) clearly defining direct and indirect discrimination and considering multiple and intersecting forms of discrimination; (iii) prohibiting all forms of discrimination based on sex or gender at all stages of employment and occupation; (iv) adopting appropriate measures to prevent discrimination; (v) taking affirmative action; (vi) adopting, implementing and regularly assessing and monitoring policies or plans for gender equality in employment and occupation; (vii) collecting and analysing relevant data, disaggregated by sex; (viii) explicitly assigning supervisory responsibilities to the competent national authorities with a view to gender-sensitive enforcement; (ix) providing for dissuasive penalties and appropriate means of redress; (x) shifting or reversing the burden of proof; (xi) providing protection against reprisals; and (xii) ensuring social dialogue and seeking cooperation with workers' and employers' organizations. The Committee also notes that this legislative and policy framework should not only include measures specifically targeting gender equality, but also measures to create an enabling environment for its realization, such as policies on employment creation and promotion, education, wages, social protection and OSH.***

388 1988 General Survey, paras 157–160.

389 1988 General Survey, para. 157.

390 During the drafting of the instruments, the term "public policy" was changed to "national policy" to avoid any implication that responsibility for promoting equality of opportunity and treatment falls only on the public authorities. See 1988 General Survey, para. 157.

3.2. Means of application

Laws and regulations

154. Convention No. 111 leaves it to each country to decide the legislative measures that are appropriate to implement the national policy. Article 3 nevertheless establishes the requirement for Members to: (i) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy; and (ii) repeal any statutory provisions and modify any administrative instructions or practices that are inconsistent with the policy. Hence, while the Convention does not impose a strict obligation to legislate, it does require Members to review whether legislation is needed within the framework of the national policy as a whole.[391]

155. The Committee recalls that sex is one of the grounds of discrimination most commonly recognized and prohibited in national legislation, which provides a strong basis for the achievement of gender equality in employment and occupation. The Committee however notes that, while developing legislative frameworks remains one of the main and most effective means of action adopted by governments for the implementation of the national equality policy, and particularly as a first step to combat gender-based discrimination and promote gender equality, challenges remain in a number of countries in repealing discriminatory provisions. The Committee also notes that there are still some obstacles to ensuring that, when legislation is adopted, it addresses equality of opportunity and treatment in employment and occupation to its full extent, without gaps in coverage.

156. The Committee further notes that, while the adoption of a legislative framework is key for the implementation of the Convention, it remains limited in reach. The Committee has previously stated that general recognition in the Constitution of the principle of equality and non-discrimination, although important, has not generally proven to be sufficient to address specific cases of discrimination in employment and occupation.[392] Often, the generality of constitutional provisions setting out the principle of equality and non-discrimination does not allow space for the detailed treatment of discrimination in employment. Similarly, the abrogation of discriminatory laws and administrative measures, although essential for the national policy, is not sufficient to ensure the application of the principle of the Convention in practice. Where relevant provisions are provided for in specific laws on equality and non-discrimination, it has to be ensured that they apply to employment and occupation.[393]

157. ***The Committee emphasizes that, as the basis of an effective national equality policy required by Article 2 of the Convention, legislative frameworks must not include or endorse any provision or practice that constitutes discrimination based on sex or gender, whether direct or indirect. The legal framework also needs to be developed in consultation with workers' and employers' organizations and implemented with a view to achieving effective equality in practice, while taking care to ensure that: (i) the legal provisions adopted do not lead to indirect discrimination or perpetuate gender, social and cultural stereotypes; (ii) adequate and effective means of redress and remedies are available; and (iii) affirmative action consistent with the requirements of the Convention and awareness-raising measures are adopted and regularly reviewed.***

391 2012 General Survey, paras 734–735.

392 For example, CEACR, Convention No. 111: *Jamaica*, direct request 2020; *Saint Vincent and the Grenadines*, observation, 2020. See also 2012 General Survey, para. 851.

393 For example, CEACR, Convention No. 111: *Georgia*, direct request, 2017; *Indonesia*, direct request, 2020; *India*, direct request, 2017.

National plans and strategies

158. In addition to legislation, the Committee notes that the adoption of specific national policies and action plans is a common method of applying Convention No. 111. These may include strategies addressing equality of opportunity and treatment in employment and occupation in a general manner, as well as specific policies directed at particular groups or situations. In this regard, the Committee notes from the reports on the implementation of Convention No. 111 that a majority of governments have provided information on specific policies related to gender equality or equality between women and men in employment and occupation. The Committee welcomes that government reports on the application of Convention No. 111 tend to include a wealth of information on national plans and strategies on gender equality. It also notes that information has sometimes been provided on policies addressing other grounds of discrimination, such as in relation to persons with disabilities, but that this kind of information is less common. It therefore wishes to emphasize that the adoption of national plans and strategies on gender equality should not impair the development of plans and strategies addressing other grounds of discrimination including intersectional discrimination.

159. In some cases, governments also report strategies and measures specifically addressed at particular groups of women, such as domestic workers, women with disabilities or migrant women, as well as measures addressing gender equality at work as part of more general employment or gender equality policies. In this regard, the Committee notes that national policies on matters other than employment and occupation have also proven in practice to be pertinent to the implementation of the Convention, and particularly of gender equality, such as policies on economic development, women's empowerment, and violence and harassment.

Collective agreements

160. Collective agreements are another important tool for the implementation of the National Equality Policy. Recommendation No. 111 provides in Paragraph 2 that in collective negotiations and industrial relations the parties should ensure that collective agreements contain no provisions of a discriminatory character. In this context, the Committee particularly recalls the prohibition of indirect discrimination, from which it follows that differentiation on the basis of supposedly neutral criteria is also prohibited if it actually leads to unequal treatment of persons with certain characteristics. Moreover, the Committee notes that, following the trends it identified in its 2012 General Survey, governments have continued to adopt legislative provisions that prohibit or declare null and void discriminatory clauses in collective agreements, or which require them to include clauses on non-discrimination and gender equality.[394] In this regard, some governments refer to the existence of collective agreements that include provisions on the prohibition of discrimination or the promotion of gender equality.[395] The Committee welcomes the fact that collective agreements increasingly include clauses to promote gender equality and prohibit discrimination, including discriminatory harassment. Recent ILO research notes the inclusion in collective agreements of provisions regarding paid leave for assisted reproduction or fertility treatment, menstrual hygiene support and menstrual leave, leave for transgender persons undergoing medical procedures or hormonal therapy, provisions on sexual harassment, support to victims of domestic violence, and equal pay for work of equal value.[396]

394 For instance in *Algeria* (section 142 of Act No. 90-11) and *Georgia* (art. 11(9) of the Labour Code). See also 2012 General Survey, para. 737.

395 For instance, *Brazil* and *Tajikistan*.

396 ILO, *Social Dialogue Report 2022: Collective Bargaining for an Inclusive, Sustainable and Resilient Recovery*, 2022, 96–100.

161. The Committee wishes to recall that, for the effective integration of gender equality issues in collective agreements, it is essential to ensure that women's voices are heard. For this purpose, it is important to ensure that women's leadership and participation in trade unions reflects their participation in the labour force.[397] It is also important to ensure that sectors in which women account for the majority of the workforce are covered by social dialogue and collective bargaining. In some countries, efforts are undertaken to facilitate the adoption and extension of sectoral collective agreements in sectors or occupations where the workforce is predominantly composed of women and where collective bargaining traditionally faces serious challenges, such as domestic work. In this respect, the Committee notes the creation of organizations such as the International Domestic Workers Federation (IDWF) and Women in Informal Employment: Globalizing and Organizing (WIEGO).[398] The Committee draws attention to Chapter IV below, which addresses on collaboration with the social partners.

Affirmative action

162. While ensuring formal gender equality in laws and regulations is a first step in national policies on gender equality (*formal equality*), further action is necessary to promote effective equality in practice, including the adoption of proactive measures to remedy de facto inequalities (*substantive equality*). Affirmative action measures are aimed at ensuring equality of opportunity in practice, taking into account the diversity of situations of the persons concerned, so as to halt discrimination, redress the effects of past discriminatory practices and restore balance.[399] Such action encourages a proactive approach in which gender equality does not merely depend on avoiding discrimination or responding to complaints, but on active measures that seek to achieve established goals and substantive gender equality in practice.[400] In this regard, the Committee notes that the International Trade Union Confederation (ITUC) emphasizes in its observations that the legislative framework on non-discrimination presupposes the adoption of a range of specific and concrete measures to ensure that the right to equality and non-discrimination is effective in practice, and that proactive measures are therefore required to address the underlying causes of discrimination and de facto inequalities resulting from deeply entrenched discrimination.

163. As affirmative action, by definition, is intended to address the situation of specific groups[401], it is included, by definition, in the broader category of "special measures" foreseen in Article 5(2) of Convention No. 111.[402] The Committee nonetheless notes that in law and practice more generally the line between both concepts seems to be fluid, as they are used as synonyms or substituted by other terminology such as "positive action".[403] The Committee observes that what it considers "affirmative action" under Convention No. 111 is similar to the "special measures" provided for in Article 4(1) of the CEDAW: it needs to seek to correct

397 See ILO, *Social Dialogue Report 2022*, 75.

398 Jane Pillinger and Nora Wintour, *Collective Bargaining and Gender Equality* (Newcastle: Agenda Publishing, 2019), xv and 10.

399 2012 General Survey, para. 862.

400 ILO, *Women, Gender and Work*, 54.

401 For further information on intersectional discrimination, see para. 66 of this Survey.

402 2012 General Survey, para. 837.

403 In 1988, the Committee noted that the difference between special measures of protection and assistance, and affirmative measures of preferential treatment, was often tenuous: 1988 General Survey, para. 146. See also Committee on the Elimination of Discrimination against Women, General recommendation No. 25, paras 15–17; Julie O'Brien, "Affirmative Action, Special Measures and the Sex Discrimination Act", *UNSW Law Journal* 27, No. 3 (2004); Antony Barac and Loretta Kelly, "Affirmative Action as a Form of Special Measures in Australia: Canvassing the Hidden Issues", *Australian Indigenous Law Review* 17, No. 2 (2013/2014): 56–78.

de facto inequalities, it should not be deemed necessary forever,[404] and it should adapt to the action needed.[405]

164. Most of the information received regarding affirmative action refers to the establishment of workforce quotas or goals in the public and private sectors,[406] which play an essential role in facilitating women's equal access to and advancement in employment and occupation, particularly in specific sectors or activities. Other examples of affirmative action may include outreach and support programmes; allocation and/or reallocation of resources; preferential treatment, and targeted recruitment, hiring and promotion.[407] For instance, *Australia* and *Jamaica* informed on outreach measures in education to promote girls' interest in specific sectors and areas of study. In the same line, the Government of *Cabo Verde* reached out to schools – with priority to islands with more gender-based violence – to train teachers on gender equality. The Committee also notes that onsite childcare is also a practice that is being implemented in a number of countries.[408]

165. Like affirmative action, awareness-raising and education are key to promoting substantive equality as they address the perceptions and beliefs of workers, employers, societies and the general public. They are also essential elements of transformative approaches which seek not only to redress situations of inequality, but to change labour, social and cultural dynamics, as well as gender stereotypes and prejudices, to ensure that discrimination is reduced in future. The Committee refers, in this regard, to Chapter IV below.

166. ***The Committee would like to emphasize the importance of a number of factors relating to affirmative measures: they need to be justified by the aim of the protection and assistance they pursue; they have to be proportional to the nature and scope of the protection needed or of the pre-existing discrimination; there needs to be prior consultation with representative employers' and workers' organizations; and they should be subject to periodical re-examination in order to ascertain that they are effective, still needed and that they do not have a discriminatory effect disproportionate to their purpose.***[409]

167. ***The Committee emphasizes that the national equality policy required by Convention No. 111, including for the promotion of gender equality, consists of a wide range of measures, including laws, regulations and policies, national strategies and action plans, collective agreements, affirmative action and awareness-raising measures and initiatives. In order to ensure the promotion of both formal and substantive gender equality in employment and occupation, all such measures need to be integrated and to complement each other effectively, with a view to both eliminating and redressing actual situations of discrimination, as well as transforming social and cultural gender dynamics and stereotypes that hamper progress towards gender equality.***

404 According to the Committee, affirmative action shall be examined periodically in order to ascertain whether it is still needed and remains effective, while Art. 4(1) of the CEDAW requires that special measures are temporary. See 2012 General Survey, para. 862; Committee on the Elimination of Discrimination against Women, General recommendation No. 25, para. 20.

405 According to the Committee, affirmative action needs to be "proportional to the nature and scope of the protection or assistance needed", while the Committee on the Elimination of Discrimination against Women indicates that special measures need to be "necessary and appropriate". See 2012 General Survey, para. 862; Committee on the Elimination of Discrimination against Women, General recommendation No. 25, para. 24.

406 For instance, *Albania*, *Algeria*, *Burkina Faso*, *Niger* and *Sri Lanka*.

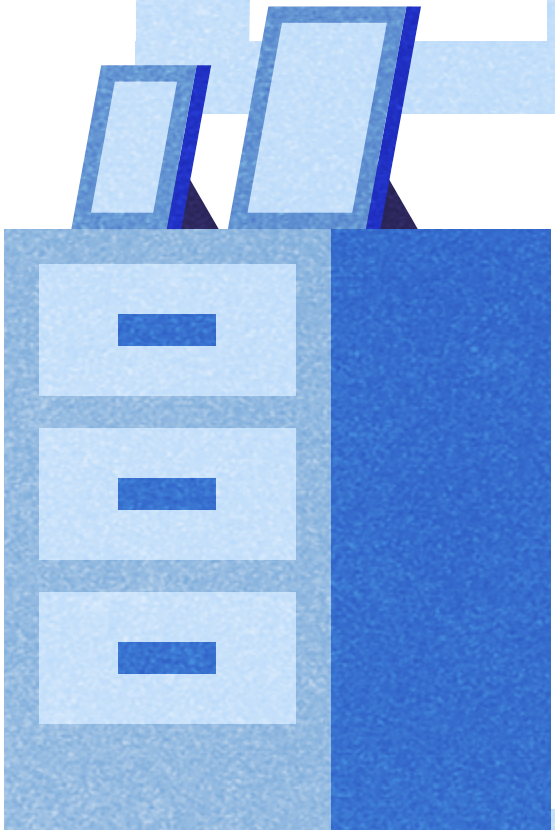
407 Committee on the Elimination of Discrimination against Women, General recommendation No. 25, para. 22.

408 For more information, see Ch. V of this General Survey.

409 1963 General Survey, para. 52; 1988 General Survey, paras 146–147; 1996 Special Survey, paras 130–137; 2012 General Survey, paras 862–864.



2 Framework for workers with family responsibilities: Convention No. 156 and Recommendation No. 165



1. Family responsibilities at the heart of decent work and gender equality: Context and recent developments

168. For both men and women, combining work obligations and their responsibilities towards family members can be a challenging balancing act. As previously acknowledged by the Committee, addressing matters related to family responsibilities is more urgent than ever before due to societal, demographic and organizational changes, including: (i) the increase in women's labour force participation and changes in the family structure; (ii) population growth, combined with an ageing population and increasing care needs; and (iii) transformative changes in the world of work, particularly in work organization, driven by technological innovations.[410]

169. In most societies, women have traditionally been considered responsible for childcare and the care of other dependent family members, while men sought to provide financial support for their families. Although more and more men would like to take up family responsibilities, despite the risk of being stigmatized, women still perform most household chores and unpaid care work throughout the world,[411] both for the household in general and for elderly family members and children, in particular. This has an undeniable effect on their ability to access, remain and progress in paid work, as well as on the persistence of gender gaps in the world of work. Globally, the principal reason given by women of working age for being outside the labour force is the burden of unpaid care work, while for men it is being in education, sickness or disability. Even when they have access to paid work, women continue to identify the balance between work and family life as one of the main challenges, if not the main challenge, to them remaining and progressing in the labour market.[412] This gendered impact is also reflected according to the workers' family situation, as research suggests that marriage increases men's labour force participation rate (the "labour force premium") and decreases the rate for women (the "marriage penalty"),[413] and that the most successful and best paid women are less likely to be married.[414] Similarly, the presence of young children (0-5 years old) in the household has a determining impact on women's labour force participation (the "maternity employment penalty"), while fathers experience the reverse effect (the "fatherhood employment premium").[415] Women in vulnerable situations or facing forms of multiple discrimination, such as women in ethnic or religious minorities or from indigenous backgrounds, or women migrant workers, may be even more affected by the disproportionate distribution of unpaid care work.[416] The need to reconcile work and family responsibilities has become even more pressing in the context of the COVID-19 pandemic, in which care responsibilities have

410 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020.

411 Unpaid care work is care work provided without monetary reward by unpaid carers. Unpaid care is considered to be work and is therefore a crucial dimension of the world of work. See ILO, Resolution concerning statistics of work, employment and labour underutilization, 19th ICLS, 2013.

412 ILO, *Care at Work*, 2017; ILO, *Care Work and Care Jobs for the Future of Decent Work*, 83. See also ILO and Gallup, Towards a Better Future for Women and Work: Voices of Women and Men, 2017, 39.

413 Research shows that married women experience a dramatic increase of the unpaid care work they undertake, while the increase in men's participation in the household services is not as dramatic. UN Women, Families in a Changing World: Progress of the World's Women 2019-2020, 2019, 114; ILO, *Care Work and Care Jobs for the Future of Decent Work*, 65 and 80.

414 ILO, *A Quantum Leap for Gender Equality*, 42.

415 UN Women, *Families in a Changing World*, 115; ILO, *Care Work and Care Jobs for the Future of Decent Work*, xxxii and 65.

416 See ILO, *Implementing the ILO Indigenous and Tribal Peoples Convention No. 169: Towards an Inclusive, Sustainable and Just Future*, 2020, 18 and 69; ILO, *Exploring and Tackling Barriers to Indigenous Women's Participation and Organization*, 2021, 12; ILO, *ILO Global Estimates on International Migrant Workers – Results and Methodology*, Third Edition, 2021, 12, 21–22; Silas Amo-Agyei, *The Migrant Pay Gap: Understanding Wage Differences between Migrants and Nationals* (ILO, 2020), 18 and 109.

exponentially increased and the challenges faced by women in this regard, exacerbated.[417] ***The Committee wishes to recall its general observation of 2020 on Convention No. 156 in relation to the importance of education and awareness-raising campaigns: (i) to promote broader public understanding of the difficulties faced by workers with family responsibilities; (ii) to correct misinformation or contradict negative attitudes and beliefs vis-à-vis workers using flexible arrangements, while boosting their self-esteem, reducing self-stigma and promoting stress management; (iii) to encourage men to participate more in family responsibilities; and (iv) to promote understanding of the benefits to society, families and the workplace of gender equality and a better balancing of work and family life.***

170. A more balanced sharing of family responsibilities between men and women at home, as well as between families and the State, is a pillar of the SDG Agenda and the ILO human-centred agenda, and of the commitment by ILO constituents for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient.[418] The 2021 International Labour Conference resolution concerning inequalities and the world of work recognizes that ensuring gender equality and non-discrimination and promoting equality, diversity and inclusion requires an integrated and comprehensive approach which, among others, removes barriers preventing women from accessing, remaining and progressing in the labour market and ensures "access to quality and affordable long term and childcare".[419] In the same vein, the 2021 International Labour Conference conclusions concerning the second recurrent discussion on social protection (social security) call upon all ILO Members to "pursue gender-responsive social protection policies and address gender gaps in coverage and adequacy of social protection, to ensure that social protection systems address gender-related risk over the life cycle, and promote gender equality, including by care credits in social insurance and by fostering income security during maternity, paternity and parental leave".[420]

171. In this context, although adopted over 40 years ago, Convention No. 156 and Recommendation No. 165 remain particularly relevant to the ILO's decent work and gender-transformative agenda. They provide a detailed framework to respond to the needs of all workers with family responsibilities, taking into consideration national conditions. In particular, they call for measures to: prohibit discrimination in employment against workers with family responsibilities; support terms and conditions of employment that allow for a work-family balance and family-friendly working time and leave arrangements; develop or promote family-friendly facilities, such as childcare and other services; and provide training to allow workers with family responsibilities to become and remain integrated in the workforce, and to re-enter it after an absence due to those responsibilities. In this regard, the Committee notes that a number of elements covered by these instruments are also addressed in several other international labour standards as key enablers of gender equality, such as: care policies in the form of childcare and long-term care services; social protection systems; care leave policies, including maternity, paternity, adoptive and parental leave; and family-friendly working arrangements and care-relevant infrastructures.[421]

---

417 According to recent global estimates, over 2 million mothers left the labour force in 2020, therefore perpetuating a cycle of poverty, inequality and exclusion. ILO, *Inequalities and the World of Work*, para. 77; ILO, *Care Work and Care Jobs for the Future of Decent Work*, 40–47.

418 ILO, Centenary Declaration; ILO, Global Call to Action for a human centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, International Labour Conference, 109th Session, 2021.

419 ILO, Resolution concerning inequalities and the world of work, International Labour Conference, 109th Session, 2021.

420 ILO, Conclusions concerning the second recurrent discussion on social protection (social security), International Labour Conference, 109th Session, 2021, para. 13(f).

421 See, in this regard, the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000; the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Social Protection Floors Recommendation, 2012 (No. 202); and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

2. Objectives of the instruments

172. Convention No. 156 and Recommendation No. 165 firmly place equality of opportunity and treatment for both women and men workers with family responsibilities within the wider ILO normative framework for the promotion of equality of opportunity and treatment in employment and occupation and gender equality. They have the *dual objective* of creating equality of opportunity and treatment in working life, on the one hand, between men and women with family responsibilities and, on the other, between men and women workers with and without family responsibilities.[422] It should be emphasized in this respect that the instruments cover all workers with family responsibilities, both men and women, and that full equality cannot be achieved without addressing the necessary gender-related societal changes, including a more equitable sharing of family responsibilities between women and men.[423] The instruments cover two main categories of dependent family members: *children* and *other members of the worker's immediate family who need care or support*, including persons with disabilities and older persons. The latter is becoming increasingly important in view of the ageing of the population.[424]

173. During the preparatory work for Convention No. 156 and Recommendation No. 165, it was noted that previous ILO instruments had viewed family responsibilities purely in relation to women and that "[n]othing had been done to promote more active participation by men in family life. Men were able to play an extremely active part in working, social and public life because women assumed responsibility for the home and family, or were expected to do so. This division of labour had had adverse effects not only on men and women and their family lives, but also on society as a whole."[425]

174. The Committee also recalls that, in its 1993 General Survey on these instruments, it identified important gaps in their application in terms of assisting both women and men to deal with their care obligations. In many jurisdictions, issues linked to family responsibilities were addressed with the overall objective of facilitating the balancing of work and family life by women, thereby intrinsically perpetuating gender roles and stereotypes in the family and society.[426] The Committee has continued to observe this tendency in a number of countries where the respective policy measures are primarily geared towards benefiting women.[427] The Committee notes in this respect that, where inequalities exist between men and women workers regarding the sharing of family responsibilities which have the effect of restricting the economic activity of women workers, it may be helpful to develop measures that are focused on improving the situation of women, on condition that men who are in the same situation are not formally barred from access to such measures. One of the main requirements of the instruments is to make it an aim of national policy to enable *both men and women with family responsibilities* to engage in employment without discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

422 During the discussion of the instruments, some considered that equality of opportunity and treatment of men and women workers should be the major thrust of the instruments, while others considered that their goal was to assist workers with family responsibilities, rather than promoting equality between the sexes. See ILO, Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, Report VI(2), International Labour Conference, 66th Session, 1980 (hereinafter "Report VI(2) on Convention No.156").

423 See ILO, Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, Report V(1), International Labour Conference, 67th Session, 1981 (hereinafter "Report V(1) on Convention No. 156"), 67.

424 UN Women, *Families in a Changing World*, 67.

425 ILO, Report V(1) on Convention No. 156, para. 8.

426 ILO, Workers with Family Responsibilities: General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981, Report III (Part 4B), International Labour Conference, 80th Session, 1993 (hereinafter "1993 General Survey"), paras 264-278.

427 CEACR, Convention No. 156: *Azerbaijan*, direct request, 2017; *Bulgaria*, direct request, 2018; *Ethiopia*, direct request, 2017; *Greece*; observation, 2016; *Kazakhstan*, direct request, 2016 and 2020; *Mauritius*, direct request, 2016; *Montenegro*, direct request, 2017; *Niger*, direct request, 2012; *North Macedonia*, direct request, 2017; *Republic of Korea*, observation, 2020; *Ukraine*, direct request, 2018; *Yemen*, direct request, 2017.

175. ***The Committee wishes to recall the importance of ensuring that measures taken to promote gender equality do not in practice reflect an assumption that the main responsibility for family care lies with women, or exclude men from certain rights and benefits, which would have the effect of reinforcing stereotypes regarding the roles of women and men in the family and in society. The Committee emphasizes in this regard that the measures taken to implement the instruments should be accompanied by information and education to improve public understanding of the principle of equality of opportunity and treatment for men and women workers and of the challenges faced by workers with family responsibilities, as called for in Article 6 of the Convention. The Committee further recalls that legislative or other measures designed to assist workers with family responsibilities to better balance work and family care are essential for the promotion of gender equality in employment and occupation, and that the measures adopted in this regard, including the redistribution and progressive equalization of leave entitlements between care givers, are consistent with the principles of equality of opportunity and treatment. Care therefore needs to be taken when designing and adopting measures to promote effective equality for men and women through a balanced distribution of family responsibilities that they do not have the effect of perpetuating gender stereotypes.***

3. Definitions and scope of application

Convention No. 156, Articles 1 and 2
Recommendation No. 165, Paragraphs 1 and 2

3.1. Definitions

176. Within the meaning of Convention No. 156 and Recommendation No. 165, family responsibilities are responsibilities in relation to dependent children and other members of workers' immediate family who clearly need their care or support. In this regard, the Committee notes that the instruments determine the persons in relation to whom family responsibilities exist (dependent children and other members of the immediate family), but do not define the nature of the responsibilities concerned. However, under the terms of the instruments, these responsibilities are characterized as restricting the possibilities of workers with family responsibilities of "preparing for, entering, participating in or advancing in economic activity." The notions of "family" and "family responsibilities" may be interpreted differently, depending on the national context and local conditions. Nevertheless, the family responsibilities referred to in Convention No. 156 clearly relate to children, the sick and the old who depend on the worker. Household tasks are also seen as part of family responsibilities.

177. Specific definitions of family responsibilities are rare in national legislation. Where they exist, they are sometimes based closely on the text of the Convention. For instance, in the *Russian Federation*, the Supreme Court, in Decision No. 1 of 28 January 2014 (paragraph 2), defines a "worker with family responsibilities" as: (i) an employee who has the responsibility for the upbringing and development of a child in accordance with family and other legislation; (ii) another relative of the child who actually cares for the child; and (iii) an employee who is responsible for other members of his or her family in need of prescribed care or assistance.[428]

428 CEACR, Convention No. 156: *Russian Federation*, direct request, 2018

In *Mauritius*, the legislation takes the wording of the Convention and defines "family responsibility" as "the responsibility of a person to care for or support … a dependent child; or … any other immediate family member who is in need of care or support".[429] In *Australia,* the Equal Opportunity Act 1984 (SA) defines in section 5(3) "caring responsibilities" as responsibilities to care for or support a dependent child or any other immediate family member of the person who is in need of care and support.

Dependent children

178. For the purposes of the Convention, the term "dependent children" means persons defined as such in each country. The Committee considers that the concept of "dependence", in this context, means reliance on the worker for support and sustenance, and physical and mental well-being, in light of the child's age, legal relationship to the worker, residence and other characteristics.[430] The Committee notes in this respect that reference is made in a number of countries to the standard age limit for minor children, namely between 16 and 18 years of age.[431] In *Belgium*, for example, the term "dependent child" generally means a person whose maintenance is the responsibility of another person. The Committee also notes that all recognized children, including those born outside marriage, in accordance with national practice, are often explicitly included in this definition (or, at least, not explicitly excluded),[432] as well as adopted and stepchildren and children under guardianship.[433] For example, in *Australia*, under the Sex Discrimination Act, a "dependent child" is a child who is wholly or substantially dependent on the worker. The definition of "child" includes adopted children, stepchildren and ex-nuptial children. Measures have been adopted in a few countries regarding children who are not covered by any of these categories, but who are legally resident with the worker, who may include children who are related to the worker and who are being brought up by other family members or friends of the family.[434] For example, in *Burkina Faso*, the social security scheme considers as a dependent child of a salaried worker a child aged up to 21 years who lives with the insured worker, including the children of the worker's spouse or those adopted by or placed under the guardianship of the workers' spouse. Moreover, under the tax legislation, dependants include orphaned children taken in and fully supported by the taxpayer.[435] In *Slovenia*, a large family allowance may be granted in cases where there are three or more children without parents. The Committee notes that the coverage by measures benefiting workers with family responsibilities of children who are outside the natural or genetic relationship with the worker allows greater inclusivity of more varied family settings and personal circumstances, such as same-sex couples, persons who have used adoption services and assisted reproduction methods, and blended families.

429 *Mauritius* (section 5(3)(b) of the Equal Opportunities Act 2008).

430 On this note, the Committee observes that the Convention on the Rights of the Child refers in Art. 5 to the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention.

431 For example, *Plurinational State of Bolivia*, *Colombia*, *Greece*, *Kazakhstan*, *Luxembourg*, *Panama*, *Slovenia*, *Togo* and *Yemen*.

432 For instance, *France* and *Mali.*

433 For instance, *Burkina Faso*, *Greece* and *Mali*.

434 For instance, *Benin* and *Bulgaria*.

435 *Burkina Faso* (section 40 of Act No. 004/2021 and section 113 of Act No. 058-2017/AN).

179. The Committee notes that the age limit for dependency is often extended in the case of severe illness, disability or related incapacity to work, sometimes up to a specific age (often around 20 years of age),[436] while there is no upper age limit in certain countries,[437] or the age limit depends on the degree of disability.[438] For instance, in *Luxembourg*, the limit of 18 years is extended to 25 years for children living with a condition that reduces their physical or mental capacity by at least 50 per cent. Dependency may also be extended in cases where the child continues to pursue education programmes, often beyond the age of compulsory schooling.[439]

180. The Committee notes that, in cases where the definition of the degree of dependence of the child on the worker is linked to the legal residence of the child, this may exclude specific family situations in which the child does not reside with the worker concerned, such as when the parents are divorced or not living together, and the child has legal residency with only one parent.

Other members of the immediate family

181. The coverage of family members other than children by the Convention was discussed during the preparatory work, particularly in light of the difficulty of establishing a clear and common definition of the persons concerned.[440] As a result, the Convention refers to "other members of their immediate family who clearly need their care or support", which encompasses a subjective element relating to the family relationship with the worker, on the one hand (the "immediate family"), and a material element regarding the nature of the care responsibility, on the other ("clearly need their care or support"). This limits coverage to the neediest cases in which the amount of care provided by the worker would have a serious impact on her or his ability to participate in economic activity, for instance, in relation to persons with disabilities or elder people. The Committee had previously noted that the immediate family usually includes the partner and parents or parents-in-law of the worker, as well as grandparents and grandparents-in-law, and that siblings and siblings-in-law are often covered, particularly when they are minors or are disabled or unable to support themselves for some other imperative reason.

182. The Committee notes that not all governments have reported on the effect given to Article 1(2) of the Convention and that general definitions of "immediate family members" are rare. However, in *Belize,* the "immediate family" is defined as including the spouse, child, parent or grandparent of the worker.[441] In *Slovakia*, the term "close person" includes a direct relative, sibling or spouse, and other persons in a family or other relationship in which one of them, on reasonable grounds, would perceive harm suffered by the other as harm suffered by him or herself.[442] In *Australia*, the Fair Work Act defines "immediate family of a national system employee" as the spouse (or former spouse), de facto partner (or former de facto partner), children, parents, grandparents, grandchildren or siblings of the employee, or of the spouse or de facto partner (or former spouse or de facto partner) of the employee. The Sex Discrimination Act provides for similar coverage, and the provisions on "carer's leave" and flexible working time arrangements also refer to responsibilities towards household

436 For instance, *Côte d'Ivoire* and *Togo*.

437 For instance, *Belgium, Benin, Plurinational State of Bolivia* (invalidity occurring before the established age limit), *Colombia*, *Mauritius* and *Panama*.

438 *Luxembourg* (section L.234-51 of the Labour Code and section 274 of the Social Security Code).

439 For instance, *Plurinational State of Bolivia* (19 years), *Colombia* (25 years), *Côte d'Ivoire* (20 years) and *Slovenia*.

440 While coverage of dependent children was easily agreed, concerns existed on whether, and to what extent, responsibilities towards other persons should be covered, particularly in light of the difficulty to define the relationship with such other family members. See 1993 General Survey, paras 42–43.

441 *Belize* (section 2 of Labour (Amendment) Act, 2011; see also, CEACR, Convention No.156: direct request, 2011).

442 CEACR, Convention No. 156: *Slovakia*, direct request, 2007.

members.[443] In *Eswatini*, "immediate family" is defined as related to a person's father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister, wife, husband, common-law wife or common-law husband.[444]

183. The Committee notes that measures to facilitate the reconciliation of work and family responsibilities (such as leave to care for sick family members or in the event of their death, social security or insurance coverage, and anti-discrimination provisions) usually cover spouses.[445] In a number of countries, the respective provisions also cover partners and persons who are in de facto relationships,[446] which contributes to adaptation to emerging family structures, such as those of couples who do not wish to or cannot be married, including same-sex couples. In *Australia*, the Fair Work Act defines "de facto partner" as a person who, although not legally married to the employee, lives with the employee in a relationship as a couple on a genuine domestic basis (irrespective of whether they are of the same sex or different sexes).[447]

184. The measures adopted in a number of countries also cover the workers' parents, grandparents or relatives in the ascending line,[448] and those of the worker's spouse or partner,[449] as well as the siblings and grandchildren of the worker[450] and of the worker's spouse.[451] In other countries, the degree of kinship or family ties is used to determine whether persons are taken into consideration by specific measures.[452] For example, in *Bulgaria*, "related persons" include spouses, relatives in the direct line without restriction in collateral line, the worker's relatives up to the fourth degree of kinship and the spouse's relatives up to the third degree of kinship. In *Australia,* the Equal Opportunity Act considers that, in addition to the immediate family member, an Aboriginal or Torres Strait Islander person may also have caring responsibilities towards any person to whom that person is held to be related according to Aboriginal kinship rules or Torres Strait Islander kinship rules as the case may require.[453]

185. More broadly, and usually in addition to some of the categories referred to above, national legislation may also refer to "household members", "close relatives" or "persons living with the worker". Among Member States that have ratified the Convention, the Committee notes that in the *Republic of Korea* the Basic Plan on the Low Birth Rate and Aging Society (2011–15) contains information on the measures taken to assist workers to cope with their family responsibilities in relation to *close relatives*.[454] The Committee recalls that, during the preparatory work, a proposal that family responsibilities should be limited to those arising towards members of workers' families who lived with them and to whom they had to give "particular attention" was not retained.[455] ***The Committee recalls that residence with the worker is not a requirement for coverage of family members under the Convention.***

443 *Australia* (section 12 of the Fair Work Act 2009, as amended; section 4A of the Sex Discrimination Act, 1984).

444 *Eswatini* (art. 2, Employment Act 1980).

445 For example, in: *Australia, Bahrain, Belgium, Belize, Brazil, Bulgaria, Burkina Faso, Burundi, Colombia, Croatia, Ecuador, El Salvador, Fiji, Greece, Guinea, Iceland, Indonesia, Italy, Japan, Mali, Mauritius, New Zealand, Norway, Peru, Philippines, Saudi Arabia, Slovakia, Slovenia, South Africa, South Sudan, Switzerland, Togo, Türkiye, Turkmenistan* and *Viet Nam*.

446 For example, *Australia, Ecuador, Greece, Italy, Japan, Norway, Peru, South Africa* and *Switzerland*.

447 *Australia* (section 12 of the Fair Work Act 2009; see also definition of "caring responsibility", "domestic partner" and "close personal relationship" in the Equal Opportunity Act of 1984).

448 For example, *Australia, Belgium, Belize, Brazil, Burundi, El Salvador, Guinea, Indonesia, Japan, Norway, Peru, Philippines, Saudi Arabia, Slovakia, South Africa, South Sudan, Switzerland, Tunisia, Türkiye, Turkmenistan* and *Viet Nam*.

449 For example, *Australia, Belgium, Czechia, Indonesia, Japan, Switzerland* and *Viet Nam*.

450 For example, *Australia, Slovakia, South Africa, South Sudan* and *Turkmenistan.*

451 For example, *Australia*.

452 For example, *Bahrain, Bulgaria, Colombia, Ecuador* and *Italy.*

453 *Australia* (section 5(3) of the Equal Opportunity Act 1984 (SA)).

454 CEACR, Convention No. 156: *Republic of Korea*, observation, 2018.

455 Report V(1) on Convention No. 156, para. 94 ff.

186. With regard to the nature of the care or support needed by immediate family members, it is usually related to health issues, such as accidents, illness, disease or disability. For instance, in *Japan*, the term "condition that requires caregiving" is defined as a "condition requiring constant nursing care for a period specified [by order of the Ministry] due to injury, sickness or physical or mental disability".[456] Reference is also sometimes made to persons covered by social security schemes and benefits, in which case the criteria followed to determine the requirement for support tends to be economic dependence on the worker or registration with the social security scheme.[457] In *Norway*, "necessary care" is assessed on a case-by-case basis.

187. ***The Committee recalls that, with a view to achieving the objectives of the instruments of alleviating the problems faced by workers with family responsibilities so that they can both exercise their right to work and play their part in family life with a minimum of conflict, measures adopted may include working-time arrangements, leave entitlements, family facilities and social security coverage, as indicated in Recommendation No. 165, and should take into account the need to promote gender equality.***

3.2. A broad scope of application

188. The scope of application of Convention No. 156 and Recommendation No. 165, as set out in Article 2 of the Convention, namely "all branches of economic activity and all categories of workers", was discussed at length during the preparatory work. The wording adopted leaves no doubt that the instruments cover all forms of economic activity, whether in the private or public sectors, profit- or non-profit making, as well as all workers living in a particular country, including migrant workers.[458]

189. However, the Committee has noted, particularly in its general observation of 2020 on Convention No. 156, that national laws and policies implementing the instruments show important shortcomings by excluding from their scope certain categories of workers (such as domestic, migrant, or temporary workers) or sectors (such as workers in the informal economy or in the agriculture sector).[459] The Committee has also raised the issue that, where measures are only adopted through collective agreements, they may exclude workers with family responsibilities who are not covered by such collective agreements.[460]

190. It is also clear from the preparatory work that the instruments cover all workers, irrespective of whether they work in full-time, part-time, temporary or other forms of employment and work arrangements, and whether they are in waged or non-waged work.[461] This is of particular significance in view of the erosion over recent decades of the standard employment relationship and the proliferation of non-standard jobs.[462] In its 2020 General Survey on employment and decent work, the Committee noted the existence of different variations of the employment relationship, which may range from traditional full-time, open-ended, permanent and one-employer relationships to part-time, fixed-term, intermittent and multi-party

456 *Japan* (Act on Childcare Leave, Caregiver Leave and Other Measures for the Welfare of Workers Caring for Children or other Family Members).

457 For instance, *Brazil, Mali, Slovenia*, *South Sudan* and *Tunisia.*

458 1993 General Survey, paras 46–49.

459 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020. See also, CEACR, Convention No. 156: *Azerbaijan*, direct request, 2017; *El Salvador*, direct request, 2019; *Ethiopia*, observation, 2017; *Greece*, direct request, 2020; *Japan*, observation, 2020; *San Marino*, direct request, 2020; *Yemen*, direct request, 2019.

460 CEACR, Convention No. 156: *Belgium*, direct request, 2019.

461 See ILO, *Record of Proceedings,* International Labour Conference, 67th Session, 1981, *Provisional Record* No. 28, paras 103–106. According to the ILO Legal Adviser, the term "employment" in ILO instruments refers to both wage and non-wage-earning workers.

462 ILO, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects*, 2016, 47.

relationships, or a combination of the two.[463] Work and crowd work in digital working platforms have also emerged as new forms of work.[464] It is therefore essential to ensure that the measures adopted for the implementation of Convention No. 156 follow the guidance contained in Recommendation No. 165 and do not leave behind workers in non-standard forms of work and other work arrangements. It is important to recall that some of these forms of employment, such as part-time work, may involve a higher concentration of workers with family responsibilities, as they are often a means of facilitating the reconciliation of work and family responsibilities, which makes it even more important to include these categories of work in the measures adopted to give effect to the instruments.[465]

191. ***The Committee emphasizes that it is essential to promote the rights of workers with family responsibilities in all branches of economic activity in order to achieve real progress in gender equality, particularly in the light of patterns of occupational segregation that result in workers with family responsibilities, and particularly women, being more represented in sectors, occupations and work arrangements in which workers tend to be more vulnerable. Proactive policies are necessary to ensure that the legislation and other measures implementing Convention No. 156 and Recommendation No. 165 cover all categories of workers with family responsibilities, and particularly more vulnerable categories, such as migrant workers, domestic workers and workers in non-standard forms of employment.***

192. Article 1 of Convention No. 156 further ensures its broad application through its reference to the possibilities of workers with family responsibilities of "preparing for, entering, participating in or advancing in economic activity". The Convention therefore covers not only people who are currently in employment, but also persons with family responsibilities who are seeking to enter or re-enter the workforce or undergo training for employment. This is essential to ensure that the measures implementing the instruments address the implications and consequences of family responsibilities for the labour force participation of workers throughout their lifetime, based on a more balanced sharing of family responsibilities by addressing gender roles within the household from an early stage. In this regard, the Convention and Recommendation set out a range of requirements and guidance on measures relating to access to work and training, progression at work, return from leave and protection from dismissal (see Part II).

463 ILO, *Promoting Employment and Decent Work in a Changing Landscape*, Report III (Part B), International Labour Conference, 109th Session, 2020 (hereinafter "2020 General Survey"), para. 274.

464 ILO, *Digital Labour Platforms and the Future of Work: Towards Decent Work in the Online World*, 2018.

465 Regarding work arrangements to reconcile work and family responsibilities, see Part II.

4. Making equality for workers with family responsibilities a priority in national policy

Convention No. 156, Article 3
Recommendation No. 165, Paragraphs 6, 7, 8 and 9

4.1. General features of national policy measures

193. The wording of Article 3(1), which starts with the phrase "[w]ith a view to creating effective equality of opportunity and treatment for men and women workers (...)", emphasizes that the measures adopted in support of workers with family responsibilities are intended to contribute to the broader goal of achieving equal opportunities and equal treatment for men and women workers in general. Article 3(1) of the Convention requires Members to "make it an aim" of national policy to enable persons with family responsibilities to exercise their right to engage in employment: (i) "without being subject to discrimination"; and (ii) "to the extent possible, without conflict between their employment and family responsibilities". The national policy accordingly has to encompass the measures and requirements set out in Articles 4 to 8 of the Convention, that is not only by addressing discrimination against workers with family responsibilities, but also by adopting measures to promote the principle of equality of opportunity and treatment for such workers. Paragraph 9 of Recommendation No. 165 adds that national policy measures compatible with national conditions should be adopted concerning: (a) vocational training and free choice of employment; (b) terms and conditions of employment and social security; and (c) childcare, family and other community services, public or private. Moreover, all such measures should be sufficiently broad in scope to cover all sectors of economic activity and all categories of workers, including salaried and non-salaried workers, such as the self-employed.[466] ***The Committee considers that such broad measures in support of workers with family responsibilities are an essential pillar of any policy to create effective equality of opportunity and treatment for men and women workers***.

194. The Committee recognizes that the approach adopted by Members in their national policies depends on national social, gender and cultural norms and levels of economic development, which shape the employment opportunities of women and men. For example, where family care dynamics rely on women as the main care providers, it is important that measures for workers with family responsibilities focus on maternity leave and benefits, job security for mothers and the establishment of allowance schemes or insurance to offset their loss of income or earnings. Where measures seek to encourage men and women to work outside the home, they could focus on securing better conditions for combining training and paid employment with family responsibilities, with priority being given to the promotion of more generalized and accessible childcare services. As gender roles and the nature of family, labour markets and societal values continue to evolve, family support policies will be crucial in achieving gender equality in the world of work. ***The Committee therefore recalls the importance, when designing and adopting national policy measures in support of workers with family responsibilities, of taking closely into account the prevailing gender roles and national conditions. Measures implementing the Convention should aim to promote a fair distribution of family responsibilities so that both men and women can equally access and engage in employment to the extent they wish to do so.***

195. The national policy measures adopted to give effect to Convention No. 156, in accordance with the guidance contained in Recommendation No. 165, should therefore be seen as part of the overall goal of Convention No. 111 to promote and realize equality of opportunity and treatment in all spheres of employment and occupation. In this regard, the adoption of an

466 1993 General Survey, para. 56.

integrated approach linking the prohibition and effective treatment of both direct and indirect discrimination with gender-sensitive measures for workers with family responsibilities, such as a better distribution of leave, is key to deconstructing stereotypes of women's and men's roles in the household and society.

196. In light of the above, the measures adopted to give effect to the instruments on workers with family responsibilities are often embedded in broader legislative and policy frameworks that address gender equality and equality in employment and occupation, in particular where countries have already adopted a national equality policy, as required by Convention No. 111.[467] The information provided on the implementation of the instruments therefore often refers to more general strategies or action plans to promote equality and non-discrimination or gender equality, which include specific measures or action lines on the reconciliation of work with family responsibilities.[468] Measures supporting workers with family responsibilities can also be found in social protection policies.[469] More recently, specific measures addressing work–life balance have been adopted in some countries.[470]

197. The Committee notes in this regard the European Union Directive of 2019 on work–life balance for parents and carers,[471] which introduces, among other measures, minimum standards for parental leave, including paternity leave, carer's leave, the right to flexible working arrangements for parents and carers, and safeguards against unfair dismissal. The Committee notes that the governments of many European Union Member States refer to the future transposition of the Directive into national equality legislation (*Belgium*, Flemish Region) or to the resulting substantive legislative amendments, such as the introduction in *Slovenia* of longer paternity leave, paternity leave benefits, parental leave for both parents, parental leave benefits, the possibility of reduction from full-time to part-time work, and other family and child support allowances and assistance.

198. ***The Committee recalls that, rather than calling for a national policy to be declared and pursued on workers with family responsibilities, Article 3 calls on Member States to make it an aim to support these workers within their national policies. The Committee considers that measures in national policies that promote the sharing of family responsibilities between men and women contribute to gender equality in employment and occupation. The Committee further considers maternity protection policies to be an important part of any national policy on equality of opportunity and treatment and, in this regard, draws attention to the provisions of Convention No. 183 and Recommendation No. 191, also examined in the present General Survey.***

199. The design and implementation of effective measures in support of workers with family responsibilities normally requires the involvement of more than one government agency or ministry. In *Algeria*, the Ministry of National Solidarity, Family and Women's Issues collaborates in this regard with several national councils, the Gender Focal Points Committee and a National Sectoral Committee.[472] In *Canada*, provincial and territorial governments have jurisdiction for the design and delivery of early learning and childcare systems (ELCC), and work in collaboration with the federal government to help children make the best start in life and encourage the equal sharing of parenting roles and family responsibilities. In *Paraguay*, in

467 1993 General Survey, para. 58.

468 CEACR, Convention No. 156: *Portugal*, direct request, 2021; *Paraguay*, direct request, 2018.

469 For example, *Armenia* (Law on State benefits, family benefits, social benefits and emergency assistance).

470 *Japan* (Childcare and Family Care Leave Law); *Republic of Korea* (Equal Opportunity and Work–Family Balance Assistance Act); *Peru* (National Family Support Plan 2016-2021); *Slovenia* (Parental Protection and Family Benefits Act, as amended in 2018).

471 The European Union Directive 2019/1158 on work–life balance for parents and carers repealed Council Directive 2010/18/EU on parental leave.

472 *Algeria* (*National Report on the Implementation the Beijing Platform for Action after 25 Years (Beijing +25)*, May 2019, 32).

response to the unequal sharing of care and family responsibilities between men and women, the Ministry of Women, sectoral institutions, international partners and organized civil society have agreed to place care on the public agenda in relation to the exercise of women's rights, including in the field of social protection. ***The Committee recalls the importance of viewing the implementation of the Convention from a broad perspective, which requires measures to be taken not only by the Ministry of Labour, but also in collaboration with other ministries, institutions and authorities, including those focusing on gender equality, with a view to the development of policies and programmes in the areas of family and social protection, including social security and social services and education and vocational training.***

4.2. Engaging in employment without discrimination

200. As noted in Chapter I, the prohibited grounds of discrimination of "family responsibilities", "family situation" and "marital status" are not explicitly referred to in Convention No. 111 or Recommendation No. 111, although they have been addressed in their implementation. Due to the absence of explicit reference in such instruments, during the preparatory work for Convention No. 156, it was proposed that "family situation" and "marital status" should be included alongside "family responsibilities" as prohibited grounds of discrimination. The proposed preliminary texts of the Preamble and Article 7 of the Convention, as well as Paragraph 15 of the Recommendation, accordingly referred to "marital status" and "family situation".[473] However, following a proposal by a number of Government members and the Employer members, the two terms were not included in the final text of the Convention, on the basis that they referred to concepts that had not been previously defined and ran contrary to the requirements of concision and accuracy.[474] It was therefore decided that the Convention would only refer to "family responsibilities" and the Recommendation would cover the variety of family situations that might exist in the different countries.[475]

201. The Committee observes that neither Convention No. 156 nor Recommendation No. 165 provide a clear definition of "family responsibilities" and that both are confined to indicating in relation to whom family responsibilities are covered by the instruments, namely: dependent children and other members of the immediate family of the worker who clearly need care or support. In addition, the preparatory work indicates that workers with family responsibilities include many subcategories, such as single-parent families and families with both parents, single persons with dependants, widows and widowers, separated or divorced parents, as well as the number and characteristics of the children and other dependent persons living at home,[476] thereby confirming the intention of the instrument to cover all workers with family responsibilities, irrespective of their marital status or family situation or composition.

202. The Committee notes that, since the adoption of Convention No. 156, an increasing number of ratifying and non-ratifying Member States have included "family situation", "marital status" and "family responsibilities" in the prohibited grounds of discrimination set out in national law or practice (see Chapter I). The Committee welcomes the inclusion in national law and practice of the prohibited grounds of discrimination set out in Convention No. 156 and Recommendation No. 165. Nevertheless, it also observes that the definition and use of these

473 Report V(1) on Convention No. 156, 74–80; ILO, *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, Report V(2), International Labour Conference, 67th Session, 1981 (hereinafter "Report V(2) on Convention No. 156"), 68 and 78.

474 The Worker members were opposed to the amendment, as they supported a text that would prevent discrimination that might be suffered by certain workers, especially those in unusual family circumstances and the heads of one-parent families. See ILO, *Record of Proceedings*, International Labour Conference, 67th Session, 1981, *Provisional Record* No. 28, para. 36.

475 Recommendation No. 165 refers to "marital status" and "family responsibilities" (Para. 7), as well as "family situation" with respect to refusal or termination of employment (Para. 16).

476 Report VI(2) on Convention No. 156.

different terms varies between countries, and that they are sometimes used interchangeably. To give full effect to Convention No. 156, it is essential to ensure that the prohibited grounds set out in law fully cover the concept of "family responsibilities" within the meaning of the Convention.

203. ***The Committee welcomes the fact that more and more governments have taken measures to recognize family responsibilities, marital status and family situation as explicitly prohibited grounds of discrimination. The Committee encourages governments that have not yet done so to take appropriate measures to ensure that all workers with family responsibilities – women as well as men – are not disadvantaged in relation to other workers and, in particular, that women with family responsibilities are not disadvantaged in comparison to men with family responsibilities.***

204. Convention No. 156 and Recommendation No. 165 both make reference to Article 5 of Convention No. 111, and the Recommendation further indicates in Paragraph 8(2) that special measures adopted "during a transitional period" to promote equality shall not be considered discrimination. As indicated in relation to the dual objectives of the Convention, the Committee notes that, in response to a situation in which women have tended to bear the major share of unpaid care work in the family, and in light of the need to reinforce maternity protection, the measures adopted to give effect to the instruments have sometimes been designed to facilitate the reconciliation by women of work and family responsibilities. However, when implemented over a long period of time, these measures may have the unintended consequence of perpetuating gender roles and stereotypes in the family and in society, particularly in relation to the role of women as carers. The Committee therefore notes that special measures should only be applied "during a transitional period", and that national policy measures should aim as soon as possible to address the needs of both men and women workers with family responsibilities.

4.3. Engaging in employment without conflict between work and family responsibilities

205. The Committee is pleased to note that measures are being adopted in a steadily increasing number of countries to assist workers to reconcile their work and family responsibilities. In some countries, the right of workers to reconcile work and family life has recently received formal legislative recognition.[477] In order to achieve this objective, governments have adopted targeted measures, such as: the expansion of parental leave entitlements to both men and women; the adoption of paternity leave; the development of flexible working arrangements; and the provision of childcare and long-term care services, in addition to social protection benefits.[478] However, the Committee also notes that measures to facilitate the reconciliation of work and family responsibilities do not exist in the legislation of some countries.[479]

206. The Committee further observes that it is essential to promote the redistribution of care responsibilities between families and the State, including through investment in quality care services, care policies and care-relevant infrastructure.[480] On this aspect, the Committee notes that, for instance, the General Confederation of Labour of the Argentine Republic (CGT–RA) *(Argentina)* indicates that, under the project "Care in Equality", a bill has been proposed by the Government to create an Integrated Care Policy System, which would recognize the right of all persons to receive and provide care, including support to care for themselves. The

477 For instance: *Bahrain* (only in relation to women) and *Spain*.

478 For more detail, see Part II.

479 For example, *Afghanistan, Algeria, Lebanon, Madagascar, Malawi, Oman, Sudan* and *Tunisia*.

480 ILO, *Care Work and Care Jobs for a Future of Decent Work*, 289.

system embodies a gender perspective and aims to guarantee the provision, socialization, recognition and redistribution of care work with the involvement of the public and private sectors, and community organizations, and includes all gender identities.[481] Similarly, workers organizations in the *Dominican Republic*[482] indicate that an Inter-institutional Table was created to establish a care policy with the collaboration of different government institutions, autonomous entities providing care, the Institute of Vocational Training, workers' organizations and civil society organizations.

5. Means of application

Convention No. 156, Articles 9 and 10
Recommendation No. 165, Paragraph 3

207. The Committee notes from the reports received that statutory provisions on specific measures benefiting workers with family responsibilities are mostly contained in: (i) labour/employment laws (section 167(a) of the Labour Code of the Government of *Bosnia and Herzegovina* on paternity leave; section 152 of the Labour Code of *Ecuador* on parental leave; section 20 of the Employment Act of *Bahamas* on family leave); (ii) specific laws (Law No. 27555 of 2020 on Teleworking in *Argentina*; the Maternity leave and Family Support Act of 2003 in *San Marino*; the 2016 Act on Flexible Work in the *Netherlands*); and (iii) collective agreements. For instance, in *Belgium*, collective agreements negotiated at the sectoral or company levels contain leave provisions for workers with family responsibilities. In *Belize*, the collective agreement signed between Belize Water Services Limited and the Belize Water Services Workers Union in 2010 provides for leave entitlements. In *Chile*, collective agreements contain clauses on the establishment of facilities for infant care, breastfeeding and care for young children. The Committee notes that in some countries, including *Spain* and *Switzerland*, employers are required by law to adopt policies in support of workers with family responsibilities. It should be recalled in this regard that Article 9 of the Convention provides for sufficient flexibility to take into account different national circumstances.

208. The Committee further recalls that by virtue of Article 10 of the Convention, ratifying countries may apply its provisions by stages. The Committee however emphasizes that the application by stages is not accepted in relation to the dependent children, as paragraph 1 of Article 10 explicitly indicates. During the standard-setting process, consensus emerged that measures to give effect to the Convention should be of immediate benefit to workers with family responsibilities in relation to their dependent children, while the benefits of such measures could be progressively extended in relation to responsibilities regarding members of their immediate family.[483]

209. In this regard, the Committee emphasizes that paragraph 1 of Article 10 is not an exclusionary clause but is intended to offer flexibility to governments in their efforts for the full application of Article 1(2) of the Convention. In its 1993 General Survey, the Committee noted

481 The organization also points out that such draft bill proposes to create a leave for workers to care or accompany their partner to undergo medically assisted reproduction.

482 The Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS).

483 ILO, *Record of Proceedings*, International Labour Conference, 67th Session, 1981, *Provisional Record* No. 28, paras 72–95.

that, among the Member States that have ratified the Convention, "only *Norway* and *Sweden* have specifically made use of the provision to apply the Convention in stages regarding coverage of these family members (coverage has subsequently been extended to cover many of these cases in both countries, which were among the first to ratify the Convention) … . Only a few, in particular *Portugal* and *San Marino,* refer at any length to measures taken with regard to other family members, such as the elderly."[484]

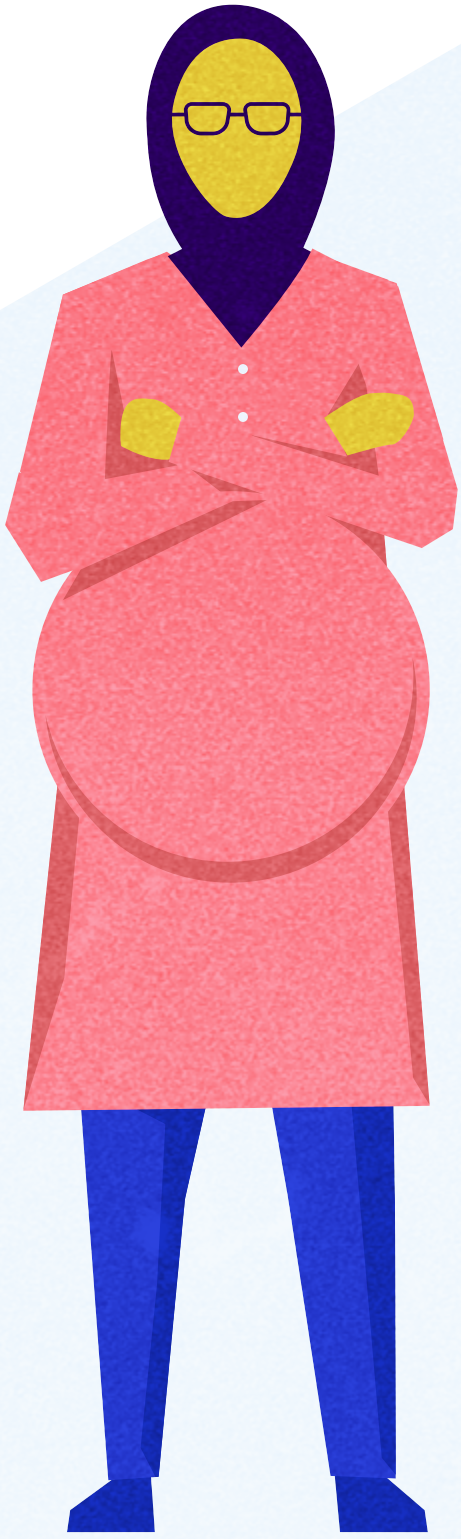
210. The Committee considers that although ratifying countries may apply the Convention by stages, it is important to ensure that such application is considered for a limited period of time. The Committee is pleased to note from the reports received, that the majority of governments did not provide information on any possibility of applying the Convention by stages. They only indicate that the measures adopted to give effect to the Convention apply to all workers in which cases the Committee considers that there is no intention to apply the Convention by stages.[485] ***In this connection, the Committee recalls that the measures adopted to give effect to the Convention and Recommendation form an intrinsic part of any overall policy to promote equality of opportunity and treatment between men and women, an objective to which almost all countries are committed, irrespective of their economic situation and stage of development***.

484 1993 General Survey, para. 45.

485 For example, *Algeria, Bahamas, Benin, Burkina Faso, Burundi, Cameroon, Columbia, Côte d'Ivoire, Cuba, Dominican Republic, Guinea, Honduras, Luxembourg, Mali, Mauritania, Nicaragua, Panama, Senegal, Togo* and *Tunisia.*



3 Convention No. 183 and Recommendation No. 191: Setting forth a comprehensive approach to maternity protection that enables gender equality



1. Objectives and purpose of the maternity protection standards

Convention No. 183, Preamble

211. Convention No. 183 and Recommendation No. 191 set forth a comprehensive approach to maternity protection that seeks to enable women to successfully combine family life and work. They do so by setting standards to ensure that pregnant women, mothers and newborns are sufficiently protected against the health risks that may arise in relation to work, that women do not suffer discrimination in the world of work due to their reproductive role, and that they benefit from equal treatment and opportunities in employment, including in access to employment and occupation, without prejudice to their health or economic and financial security.

212. Firmly anchored in human rights and fundamental principles and rights at work, these instruments respond to three main imperatives, which are set out in the Preamble to Convention No. 183: (i) to further promote equality of all women in the workforce; (ii) to provide protection for pregnancy; and (iii) to promote the health and safety of the mother and child.

1.1. Maternity protection: A fundamental need and a human right

213. Maternity protection, as provided for in Convention No. 183 and Recommendation No. 191, consists of a set of public measures aimed at securing the right to work of women of reproductive age without threat of discrimination,[486] including access to work in conditions of economic security and equality of opportunity, and fair and decent working conditions and social protection. These measures include health protection, pregnancy and maternal and child healthcare, maternity leave, income security, employment protection and non-discrimination in employment, and breastfeeding arrangements.

214. The positive impact and the transformative role of comprehensive maternity protection, as defined in Convention No. 183 and Recommendation No. 191, on societies, families and individuals, are well recognized. Maternal health protection, safe working environments and access to breastfeeding arrangements promote the overall health, nutrition and well-being of mother and child and contribute directly to the reduction of child and maternal mortality and morbidity.[487] The right to maternity leave, income replacement and security through social protection, as well as financial protection in accessing medical care, not only form an integral part of decent work, but also play an essential role in preventing and reducing poverty and vulnerability, while fostering economic growth. Employment protection measures and the prohibition of discrimination on grounds related to maternity are also fundamental to the achievement of gender equality and decent work.[488] Maternity protection, as embodied in ILO instruments, is therefore crucial for the achievement of the 2030 Agenda for Sustainable Development and several Sustainable Development Goals (SGDs), namely the elimination of

486 For the purposes of the present Survey, the age group of "women of reproductive age" is assumed to be 15–49 years: see World Health Organization (WHO), *Reproductive Health Indicators: Guidelines for their Generation, Interpretation and Analysis for Global Monitoring*, 2006.

487 WHO, *Global Strategy for Women's, Children's and Adolescents' Health (2016–2030)*, 2015; United Nations Children's Fund (UNICEF) and WHO, *Ending Preventable Newborn Deaths and Stillbirths by 2030: Moving Faster towards High-Quality Universal Health Coverage in 2020–2025*, 2020; Julie Babinard and Peter Roberts, *Maternal and Child Mortality Development Goals: What Can the Transport Sector Do?*, Transport papers No. TP-12. (World Bank, Washington, DC, 2006).

488 ILO, *Care at Work*, 85; OECD, *Advancing Gender Balance in the Workforce: A Collective Responsibility*, Gender Balance Network, Forum on Tax Administration, 2020, 23; ILO, *World Social Protection Report 2020-22: Social Protection at the Crossroads – In Pursuit of a Better Future*, 2021, 33.

poverty (SDG 1, and in particular target 1.3 on social protection systems), and hunger (SDG 2), the promotion of good health and well-being (SDG 3), gender equality (SDG 5, and in particular target 5.4 on gender equality and non-discrimination), decent work and economic growth (SDG 8), reduced inequalities (SDG 10), and the promotion of peace, justice and strong institutions (SDG 16).[489] These goals are also central to the ILO Decent Work Agenda, which promotes equal opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.[490]

215. In this respect, the Committee welcomes the inclusion in some countries of maternity protection as a component of broader national social policies or strategies. For example, the National Strategy for Labour and Employment Policy (2019–2023) in *Georgia* provides for measures to ensure a better level of safety and health protection for pregnant women and nursing mothers. In *Senegal,* the National Social Protection Strategy (2015–2035) aims to extend the coverage of maternity social insurance programmes and supporting social protection for all children, including through family benefits. The Outline of the 14th Five-Year Plan (2021–2025) for National Economic and Social Development and Vision 2035 in *China* provides for maternity leave and maternity allowances, implementation of the maternity leave policy, and a full range of services for maternal care.

216. ***The Committee observes that maternity protection is conducive to social and economic development and is of high significance for the implementation of the ILO Decent Work Agenda and the 2030 Agenda for Sustainable Development. It therefore encourages Member States to give due consideration to the objectives and provisions of Convention No. 183 and Recommendation No. 191 in the formulation of their national employment and social protection policies, as well as their development strategies, and in the action taken for the implementation of the Sustainable Development Goals.***

217. The right to special protection for maternity is deeply enshrined in the human rights framework. This right was first established as a labour right under the auspices of the ILO in 1919 with the adoption of the Maternity Protection Convention, 1919 (No. 3), the first international treaty to make provision for specific rights and measures in relation to women's employment in certain economic sectors "before and after childbirth, including the question of maternity benefit".[491] These rights included maternity leave, cash benefits, medical attendance free of charge and nursing breaks, as well as employment protection provisions.[492] The Medical Care Recommendation, 1944 (No. 69), further specifies that all members of the community, whether or not they are gainfully occupied, should be covered by the medical care services related to maternity.[493]

218. Maternity protection later gained recognition as a human right, i.e. a right inherent to all women, regardless of status or occupation, through its inclusion in the Universal Declaration of Human Rights, 1948 which provides in Article 25 that:

> Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old-age or other lack of livelihood in circumstances beyond his control.
>
> Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

489 ILO, *World Social Protection Report 2020-22*, 33.

490 See "The ILO's Decent Work Agenda".

491 Convention No. 3, Preamble.

492 Arts 3 and 4.

493 Recommendation No. 69, Paras 8 and 21.

219. The development of the concepts of social security and social protection at the international level and the broadening of the protection afforded in the event of maternity in national law and practice led to the revision of Convention No. 3 by the Maternity Protection Convention, No. 103, in 1952,[494] expanding the scope and levels of the protection for women in the event of maternity. The Social Security (Minimum Standards) Convention, No. 102, was adopted the same year, making specific provision, in Part VIII, for maternity medical care and cash benefits provided to employed or economically active women, and setting quantitative and qualitative benchmarks to be met by Member States in this regard. Part II of Convention No. 102 also establishes the minimum medical care services, including maternity care services, to be provided to the dependent wives and children of persons protected.

220. Reflecting these international developments, the International Covenant on Economic, Social and Cultural Rights, 1966, (ICESCR) further specifies the human right to maternity protection, both in general terms and in relation to work, in Article 10(2), which recognizes that:

> Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

221. The ICESCR also recognizes in Article 12 the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, which requires measures for "the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child".

222. Developments in relation to maternity protection were also framed by the growing momentum for gender equality and non-discrimination at the national and international levels. The adoption of landmark instruments establishing the fundamental rights to equal treatment and non-discrimination for all men and women, such as ILO Conventions Nos 111 of 1958 and 100 of 1951, provided an overall normative framework for the achievement of equality of opportunity and treatment in employment and occupation, to which standards on maternity protection are inextricably linked. Reaffirming the importance of gender equality in the workplace, Convention No. 156 and Recommendation No. 165, adopted in 1981, further specify the means through which these objectives are to be achieved for workers with family responsibilities.[495]

223. Maternity protection is also included in the range of rights protected by the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW), in particular from the perspective of equality between men and women in employment (Article 11) and the right to health (Articles 12 and 14(2)(b)). The CEDAW provides for specific measures to: prevent discrimination against women in employment on the basis of maternity; prohibit dismissal on the grounds of pregnancy or maternity leave; grant paid maternity leave; eliminate discrimination against women in healthcare; and ensure free access to services with regard to pregnancy and the postnatal period, including lactation.[496] Moreover, The Committee on the Elimination of Discrimination against Women's (CEDAW) General recommendation No. 26 on women migrant workers recalls that States parties have an obligation to protect women migrant workers, regardless of their immigration status, from discrimination on the basis of pregnancy and maternity.[497]

---

494 ILO, *Maternity and Paternity at Work: Law and Practice across the World*, 2014, ix.

495 In this regard, see Part I, Ch. I, and Part II, Ch. V.

496 United Nations and Inter-Parliamentary Union, *The Convention on the Elimination of All Forms of Discrimination against Women and Its Optional Protocol: Handbook for Parliamentarians*, 2003.

497 Committee on the Elimination of Discrimination against Women, General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 2008.

224. Against this background, references to these instruments are included in the Preamble of Convention No. 183 to highlight the relationship between the human rights framework and ILO standards, with a particular emphasis on fundamental principles and rights at work and ILO standards on equality of opportunity and treatment for men and women workers, and particularly Convention No. 156.

225. The Committee observes that the various facets of the right to maternity protection, as set out in international human rights instruments, are provided for and specified, often to a greater extent, in Convention No. 183 and Recommendation No. 191. Not only do these instruments spell out the rights of women pertaining to maternity, but they also go further by defining the specific means to be taken for their effective implementation.

226. The Committee thus considers that the human right of women workers to maternity protection is substantiated by the provisions of Convention No. 183 and Recommendation No. 191, making both instruments key references for the application of this right. The Committee further considers that Convention No. 183 and Recommendation No. 191 are instrumental for the achievement of human and labour rights pertaining to health, social security and equality and non-discrimination in the workplace and beyond, in view of the strong connection existing between these sets of rights.

227. ***The Committee observes that Convention No. 183 has strengthened linkages between the larger human rights framework and the ILO's body of standards promoting maternity protection and gender equality, which share the same objectives. It further observes that concrete measures are needed to bring national legislation into full compliance with Convention No. 183 and Recommendation No. 191 and to ensure that Member States fulfil their international human rights obligations. The Committee considers that these instruments are complementary and mutually reinforcing and encourages Member States to consider the adoption of measures for their simultaneous and coherent application.***

1.2. Maternity protection as a precondition for gender equality and non-discrimination at work

228. The Committee considers that maternity protection is a vital element in realizing equality between men and women at work. The Preamble to Convention No. 183 highlights the significance of maternity protection for gender equality by establishing as one of its main objectives the setting of new standards "to further promote equality of all women in the workforce".

229. The primary concern of ILO constituents when deciding upon the formulation of a new maternity protection Convention to revise Convention No. 103 was to establish maternity protection standards that would take into consideration the significant changes that had occurred since the adoption of Convention No. 103 in 1952, and to address the main challenges experienced by women in relation to maternity in the world of work.[498] At the international level, the growing commitment to eliminate discrimination in the world of work had translated into the adoption of landmark instruments[499] which expressly recognize the importance of maternity protection for gender equality, identify maternity as a ground for discrimination and specify special protective measures as a condition for non-discrimination and equal opportunities for women in employment and occupation.

498 ILO, *Record of Proceedings*, Report of the Committee on Maternity Protection, International Labour Conference, 87th Session, 1999, *Provisional Record* No. 20, paras 5 and 6.

499 As noted above, the most influential in this respect are referred to in the Preamble to Convention No. 183.

230. At the national level, the main developments and challenges driving the revision of the maternity protection standards related, primarily, to the increased participation of women in the workforce and the persistent inequities and discriminatory practices in the treatment of men and women at work, notably in the case of maternity.[500] It was noted during the preparatory work for Convention No. 183 and Recommendation No. 191 that, while progress had been made regarding the rights of women during their childbearing years, the fundamental problem of unequal treatment in employment due to women's reproductive role had yet to be resolved. In particular, women faced unequal hiring standards, unequal opportunities for training and retraining, unequal pay for work of equal value, and unequal promotion prospects. They also faced a greater likelihood of experiencing unemployment and poverty. The rising number of women working through their childbearing years made maternity protection all the more imperative.[501] These developments called for a strengthening of employment rights to avoid women being refused access to employment due to their reproductive role, or their dismissal due to pregnancy, and to ensure that maternity leave did not result in discriminatory termination of employment, as a fundamental element of maternity protection. It was also recalled during the preparatory work that women who remained employed throughout their pregnancy were far less likely to suffer negative outcomes of pregnancy in view of their greater command of economic resources and their greater access to healthcare.[502]

231. Taking into account the ILO instruments and other international human rights instruments aimed at ensuring equality of opportunity and treatment for men and women workers, Convention No. 183 and Recommendation No. 191 establish employment protection and non-discrimination standards which directly address the obstacles frequently faced by women in this respect and seek to ensure that their rights are safeguarded.[503] Employment protection, as set out in Article 8 of the Convention includes in the first place the **protection of women against dismissal during periods of maternity**, which covers pregnancy, the period of leave and a period after returning to work. Pursuant to this objective, it prohibits dismissal on grounds related to pregnancy, birth of a child and its consequences, or nursing, and places the burden on the employer of proving that the reasons for dismissal are unrelated to maternity. Guaranteeing employment protection also entails **securing the right of a woman employee, after maternity leave, to return to the same or an equivalent position** to the one she held prior to her leave, and to be paid at the same rate. **Protection against discrimination in employment on the basis of maternity** is another key aspect addressed in Convention No. 183, which calls for appropriate measures to be taken to ensure that maternity does not constitute a source of discrimination for women at work, and in accessing employment (Article 9).

232. The strengthening and extension of other aspects of maternity protection in Convention No. 183 and Recommendation No. 191, namely health protection at the workplace, maternity leave, entitlement to medical and cash benefits and breastfeeding arrangements, also contribute to the effective achievement of gender equality at work by allowing women to combine their productive and reproductive roles without prejudice to their health or income security, thereby promoting their economic empowerment.[504] Similarly, the principle of solidarity contained in Article 6(8) of Convention No. 183 pursuant to which maternity medical care and cash benefits are primarily to be financed collectively, through risk pooling mechanisms such

500 ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)*, Report V(1), International Labour Conference, 87th Session, 1999 (hereinafter "Law and practice report on Convention No. 183"), 5–14.

501 Law and practice report on Convention No. 183, 49–60.

502 Law and practice report on Convention No. 183, 11.

503 For a more detailed examination of these standards, see Ch. V.

504 See also Ch. VI and ILO, *Maternity and Paternity at Work*, 2–3.

as social insurance and State revenue, rather than by the employer directly,[505] is essential to prevent discrimination against women of childbearing age and pregnant women and to promote gender equality in employment and occupation.[506]

233. The Committee notes that in many countries maternity protection issues are covered by national legislation and/or integrated in policies on gender equality and non-discrimination.[507] For example, the National Policy on Effective Equality between Women and Men (PIEG) for 2018–2030 in *Costa Rica* includes as an expected result an increased number of women with quality jobs in all sectors of the economy by reducing gender gaps due to maternity and breastfeeding. The Act on Equal Opportunities for Women of 2000 of *Honduras* provides that the State and the social partners shall promote effective protection of women during pregnancy and the postnatal period, undertake measures to eliminate discrimination in employment and prohibit the performance of work which can affect their health (section 51). In *Senegal*, the National Gender Equity and Equality Strategy (2016–2026) draws attention to the measures which should be taken to provide maternity medical care benefits with a view to reducing the maternal mortality rate. In *Suriname*, the Gender Vision Policy Document (2021–2035) aims to improve coverage and access to quality health services for women and to promote women's access to formal work, including paid maternity leave.

234. ***The Committee considers that maternity protection is an essential component of a comprehensive strategy to promote equal opportunities and treatment in employment and occupation for men and women. By safeguarding women's employment, health and income security during pregnancy and after childbirth, maternity protection is fundamental to the achievement of social inclusion and gender equality, and to addressing inequalities and discrimination in the world of work and beyond. The Committee therefore considers that the effective implementation of Convention No. 183 and Recommendation No. 191 constitute a significant step towards the achievement of gender equality in employment and occupation, as set out in Convention No. 111, and encourages Member States to consider the measures taken for their implementation as part of, and in coordination with, other measures tailored to that broader objective.***

1.3. Ensuring the health, safety and income security of women and children

235. Convention No. 183 is the first maternity protection Convention to clearly spell out the right of pregnant women and breastfeeding mothers to health protection against the hazards or risks associated with particular working conditions, work environments or exposure to substances.[508] Despite the tremendous efforts made to raise women's overall health security and improve survival rates for infants, and the resulting increase in female life expectancy and sharp drop in infant mortality rates in the decades that preceded the revision of the maternity protection standards, maternal and infant mortality rates remained unacceptably high.[509] This called for enhanced standards to secure health protection, extend leave and benefit entitlements, and better protect and promote breastfeeding.

505 See also Part II, Ch. VI.

506 ILO, *Maternity and Paternity at Work*, 20–33.

507 See, for example, *Belgium*, *Cyprus*, *Hungary*, *Lithuania*, *Nicaragua*, *Peru* and *Republic of Korea.*

508 Certain aspects of health protection during pregnancy and after childbirth in some sectors or in work with dangerous substances are also regulated by the ILO OSH instruments, including the Safety and Health in Agriculture Convention (No. 184) and Recommendation (No. 192), 2001, the Benzene Convention (No. 136) and Recommendation (No. 144), 1971, the Safety and Health in Mines Recommendation, 1995 (No. 183), the Chemicals Recommendation, 1990 (No. 177), the Maximum Weight Recommendation, 1967 (No. 128), and the Radiation Protection Recommendation, 1960 (No. 114).

509 Law and practice report on Convention No. 183, 10–11.

236. Law and practice had also evolved in many countries since the adoption of Convention No. 103, with changes in approaches influencing the development of international law. In the field of OSH, the most striking trend had been the move away from generalized employment prohibitions for women towards targeted protection for groups at special risk, including women before and after childbirth, adapted to their needs and specific circumstances.[510] The impact of the working environment on reproductive health and the dangers for women, men and babies associated with exposure to hazardous substances, agents or processes had also become better known, enabling a more focused approach to reduce or eliminate risks and provide safer work alternatives. Accordingly, a number of international instruments were being reviewed to account for these developments.[511]

237. Convention No. 183 and Recommendation No. 191 thus seek to ensure the protection of pregnant women and nursing mothers and their babies from workplace dangers that specifically affect them, in full respect of the principle of equality of treatment between men and women. Pursuant to this objective, they establish the right of pregnant and breastfeeding women **not to perform work that could be damaging to their health or that of their child**, based on a risk assessment, and taking into account individual needs and circumstances, and for alternative arrangements in the presence of risk.[512]

238. With the same objective, Convention No. 183 and Recommendation No. 191 further expand the scope of other protections included in previous instruments, which are also fundamental to the health of mothers and their babies. Notably, Convention No. 183 maintains the right to comprehensive **maternity medical care benefits** covering a wide range of circumstances and introduces additional flexibility in the exercise of a woman's right to **breastfeeding breaks**, to better respond to individual needs. In view of the positive health outcomes associated with periods of rest and childcaring made possible through **income security** during maternity leave and the importance of such entitlements for the establishment and maintenance of breastfeeding, Convention No. 183 and Recommendation No. 191 extend the duration of maternity leave and make additional provision for leave in case of complications, illness, and medical examinations. Similarly, the duration of **cash benefit** entitlements is also extended, based on the recognition that women's income from work is essential for families and households and that it needs to be maintained or supported during periods of incapacity for work due to maternity.[513]

239. The Committee considers this objective to be more relevant than ever. According to a recent study, **only one in ten potential mothers are covered by statutory protection against dangerous or unhealthy work globally.**[514] The same study also shows that, despite the crucial health benefits of antenatal care, there is no right to paid time off for prenatal medical examinations in 132 countries.[515] Broad disparities and inequities in the availability, accessibility and quality of pre- and postnatal maternity care persist, translating into high maternal mortality rates in many parts of the world, particularly in rural areas.[516]

510 Law and practice report on Convention No. 183, 78–79.

511 Pursuant to the International Labour Conference resolution on equal opportunities and equal treatment for men and women in employment, adopted in 1985, which called for protective instruments to be reviewed periodically to determine whether their provisions were still adequate and appropriate in light of experience acquired since their adoption and of scientific and technical information and social progress (para. 16(a)). In this regard, for example, in 1990, the Night Work (Women) Convention (Revised), 1948 (No. 89) was supplemented by a Protocol and revised by the Night Work Convention, (No. 171). See Part II, Chs V and VI.

512 Convention No. 183, Art. 3, and Recommendation No. 191, Para. 6. See also Part II, Ch. VI.

513 Law and practice report on Convention No. 183, 9. See also Part II, Ch. VI.

514 ILO, *Care at Work*, 183.

515 ILO, *Care at Work*, 180.

516 WHO and World Bank, *Tracking Universal Health Coverage: 2017 Global Monitoring Report*, 2017.

240. One of the important measures to ensure health protection for women and children is to provide affordable maternity medical care. In this respect, the Committee observes that constitutional provisions in certain countries specifically establish the right to maternity and child medical care.[517] For example, article 38 of the Constitution of *Nepal* establishes the right of every woman to safe motherhood and reproductive health. Under article 49(5) of the Constitution of *Sudan*, free healthcare is provided for motherhood, childhood and pregnant women.

241. Further, the Committee welcomes the adoption of national strategies and policies in some countries which particularly address maternity healthcare. For example, the National Health Strategy (2022–2030) in *Georgia* includes measures to improve access to and the quality of maternal and neonatal, as well as reproductive health services. Similarly, in *Congo*, the Integrated Strategic Plan for the Health of Maternal Reproduction, Neonatal, Infantile, Adolescents and Nutrition for 2022–2026 aims to reduce maternal and neonatal mortality by extending the coverage, accessibility and quality of medical care services. The aims of the National Policy of Protection, Promotion and Support to Maternal Lactancy in *El Salvador* include ensuring suitable conditions for breastfeeding for women workers.

242. ***The Committee considers that the comprehensive approach to maternity protection adopted in ILO standards is of the utmost importance for the health and safety of mothers and their children. Maternity care, leave, health and income protection measures, as well as adequate breastfeeding arrangements, as set out in Convention No. 183 and Recommendation No. 191, are essential to mitigate the impact of work on the health of mothers and newborns and to promote their well-being. When accompanied by employment protection and non-discrimination provisions, quality healthcare, childcare and education services, and measures to promote a more equitable sharing of care responsibilities between women and men, they contribute to maintaining the participation of women workers in the labour market and their level of earnings when returning to work, and accordingly to empowering women in every sphere of their lives. The Committee therefore encourages Member States to consider implementing maternity protection measures in conjunction with broader health, labour and social protection policies.***

1.4. Maternity protection: A joint responsibility of governments and society

243. The Preamble to Convention No. 183 acknowledges "the shared responsibility of government and society" for the circumstances of women workers and the need to provide protection for pregnancy.[518] Accordingly, the Convention establishes, in the first place, the government's primary and overall responsibility for the adoption and implementation of the policy and legislative framework necessary for the application of the standards contained therein. In addition, it makes specific provision for the involvement of employers and workers in the determination and implementation of some of the required measures. Their participation is sought, in particular, in defining the scope of personal coverage of maternity protection provisions, conducting risk assessments and adapting work modalities to ensure the health and safety of the mother and her child, paying contributions and taxes to finance benefits, determining the period of maternity leave and the amount or level of cash benefits, and implementing breastfeeding arrangements.[519]

517 For example, *Afghanistan, Angola, Malaysia, Nepal, Niger* and *Sudan*.

518 ILO, *Record of Proceedings*, Report of the Committee on Maternity Protection, International Labour Conference, 88th Session, 2000, *Provisional Record* No. 20, paras 74–78.

519 Convention No. 183, Arts 2(2)(3), 3, 4(4), 6(8), 11, and Recommendation No. 191, Para. 2. See also Part I, Ch. IV.

244. The collective responsibility approach to maternity protection embodied in the ILO maternity protection standards also finds expression in the principle of solidarity in the financing of medical care and cash benefits endorsed by Convention No. 183 and Recommendation No. 191. The International Organisation of Employers (IOE), for example, has pointed out the importance of maintaining a balance of responsibilities between governments and employers, and that employers should not carry undue financial and compliance costs related to the implementation of the Convention. The IOE also recalled that during the discussions of the provisions of the Convention, the Employers' group expressed concern that small enterprises and developing countries would not be able to cope with the costs of implementation of the Convention.

245. As opposed to the employers' liability approach, under which employers have the statutory obligation to bear the full direct cost of wage replacement during maternity-related leave, financing mechanisms based on risk pooling and collective financing, such as those called for in Article 6(8) of Convention No. 183, envisage the sharing of the cost of benefits among members of society and their payment out of the State budget (in the case of taxed-financed benefits), or between workers and employers (in the case of contributory social insurance benefits), with contributions paid by and/or in respect of all men and women workers, as indicated in Paragraph 4 of Recommendation No. 191.[520] In this respect, Article 6(8) allows employers to be liable for the direct cost of maternity benefits in only two cases: where such is provided for in national law or practice in a Member State prior to the date of adoption of the Convention; or it is subsequently agreed at the national level by the Government and the representative organizations of employers and workers. The effective implementation of maternity protection provisions requires broad acceptance and take up by all stakeholders, particularly employers and workers' representatives, whose involvement in the policymaking and legislative process is vital from the early stages. Similarly, the Committee emphasizes the importance of appropriate support and financing from the State for the implementation of maternity protection measures. Public investment in quality healthcare, family benefits and childcare services is also crucial for the attainment of the objectives of the instruments. In this regard, the Committee recalls that Convention No. 156 and Recommendation No. 165 call on Member States to consider the needs of workers with family responsibilities in community planning and in the development and promotion of community services, public or private, such as childcare and family services and facilities. Moreover, the efficiency of maternity protection policies is also contingent upon their coordination with other social and economic policies that share the same or related objectives.

246. The Committee is pleased to note that in every country for which information has been provided, provision is made in the legal framework for the protection of maternity or motherhood. In many countries, maternity protection is established at the constitutional level.[521] For example, article 47 of the Constitution of *Bulgaria* provides that mothers shall be the object of special protection by the State and shall be guaranteed prenatal and postnatal leave, free

520 Recommendation No. 191 indicates in Para. 4 that: "Any contribution due under compulsory social insurance providing maternity benefits and any tax based upon payrolls which is raised for the purpose of providing such benefits, whether paid by both the employer and the employees or by the employer, should be paid in respect of the total number of men and women employed, without distinction of sex." See also, ILO, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development*: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202), Report III (Part B), International Labour Conference, 108th Session, 2019 (hereinafter "2019 General Survey"), paras 615–630. See also, Part II, Ch. VI.

521 For example, *Albania, Argentina, Armenia, Azerbaijan, Belarus, Plurinational State of Bolivia, Brazil, Bulgaria, Burkina Faso, Cambodia, Cabo Verde, Colombia, Costa Rica, Croatia, Cuba, Ecuador, El Salvador, Ethiopia, Gabon, Ghana, Georgia, Germany, Greece, Guatemala, Guyana, Haiti, Honduras, Hungary, Islamic Republic of Iran, Italy, Iraq, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Lithuania, Madagascar, Malaysia, Mexico, Mongolia, Montenegro, Mozambique, Namibia, Nepal, Nicaragua, North Macedonia, Qatar, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, San Marino, Serbia, Seychelles, Slovenia, Somalia, Suriname, Switzerland, Syrian Arab Republic, Thailand, Timor-Leste, Türkiye, Ukraine, United Arab Emirates, Uruguay, Uzbekistan, Bolivarian Republic of Venezuela, Viet Nam, Yemen* and *Zimbabwe*.

obstetric care, alleviated working conditions and other social assistance. Under article 332 of the Constitution of *Ecuador,* the State shall guarantee the reproductive rights of all workers, including the elimination of work-related risks affecting their reproductive health, access to employment and job security without limitation due to pregnancy or number of children, maternity, and breastfeeding. By virtue of article 35(5) and (8) of the Constitution of *Ethiopia*, women have the right to maternity leave with full pay and to equality in employment. Articles 35 and 37(e) of the Constitution of *Pakistan* establish the policy principle that the State shall protect the mother and child and make provision for maternity benefits for women in employment. Article 76 of the Constitution of the *Bolivarian Republic of Venezuela* provides that the State shall guarantee overall assistance and protection for motherhood throughout pregnancy, delivery and the puerperal period. In the *Seychelles*, article 30 of the Constitution recognizes the unique status and natural maternal functions of women in society and requires appropriate measures to be taken to ensure that a working mother is afforded special protection with regard to paid leave and working conditions during such reasonable period as provided by law before and after childbirth.

247. Nearly all governments report the existence of national laws and regulations covering various aspects of maternity protection, including health protection, maternity leave, maternity cash benefits, maternity medical care benefits and non-discrimination.[522] In some countries, the laws and regulations on maternity and parental protection specifically deal with work arrangements for pregnant and breastfeeding mothers, maternity and parental leave, and the provision of maternity cash benefits.[523] In other countries, maternity-related issues are regulated by a specific chapter of the labour code.[524]

248. ***Recalling that maternity protection is a shared responsibility between the government and society, the Committee calls upon Member States to prioritize the design and implementation of inclusive legislative and policy measures for the protection of maternity. Those concerned should have a voice in the decision-making process and participate in the implementation of maternity protection measures, as set out in Convention No. 183 and Recommendation No. 191. Their participation and consultation, through relevant and representative organizations, should be an integral part of any maternity protection policy and legislative process.***

249. ***With a view to enabling the effective implementation of maternity protection measures, the Committee calls on Member States to ensure sufficient funding, and their coordination with other social and economic policies, as part of comprehensive work-family policy frameworks, in line with the relevant ILO standards.***[525]

522 See also Part II, Chs V and VI.

523 For example, *Austria, Cuba, Germany, Sweden, Suriname* and *Trinidad and Tobago*.

524 For example, *Belgium, Chile, Colombia, Côte d'Ivoire* and *Dominican Republic*.

525 In particular, Conventions Nos 111, 156, 183 and Recommendations Nos 111, 165, 191, 202 and 204.

2. Scope of protection

Convention No. 183, Articles 1 and 2

250. Maternity is defined broadly in ILO instruments[526] and includes pregnancy, childbirth, the post-natal period and breastfeeding. Stemming from the need to protect the biological function of maternity from the risks associated with work, and to mitigate the impact of maternity on women's working lives, such protection is primarily granted, under both Convention No. 183 and Recommendation No. 191, to women in relation to work, although some aspects, notably the right to medical care benefits, extend beyond work-related matters.

2.1. Definition of woman and child

251. The scope of the personal coverage of the ILO maternity protection standards has been progressively expanded to reflect the evolving status and recognition of women's rights in the world of work over the years.[527] By its very nature, maternity protection, as envisaged in ILO standards, is primarily granted to women, in light of their reproductive function and, by extension, to their expected and newborn children.[528]

252. From the outset, ILO maternity protection standards have adopted a broad and non-discriminatory approach to the definition of *woman* and *child*, to ensure that all the women covered by those standards benefit equally from the protection afforded in relation to all of their children, irrespective of personal characteristics or circumstances. Seeking to address the main concerns and exclusions prevailing at the time of their adoption, and following the development of the principle of equality of treatment in international law, the definition of *woman* has evolved with the revision of the maternity protection Conventions. Initially defined in Convention No. 3 as "any female person, irrespective of age or nationality, whether married or unmarried",[529] a woman in Convention No. 103 is understood as "any female person, irrespective of age, nationality, race or creed, whether married or unmarried".[530] The definition of *child* in Convention No. 3 first included "any child whether legitimate or illegitimate",[531] which was later updated in more modern terms in Convention No. 103 as "any child whether born of marriage or not".[532]

253. Convention No. 183 adopts a more inclusive and broader approach, aligned with that of the equality of treatment and non-discrimination instruments, particularly Convention No. 111. A *woman* is accordingly defined as "any female person without discrimination whatsoever", and a *child* as "any child without discrimination whatsoever".[533] This means that all women should benefit equally from the protection set out in Convention No. 183, in respect of all children, with no exclusion or distinction based on any ground, such as race, colour, religion, sexual orientation, political opinion, national extraction, social origin, disability or HIV status,

526 See, in particular, the Social Security (Minimum Standards) Convention, 1952 (No. 102), Part VIII, Convention No. 111 and Recommendation No. 202.

527 ILO, *Maternity and Paternity at Work*, 34.

528 It should also be noted that Recommendation No. 191, in Para. 10, envisages the transfer of certain entitlements to the father in the case of the inability of the mother to assume her maternal role, as well as to adoptive parents. See also Part II, Chs VI and VII.

529 Convention No. 3, Art. 2.

530 Convention No. 103, Art. 2.

531 Convention No. 3, Art. 2.

532 Convention No. 103, Art. 2.

533 Convention No. 183, Art. 1. According to the preparatory work, the term "discrimination" in this provision has the same meaning as in the Discrimination (Occupation and Employment) Convention, 1958 (No. 111). ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(2A), International Labour Conference, 88th Session, 2000 (hereinafter "Report IV(2A) on Convention No. 183"), 37.

as individual or intersecting characteristics. This includes the equal treatment of single or divorced women, women in same-sex relationships and women in non-traditional families.

254. The Committee is pleased to note that the majority of governments report the absence of any distinction in national legislation regarding the terms "child" and "woman" in relation to entitlement to maternity protection provisions in general. For example, in *Australia* (Western Australia), the term "woman" defines a member of the female sex irrespective of age.[534] The Constitution of *Guatemala* specifies that no differences shall be established between married and single women workers with respect to their labour rights, including maternity rights.[535] The Government of *Pakistan* indicates that the labour legislation defines a woman as a "woman worker" and the term "child" includes a stillborn child. In *Brazil*, all children have the same rights and entitlements irrespective of whether they were born within or outside wedlock, or have been adopted.[536]

255. ***The Committee considers that the adoption of inclusive and non-discriminatory legislative provisions is key to ensure that all women benefit equally from the protection set out in Convention No. 183, in respect of all children, and constitutes an important step towards achieving gender equality. At the same time, the Committee underlines the importance of preventing their application in practice from giving rise to a particular impact or disadvantage on specific groups, including women in same-sex partnerships and adoptive mothers.***

2.2. Coverage of all women in employment and dependent work

256. The ILO maternity protection standards are primarily concerned with the world of work and seek to address the risks to which women workers are particularly exposed during periods of maternity. Consequently, the personal scope of coverage of these instruments since 1919 has focused on women in dependent employment, and has been revised, from one instrument to the next, to better address the changes occurring in women's employment patterns and the main coverage gaps.

257. Convention No. 3 initially sought to protect all women engaged in industrial and commercial undertakings,[537] a scope that was later extended in Convention No. 103 to women employed in "non-industrial and agricultural occupations, including women wage earners working at home".[538] Nearly fifty years later, the increased participation of women in the labour market, the emergence of various forms of dependent work and occupations falling outside the traditional employment relationship with very little or no statutory protection, and the prevalence of women in such jobs, prompted ILO constituents to expand the scope of personal coverage of Convention No. 183. Accordingly, Article 2 of the Convention specifies that its provisions apply to **"all employed women, including those in atypical forms of dependent work"**. This formulation was used to ensure that women working in situations of disguised employment categorized as self-employed, even if they meet all the criteria, de facto, to be considered dependent employees, benefit from the protection set out in the Convention. In this regard, as indicated in the preparatory work and emphasized by the Committee on a number of occasions, the terms chosen refer to women workers with a contract of employment, whether express or implied, irrespective of their sector of employment or

534 *Australia* (Western Australia) (section 4 of the Equal Opportunity Act 1984).

535 *Guatemala* (art. 102(k) of the Constitution).

536 *Brazil* (art. 227(6) of the Federal Constitution).

537 Convention No. 3, Art. 1.

538 Convention No. 103, Art. 1.

occupation.[539] The formulation of the scope of coverage in Article 2 of the Convention was also intended to remedy the important gaps in effective protection observed, resulting from the fact that many employed women work in situations in which employment laws are not applicable or offer less protection, notably in export processing zones, or where such laws are frequently circumvented or flouted, for being in occupations where employment relationships are not recognized. At the time the Convention was adopted, these deficits concerned in particular homeworkers, contract workers, casual and temporary workers and migrant workers.[540]

258. The prevalence of women in atypical forms of dependent work today shows the importance of this provision for the extension of maternity protection at the national level. The Committee observes from the information provided by governments that a large number of women workers are still engaged in atypical forms of dependent work in many countries. For example, in *Cambodia*, 37 per cent of the total number of women workers were in temporary employment in 2019, and 35.4 per cent were casual workers. In *Ecuador*, there were 117,663 women domestic workers in 2021, out of a total of 997,426 employed women. In *Guatemala*, 1,738,850 women were in informal employment in 2019, while only 817,852 women were in formal employment. The Committee further observes that women are engaged more often than men in atypical forms of dependent work. For example, in *Belgium*, 1,060,753 women were part-time workers in 2021, compared with 328,402 men. The General Union of Workers (UGT) indicates that in *Spain* in 2021, of the total number of part-time workers, 74.67 per cent were women. In *Chile*, in 2021, 185,069 women were domestic workers, compared with 6,412 men. In *France*, 72.9 per cent of workers in marginal part-time employment (less than 15 hours) are women. The Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK) (*Finland)* refer to the 2019 survey by Statistics Finland, according to which 19 per cent of women are temporary workers, compared with 13 per cent of men.

259. Convention No. 183 and Recommendation No. 191 are complemented by other ILO standards, which call for broader universal population coverage, extending beyond dependent employment and occupation. In particular, the Social Protection Floors Recommendation, 2012, (No. 202),[541] in Paragraph 5, calls for access to essential healthcare, including maternity care and basic income security, for all women of working age who are unable to earn sufficient income due to maternity. In the same spirit, Recommendation No. 204, in Paragraph 18, calls for the extension of maternity protection to all women workers in the informal economy.

260. With regard to the scope of national provisions governing maternity protection, the Committee notes from the information provided by governments that the national legislation on maternity protection in many countries covers all women in dependent employment. In *Israel,* maternity protection measures apply to all categories of women, including those in atypical forms of dependent work, such as women without a written employment contract, women in disguised employment and in casual and temporary work. The Government of *Benin* specifies that all women workers and the wives of men workers are covered by maternity protection measures without any exclusion. The Government of *Japan* indicates that maternal healthcare is provided irrespective of workers' employment status, including to those in part-time employment or employed on a daily basis, workers with fixed-term contracts, and dispatched workers. In *Latvia*, public sector employees benefit from the same maternity protection as private sector employees.[542]

539 Report IV(2A) on Convention No. 183, 44–45. See also, CEACR, Convention No. 183: *Latvia*, observation, 2021; *Mauritius*, direct request, 2021.

540 ILO, *Record of Proceedings,* 2000, *Provisional Record* No. 20, para. 9.

541 2019 General Survey, particularly Ch. VII.

542 CEACR, Convention No. 183: *Latvia*, observation, 2021.

261. In some countries, the labour legislation specifically regulates the working conditions of certain categories of workers, including in respect of maternity protection. For example, in *El Salvador*, the Regulation on the creation and application of the special health and maternity scheme for workers in the domestic sector of 2010 provides for the possibility of voluntary coverage by maternity cash benefits for domestic workers. The Government of *Mauritius* specifies that the Workers' Rights (Atypical Work) Regulations of 2019 provide for maternity leave and benefits for women working in atypical forms of dependent work, including homeworkers and platform workers. Public sector employees in *Mauritius* are also covered by a special legal regime that provides maternity protection.[543] The Government of *Pakistan* indicates that federal legislation covers workers engaged in all types of organizations, including those in the informal economy. In the provinces of Punjab and Sindh, to ensure the progressive coverage of workers, a right to maternity leave and maternity benefit has been established for domestic workers, home-based workers and agricultural workers through sectoral laws.

262. The Committee observes, however, that some categories of workers or some sectors are excluded – partially or totally – from the scope of labour and/or social security legislation and are therefore not protected in case of maternity. These exclusions apply predominantly to workers in atypical forms of employment such as domestic workers; casual and temporary workers; homeworkers; agricultural workers; some categories of part-time workers, especially those in marginal part-time employment, as well as workers in digital platforms, on call workers and zero-hours contracts.[544] For example, in *Costa Rica*, casual employees, including those with irregular working hours, who work intermittently or who are employed only for short-term work, are not entitled to maternity leave.[545] Similarly, in the *Seychelles*, casual workers are not entitled to paid maternity leave.[546] In *South Africa*, the members of the State Security Agency, independent contractors, unpaid volunteers working for charitable organizations and employees who work fewer than 24 hours a month for an employer are excluded from the legislative provisions governing maternity protection. In *Canada,* casual workers and workers with less than a certain threshold of insurable working hours are equally excluded. In the *Plurinational State of Bolivia, Egypt* and *Thailand*, agricultural workers are not included in the scope of maternity benefits.[547] In *Tunisia*, seasonal agricultural workers are not entitled to access maternity benefits through social security schemes.[548] In *Argentina*, *Belgium*, and *Panama*, coverage of domestic workers depends on how many hours they work.[549] Women in atypical forms of dependent work may also be misclassified as self-employed or contractors, and as a result may not be sufficiently protected by the national labour and/or social security legislation.[550]

263. ***The Committee points out that, although the diversification of working arrangements may provide a certain flexibility and allow a better reconciliation of work and family life, it also poses challenges for many women workers regarding effective coverage and access to maternity protection and jeopardizes the attainment of equality. In this respect, while acknowledging the existence of diverse forms of work arrangements, the Committee recalls that any evolution of the employment relationship should not result in a reduction in the***

543 CEACR, Convention No. 183: *Mauritius*, direct request, 2021.

544 ILO, *Care at Work*, 75; ILO, *World Social Protection Report 2020–22*, 49.

545 *Costa Rica* (Sections 38 and 42 of Health Insurance Regulations of the Costa Rican Social Security Fund (Caja Costarricense de Seguro Social)).

546 *Seychelles* (section 16(1) of Employment (Conditions of Employment) Regulations of 1991).

547 *Plurinational State of Bolivia* (art. 1, Law No. 19.161/2013); *Egypt* (sections 1, 4, and 9 of the Labour Law); *Thailand* (section 22 of Labour Protection Act).

548 ILO, *Extending Social Security to Workers in the Informal Economy: Lessons from International Experience*, Second (revised) edition, 2021, 84.

549 ILO, *Extending Social Security to Workers in the Informal Economy,* 78.

550 ILO, *Extending Social Security to Workers in the Informal Economy*, 88.

scope of application of labour laws or a reduction in labour protection, including maternity protection.[551] ***The Committee therefore firmly encourages governments to take the necessary measures to ensure that all women workers, and in particular those in atypical forms of dependent work, are effectively and sufficiently covered by maternity protection provisions, including through the adjustment of national legal frameworks.***

264. The provision of maternity protection to self-employed women still proves challenging in many countries. According to a recent ILO study, only 13.8 per cent of self-employed women live in countries where the law provides for mandatory maternity protection.[552] The challenges associated with the coverage of the self-employed by maternity protection schemes relate to their contributory capacities, as well as the administrative burden of declaring income, collecting contributions and claiming benefits.[553] However, measures have been taken in some countries to extend maternity protection to the self-employed. For example, in many European countries, self-employed women have access to maternity health protection on the same basis as employees. They are also covered by general social security systems, based on contributory insurance, whether mandatory or voluntary, and on registration as self-employed.[554] Similarly, in *Brazil*, self-employed women have the right to receive maternity cash benefits through the general social security system, based on an average amount of their last year of contributions.[555] Social security schemes which specifically cover the self-employed have been established in certain countries. For example, in *Algeria*, the National Social Security Fund for Non-Wage Earners provides maternity cash and medical benefits for different categories of self-employed workers, including business owners, artisans, farmers and members of the liberal professions.[556] The Serbian Association of Employers (SAE) *(Serbia)* indicates that the Social and Economic Council adopted conclusions in 2022 calling for the provision of cash benefits to self-employed women during maternity leave.

265. ***The Committee is pleased to observe that the scope of coverage of the legislation is defined broadly in many countries, so that all women workers in dependent employment without exception, including those in atypical forms of dependent work, are eligible for maternity protection. In some countries, this is ensured through general provisions that apply equally to all women, while in others provision is made for a variety of schemes and measures covering different categories of workers.***

266. ***However, the Committee observes that the legal provisions defining the scope of the persons to whom maternity protection applies vary broadly from one country to another. In many countries, statutory provisions concerning maternity protection are contained in various laws relating to specific aspects of maternity protection (such as OSH, healthcare, maternity leave, cash benefits, employment protection and non-discrimination), of which the scope of personal coverage differs. This may lead to the uneven application of maternity protection and result in protection gaps whereby only some women would be entitled to certain types of protection. With a view to closing such gaps and ensuring equal treatment in access to maternity protection, the Committee encourages Member States to take the necessary measures to ensure coherence and clarity in defining the scope of coverage across the various maternity protection schemes and statutory provisions, and to define this scope in a broad and inclusive manner so as to cover all employed women, including those in atypical forms of dependent work, in accordance with Convention No. 183.***

551 2020 General Survey, para. 343.

552 ILO, *Care at Work*, 79.

553 ILO, *Extending Social Security to Workers in the Informal Economy*, 2021, 88.

554 For example, *Austria, France, Portugal, Poland* and *Sweden*.

555 *Brazil* (Act No. 9.876/1999, amending Acts Nos 8.212 and 8.213 of 1991). There are similar provisions in *Argentina, Chile, Peru* and *Uruguay*.

556 ILO, *Extending Social Security to Workers in the Informal Economy*, 2021, 93.

267. ***Furthermore, the Committee observes that significant problems still persist in several countries with respect to the coverage of women in atypical forms of dependent work, particularly in relation to women employed in agriculture, homeworkers, domestic workers, and women working on a casual, temporary or part-time basis. Noting that these women are often among the most vulnerable and most in need of protection, the Committee firmly encourages Member States that have not yet done so to envisage taking measures as soon as possible to ensure the coverage and effective access to protection set out in Convention No. 183 and Recommendation No. 191.***

268. ***Irrespective of the approach adopted, the Committee emphasizes the importance of inclusive provisions that meet the needs and circumstances of a diverse workforce, and which are designed to mitigate and overcome disadvantages and inequalities, in line with ILO standards. In this connection, the Committee also underlines the need to ensure that women workers, across all sectors of economic activity, are covered by equal protection and working conditions, in line with Convention No. 111. The Committee further welcomes the rights-based approach to maternity protection reported by certain governments, under which entitlements and protections are recognized as rights of women workers.***

2.3. Limited possibility to exclude certain categories of women workers from the scope of application of Convention No. 183

269. While requiring, in principle, the coverage of all women in employment, Convention No. 183 provides a certain flexibility with a view to accommodating the wide range of national provisions, practices and cultural differences.[557] Article 2(2) allows the exclusion of limited categories of workers, wholly or partly, from the scope of the Convention. However, this flexibility is limited and can only be exercised under two conditions: first, the exclusion of certain categories of workers is permitted if their coverage would raise special problems of a substantial nature; second, prior consultation is required with the representative organizations of workers and employers concerned. In principle, this means that the government can only make its decision after having sought the views of such organizations. While it is essential for consultations to be carried out in good faith, the government makes the final decision. It should further be specified that the representative organizations of employers and workers concerned that have to be consulted are those that represent the categories of workers or enterprises that are under consideration for exclusion.[558]

270. Article 2(3) further requires a Member State that avails itself of such possibilities to indicate, in its first report on the application of the Convention under article 22 of the Constitution, the categories of workers excluded and to specify the reasons for their exclusion. Subsequently, the Member has to report on the measures taken with a view to progressively extending the provisions of the Convention to the excluded categories of employed women.

557 ILO, *Maternity Protection at Work, Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(2), International Labour Conference, 87th Session, 1999 (hereinafter "Report V(2) on Convention No. 183"), 242.

558 Report IV(2A) on Convention No. 183, 45.

271. Only two of the Member States that have ratified the Convention have availed themselves of this possibility: *Switzerland* has excluded certain categories of workers (such as homeworkers) and certain types of enterprises, including in agriculture and public transport[559] and *Czechia* has excluded women performing work outside employment.[560]

272. ***While acknowledging that Convention No. 183 provides for the limited possibility for ratifying Member States to temporarily exclude certain categories of women workers from the protection it confers, the Committee recalls that its objective is to ensure that maternity protection is provided to as many employed women as possible, and that any exclusions should be made with this in mind.***[561] ***Attention should therefore be paid to ensuring that sectors of activity or work arrangements occupied predominantly by women are duly covered by maternity protection provisions.***

273. ***In light of the above, the Committee invites the Member States concerned to take measures to progressively extend maternity protection to women workers excluded from coverage, in line with ILO standards, as soon as possible, giving priority to sectors of activity or work arrangements in which women are more present. The Committee further emphasizes the importance of effective and meaningful consultations with the representatives of the workers concerned when determining any exclusions, and when lifting them, to ensure that the measures adopted ensure effective protection, with due consideration to the circumstances and specificities of the women concerned.***

2.4. Current challenges in ensuring effective coverage

274. As observed in the section above, despite the importance of maternity protection for the health and well-being of women and their babies, many women are largely or entirely excluded, in law or practice, from coverage by the respective provisions, especially those employed in non-standard and precarious forms of employment and in the informal economy, as well as own-account and self-employed workers.[562] In certain countries, these represent the majority of working women, as women are over-represented in these types of occupations or work arrangements.[563] Difficulties in extending maternity protection to these categories of women workers involve multiple factors in many countries, including irregular and low incomes, job insecurity, high levels of informality and low levels of organization.[564]

275. Moreover, according to a recent ILO study, only 44.9 per cent of self-employed women who give birth in countries where the law provides for mandatory maternity leave actually receive maternity cash benefits.[565] In the absence of income replacement benefits and leave entitlements, women are often compelled to continue working during the last stages of pregnancy, delivery and post-delivery, endangering their health and that of their children.[566] The health risk is compounded by the fact that women in the informal economy are more exposed to dangerous or hazardous work, because of "discrimination, unsafe and insecure working conditions, lack of employment protection, often low and volatile incomes, limited

559 Particularly the categories of workers and enterprises indicated in section 3 of the Labour Act.

560 In its declaration to this effect, the Government specifies that the agreements on work performed outside employment are intended to cover short-term or ad-hoc employers' needs and do not ensure the normal operation of the enterprise.

561 Report IV(2A) on Convention No. 183, 45.

562 ILO, *World Social Protection Report 2020-22*, 114.

563 ILO, *Women at Work: Trends 2016*, 37.

564 ILO, *Maternity and Paternity at Work*, 36.

565 ILO, *Care at Work*, 79.

566 ILO, *World Social Protection Report 2020-22*, 109.

freedom of association, lack of representation in collective bargaining processes and lack of access to social insurance".[567]

276. Even when protected by law, women workers still face significant obstacles, which prevent many of them from effectively enjoying their rights. Although the scope of maternity protection is defined in broad terms in the legislation in most countries, many women who would otherwise be entitled, for example, to medical care, paid leave or cash benefits, are prevented from accessing benefits or entitlements because of eligibility conditions or requirements based, for example, on age, salary, minimum periods of contribution or employment or minimum numbers of hours worked, migration status or number of children. These narrow the application of maternity protection provisions and restrict effective access to maternity protection.[568]

277. Ensuring effective coverage and access to protection and benefits becomes even more difficult due to, inter alia, non-compliance, weak enforcement and procedural obstacles, discriminatory practices and insufficient contributory capacity, which disproportionately affect women in atypical forms of employment, and particularly those in the informal economy. There are also important differences between statutory coverage and actual access to maternal care due, among other reasons, to de facto exclusions based on lack of infrastructure and human resources, and deficiencies in delivery structures in rural areas.[569]

278. The Committee has paid particular attention to these issues in its examination of government reports on the application of Convention No. 183. In its comments concerning *Mali*, the Committee noted that atypical forms of dependent work in the country – which are not covered by labour laws or the social protection system – generally relate to informal work, such as craft skills (dyeing, sewing, soap-making) and family enterprises (trade, agriculture and market gardening). The Government also indicated that in practice the labour inspectorate rarely intervenes in the informal economy, and not at all in family enterprises, in view of the inadequacy of material and human resources.[570] In its comments concerning the *Dominican Republic,* the Committee noted that, according to the observations of the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS) *(Dominican Republic)*, "it is still necessary to consider atypical female workers" in relation to their coverage by maternity protection provisions.[571] Moreover, taking into account the vulnerability of certain categories of women workers, the Committee has requested governments to indicate the specific measures taken to ensure maternity protection for such workers, including in particular women from the Roma population, other minorities and those of foreign origin, as well as women in atypical forms of dependent work, such as occasional or temporary employment, disguised employment, women working at home and in the informal economy.[572]

279. ***In view of the important gaps in protection that persist in many countries worldwide, and the negative consequences of the lack of adequate protection for women, children and societies, the Committee firmly encourages Member States to take measures to provide maternity protection rights as soon as possible to all women workers, including those in atypical forms of dependent work and the informal economy, and the self-employed, in line with ILO standards and human rights instruments.***

567 ILO, *World Social Protection Report 2020-22*, 107.

568 See section 2.3.

569 Report IV(2A) on Convention No.183, para. 310.

570 CEACR, Convention No. 183: *Mali*, observation, 2021.

571 CEACR, Convention No. 183: *Dominican Republic*, direct request, 2020.

572 CEACR, Convention No. 183: *Benin*, direct request, 2014; *Hungary*, direct request, 2009; *Lithuania*, direct requests, 2009 and 2014; *Serbia,* observation, 2013.

280. ***The Committee recalls that the effective provision of maternity protection, as called for in Convention No. 183 and Recommendation No. 191, requires protection to be based on legal guarantees and entitlements that establish statutory rights, accompanied by appropriate means for their implementation and a legal framework that promotes equality of treatment and non-discrimination. The Committee calls on Member States to strengthen their efforts to close gaps in protection in all of these respects and to take the necessary measures to ensure the effective application of maternity protection rights and entitlements, notably by making the scope of protection universal and the eligibility criteria inclusive. In this regard, the Committee invites Member States to pay particular attention to the discriminatory effect that certain eligibility criteria may have on coverage, resulting in the de facto exclusion of certain sectors of economic activity or occupations predominantly occupied by women.***

2.5. Protection extended to fathers and adoptive parents

281. The primary purpose of Convention No. 183 and Recommendation No. 191 is clearly to protect employed women who become pregnant and give birth to a child. Accordingly, both instruments focus on protection for women during pregnancy and recovery from childbirth, that is on childbearing rather than child-rearing.[573] However, Paragraph 10 of Recommendation No. 191 envisages the possibility for the benefits and protective measures set out in the Convention to be granted, under certain circumstances, to fathers and adoptive parents. Paragraph 10(1) and (2) indicates that employed fathers should have the right to use the remainder of the mother's postnatal leave entitlement in case of death or if she cannot look after her child due, in particular, to sickness or hospitalization.[574]

282. Moreover, national legislation should make provision for the entitlement of either or both parent(s) to parental leave during a period following the expiry of maternity leave, the modalities of which are specified in greater detail in Recommendation No. 165, as part of an integrated approach to reconciling work and family responsibilities in a gender-balanced manner.[575] These provisions mark a significant development in the approach embodied in ILO maternity standards, by recognizing that fathers should be involved in the care of newborns and in family responsibilities more generally, thereby creating an enabling environment for the achievement of equality of treatment and opportunity for men and women.[576]

283. In Paragraph 10(5), Recommendation No. 191 further calls for the extension of the protection afforded by the Convention to adoptive parents, who should be entitled in particular to leave, benefits and employment protection.[577] These measures are essential to enable adoptive parents to adapt to the arrival of the child, and care for and develop an emotional bond with the child, which is of crucial importance for his or her well-being.

284. The Committee notes that many governments have reported the existence of legislative provisions at the national level envisaging the transfer of maternity benefits and entitlements to **fathers**, including in the event of the incapacity of the mother to assume her maternal role. For example, in *Latvia*, when the mother is incapable of caring for her child for up to 42 days following childbirth due to sickness, injury or other health-related reasons, the father or person who is effectively caring for the child is granted the maternity benefit for the period

573 Report IV(2A) on Convention No.183, 10.

574 See also Part II, Ch. VI.

575 Recommendation No. 191, Para. 10(3) and (4), and Recommendation No. 165, Para. 22, according to which the duration of the leave period, as well as payment and other aspects, such as the conditions of the leave and its distribution between the parents, should be determined at the national level. See also Part II, Ch. VII.

576 Report IV(2A) on Convention No. 183, 99–108; ILO, *Maternity and Paternity at Work*, 61. See also the 1993 General Survey.

577 See also Part II, Ch. VII.

when the mother is not able to care for her child. Similarly, in *Montenegro*, the father is entitled to leave from the date of childbirth if the mother of a child dies during delivery, is seriously ill or abandons the child. In *Bulgaria*, once a child reaches six months, the remaining portion of the maternity leave of 410 calendar days can be transferred to the father.

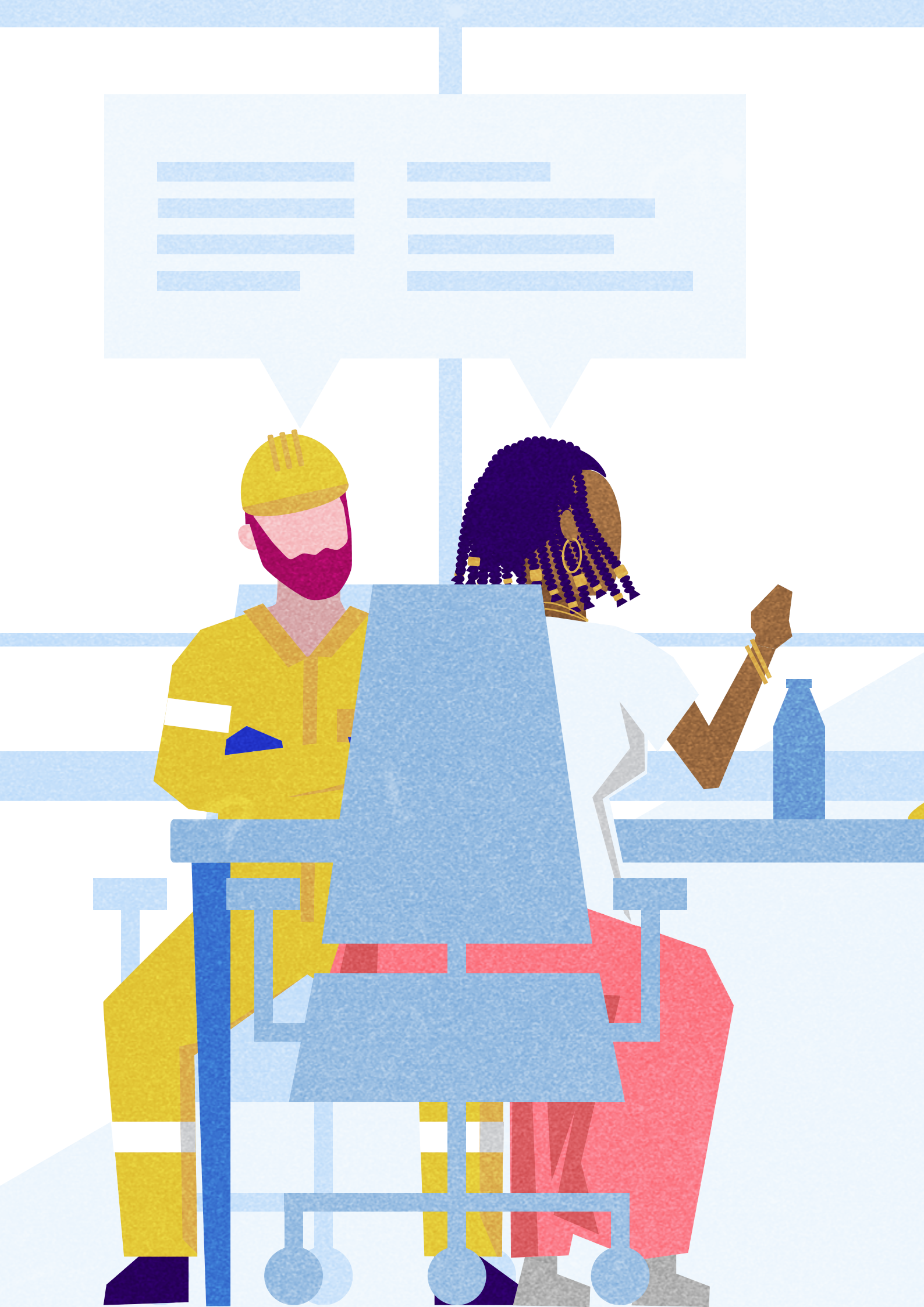
285. In certain countries, such rights are extended to the **primary carer** assuming responsibility for the care of the child. For example, in *Sweden,* when the mother is a single parent and is not able to exercise her maternal role, an insured relative or friend of the mother can be granted maternity benefits in her place. In *Cuba*, parental benefits can be paid not only to the mother or father of the child, but also to grandparents who care for the child.

286. In some countries, **adoptive parents** also have the right to leave and benefits. According to ILO data, only 52 out of the 182 countries with statutory maternity leave for which data is available apply the same maternity leave provisions to biological and adoptive parents.[578] For example, in *Italy*, in the event of adoption or guardianship, five months of maternity leave is granted to the adoptive parents, starting from the date of adoption. In *Lithuania*, adoptive parents are entitled to leave from the day of adoption until the baby reaches 70 days. In *North Macedonia*, a female employee who adopts a child is entitled to paid maternity leave until the child reaches nine months and, if she adopts more than one child, to maternity leave of 15 months. In *Sweden*, the term "parent" covers not only the biological parents, but also adoptive parents, as well as appointed legal guardians who care for a child.

287. ***The Committee emphasizes the importance of granting fathers, adoptive parents and primary carers some of the protection and entitlements set out in the ILO maternity protection standards, as appropriate, in the best interests of the children and families. The Committee also emphasizes the positive impact of parental leave on equality of treatment and opportunities for men and women workers and on the development of the child.***[579]

578 ILO, *Care at Work*, 81.

579 See also Part II, Ch. VII.



4 The formulation of national policies on gender equality and measuring progress in the achievement of policy objectives



1. The importance of an enabling environment for gender equality

Convention No. 111, Article 3(a) and (b)
Recommendation No. 111, Paragraphs 2(a) and 4(a)
Convention No. 156, Article 6
Recommendation No. 165, Paragraphs 10 and 11(b)

288. Conventions Nos 111 and 156, and their supplementary Recommendations, envisage the need to accompany their implementation with the fostering of public concern, understanding and acceptance of the principle of equality and non-discrimination. Hence, awareness-raising is part of the panoply of measures to implement such instruments.[580]

289. Educational measures, awareness-raising and public information are key to promoting substantive equality, and to ensuring that situations of inequality and discrimination are identified and addressed. The Committee recalls that low awareness may lead to a lack of knowledge about the existence and consequences of discrimination, as well as to lower reporting of cases, including where discrimination takes serious forms, such as sexual harassment.[581] Awareness-raising not only enhances understanding and knowledge of the Conventions and the national legislative and policy framework, but also helps to prevent, identify and respond to cases or situations involving discrimination, including by addressing the prejudices and stereotypes that permeate the world of work, promoting attitudinal change and ensuring that the actors concerned adhere to principles of equality.[582] It is an essential element of transformative approaches that seek not only to redress situations of inequality, but also to change gender, social and cultural dynamics underpinning discrimination. The Committee also notes that long-standing results in addressing occupational segregation can only be achieved by tackling the stereotypes and gender bias underlying this phenomenon. The Committee therefore welcomes the proliferation of awareness-raising and sensitization initiatives aimed at deconstructing views attributing specific skills, roles and occupations to girls, boys, men or women[583] which are key to promote the presence of more women in male-dominated sectors and jobs, as well as of more men in female-dominated sectors and jobs.

290. Similarly, raising the awareness of workers and employers about their rights and obligations relating to maternity protection is particularly important. Already noted during the preparatory work for Convention No. 183 and Recommendation of No. 191, insufficient awareness and information on legal entitlements and benefits constrains the effective realization of maternity rights, even where they are recognized in law. The dissemination of information on health and employment protection, and of maternity leave and benefits of pregnant and nursing women, can make a significant contribution to preventing OSH risks, addressing discrimination and ensuring the well-being and income security of mothers and their children. It is particularly relevant for women workers in rural and remote areas and women engaged in atypical forms of dependent work, including women in the informal economy, who are often members of vulnerable categories of workers and may not have effective access to the relevant information.

291. The Committee welcomes the wealth of information provided by governments and the social partners in this regard, which reveals a strong commitment to the realization of

580 2012 General Survey, para. 848; 1993 General Survey, para. 269.
581 2012 General Survey, para. 790.
582 2012 General Survey, para. 865; 1996 Special Survey, paras 60 and 287; 1988 General Survey, para. 231.
583 For examples in hiring men in early childcare facilities, see ILO, *Care Work and Care Jobs for the Future of Decent Work*, 322–323.

effective gender equality in employment and occupation. National action plans and policies addressing gender equality at work usually include awareness-raising measures,[584] and specialized equality bodies often have the mandate to carry out awareness-raising.[585] Most governments indicate that they are implementing public education activities on gender equality, including community events, discussions and workshops.[586] Campaigns addressing the broad public are also usually undertaken to raise awareness and attitudinal change, including on such matters as the unequal distribution of unpaid work between women and men, parental leave, occupational segregation, domestic violence and women in leadership.[587] Many governments also refer to the preparation and publication of resources and materials for the broad public, including databases, guides, templates and case studies.[588]

292. The Committee recalls that specific awareness-raising measures for workers and employers and their organizations are particularly effective in generating broader understanding of the principles enshrined in the Conventions.[589] In this regard, governments refer to the preparation of guidelines, tools and best practice guides, and the organization of training and workshops for workers' and employers' organizations.[590] Measures are also taken in some countries to mainstream gender in communication.[591]

293. Information has also been provided on the specific action taken by workers and employers to raise awareness on matters of gender equality.[592] For instance, the Indonesian Chamber of Commerce and Industry (APINDO) has compiled an independent assessment document for gender equality assessments in companies and has developed a small survey on the implementation of gender equality in the workplace, including a cost/benefit analysis. The Confederation of Labour of Russia (KTR) *(Russian Federation*) established a commission on gender equality to promote the inclusion of gender mainstreaming in their work and, among others, has carried out promotional activities on workers with family responsibilities and published the manual "How to overcome the wage gap between men and women". In *Sweden*, employers' and workers' organizations have collaborated in a joint educational initiative to strengthen action against sexual harassment. In *Latvia*, social partners collaborated in the "Balance for all – B4A" project to tackle gender stereotypes and encourage fathers to take paternal leave and parental leave through research, training on work–life balance and communication activities. The National Confederation of Workers of Senegal (CNTS) *(Senegal)* indicates that it promotes gender equality within the Confederation and in its affiliate organizations. In the *Dominican Republic*, the National Confederation of Dominican Workers (CNTD) has developed a care policy focusing on family co-responsibility. The Employers Confederation of Portugal (CIP) *(Portugal)* published the study "Challenges in reconciling work and family", which concludes that it is necessary to stop considering investment in work and family as two opposite alternatives, but rather as interconnected situations.

584 For example, *Djibouti*, *Lithuania*, *Mali, Mexico, Qatar, Turkmenistan* and *Viet Nam*.

585 For example, *Australia, Guyana, Lithuania*, *Panama*, *Sweden* and *United States of America*. See also 2012 General Survey, para. 865.

586 For example, *Austria, Azerbaijan, Burkina Faso, Croatia, Cyprus, Czechia, Luxembourg, Qatar, Mauritius, Turkmenistan, Trinidad and Tobago, Serbia* and *Sweden*.

587 For example, *Azerbaijan, Belgium* (Brussels Capital), *Cabo Verde, Cambodia, Czechia, Denmark, Georgia, Guyana, Honduras*, *Saint Kitts and Nevis, South Africa* and *Viet Nam*.

588 For example, *Australia, Belgium* (Flanders), *Estonia, Mexico, Panama*, *Turkmenistan* and *Uruguay*.

589 2012 General Survey, para. 867.

590 For example, *Austria, Azerbaijan, Belgium*, *Dominican Republic, Luxembourg, New Zealand*, *Panama*, *Uruguay* and *Viet Nam*.

591 For example, *Australia, Dominican Republic, Ecuador Lithuania*, *Niger*, *Paraguay*, *Peru, Portugal, Republic of Moldova* and *Turkmenistan*.

592 For example, *Algeria, Austria, Ghana, Indonesia, Latvia (*including the Free Trade Union Confederation of Latvia (FTUCL)*), Portugal, Serbia, Senegal* (the National Confederation of Workers of Senegal (CNTS)), *Sweden* (including the Swedish Trade Union Confederation (LO), Swedish Confederation for Professional Employees (TCO), Swedish Confederation of Professional Associations (SACO)) and *Turkmenistan*.

294. A number of governments refer to measures to promote gender education and the creation of a culture of gender equality in schools and among education personnel.[593] Abundant information has also been provided on the measures undertaken in schools to address gender stereotypes linked to traditionally male and female occupations.[594] The Committee observes that gender-transformative education which transforms stereotypes, attitudes, norms and practices, helps to promote a more gender equal world of work.[595] In this regard, the Committee notes that, according to the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), there is an urgent need to promote a collaborative teaching culture and leadership style that works against all forms of discrimination and exclusion, including those based on gender.[596]

295. ***Considering the importance of awareness-raising measures in building an enabling environment for gender equality at work and ensuring the effective acceptance and implementation of the policies adopted in accordance with Conventions Nos 111 and 156, the Committee encourages Members to continue adopting awareness-raising measures, and in particular action aimed at durably addressing underlying elements of discrimination, such as gender stereotypes and gender norms. Recalling the significant role of awareness-raising activities and information dissemination in facilitating access to maternity protection, the Committee further encourages Members to take the necessary measures to ensure that pregnant and nursing women are aware of their entitlements and rights, as established in Convention No. 183.***

2. Monitoring and reviewing national policies and legal frameworks

Convention No. 111, Article 3 (f)
Recommendation No. 111, Paragraph 9
Convention No. 156, Article 11
Recommendation No. 165, Paragraph 11(a)
Convention No. 183, Article 11

296. Continual monitoring, assessment and adjustment of the national policies necessary to implement Conventions Nos 111 and 156 allows for the informed review and modification of measures and strategies, as well as controlling their impact.[597] Monitoring and evaluation also contribute to the provision of childcare and other services in the community that are tailored and adapted to existing needs, as well as to supervising and improving their quality.[598] Convention No. 111 and Recommendation No. 111 refer to the need to provide information on the results secured by the national policy and to continuing cooperation to consider what further positive measures may be necessary. Recommendation No. 165 further refers to undertaking and promoting research with a view to obtaining objective information as a basis for sound policies and measures.

593 For example, *Argentina* (Buenos Aires), *Australia* (Canberra), *Cabo Verde, Cambodia, Cameroon, Cyprus, Estonia, Georgia, Maldives, New Zealand, Slovakia* and *Sweden*.

594 See Part II.

595 See also UNICEF, *Gender Transformative Education: Reimagining Education for a More Just and Inclusive World*, 2021.

596 ILO and United Nations Educational, Scientific and Cultural Organization (UNESCO), *Final Report: Fourteenth Session of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations Concerning Teaching Personnel* (Geneva, 4–8 October 2021), 2021, CEART/14/2021/10, Appendix II, para. 2(e)(vi).

597 2012 General Survey, para. 847; 1993 General Survey, para. 90.

598 1993 General Survey, paras 200 and 242.

297. In this regard, statistics and informational collection are crucial for policy monitoring and review and for determining the nature, extent and causes of discrimination.[599] The Committee also highlights the importance of comprehensive, up-to-date and accessible data to improve the effectiveness and efficiency of maternity protection provisions. Reliable and consistent statistics and indicators on maternity protection, including on coverage, benefit levels and financing, are crucial for the identification of gaps and the elaboration and adoption of well-informed policies and evidence-based lawmaking.[600] More specifically, the Committee has previously noted the need to collect data both on legal coverage (which shows the number of workers covered by the law) and effective coverage (indicating those who have effective access to benefits in practice).[601] The number of workers who are effectively covered is usually lower, due to non-compliance with or the low enforcement of legal provisions. In addition, particular attention should be paid to assessing the coverage of medical care services. In this respect, it is important to take into account such indicators as the legal coverage deficit, staff/workforce deficit, financial deficit, level of out-of-pocket payments and maternal mortality.[602] ***Recalling the critical significance of qualitative and comprehensive data collection and monitoring, the Committee encourages Member States to take the necessary measures to ensure that decision-making on equality and non-discrimination, including gender equality, on the reconciliation of work with family responsibilities, and on maternity protection provisions is based on reliable and timely statistics and indicators.***

298. The Committee welcomes the fact that a good number of governments have provided general statistics on labour market participation and employment, in most cases disaggregated by sex.[603] Some governments have provided further data on the number of men and women workers in part-time work,[604] temporary work,[605] casual work,[606] telework and home work,[607] contributory family work[608] and self-employment.[609] In some cases, comparable data has been provided for a range of years, which allows the identification of trends and changes over time.[610]

299. In some cases, the data provided is disaggregated by factors in addition to gender or sex, such as age, civil status, place of residence, migratory background, household composition, number of children or belonging to indigenous peoples.[611] This enables the identification and consideration of multiple and intersecting forms of discrimination. In relation to Convention No. 111, the Committee regularly requests information, disaggregated by sex, on the labour market situation of particular groups.[612]

300. In particular, statistics have been provided for a number of countries on training or on employment by sex and sector or occupation,[613] which is essential to evaluate trends of occupational gender segregation, identify possible protection gaps, and design tailored measures

599 2012 General Survey, paras 887–891.

600 2019 General Survey, paras 688–689.

601 2019 General Survey, para. 702.

602 2019 General Survey, para. 704.

603 For example, *Brazil, Colombia, Costa Rica, Cyprus, Estonia, Finland, Georgia, Greece, Guatemala, Honduras, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan* and *Lao People's Democratic Republic*.

604 For example, *Brazil, Canada, Estonia, Finland, Georgia, Indonesia, Ireland, Italy* and *Republic of Korea*.

605 For example, *Brazil, Costa Rica, Estonia, Georgia, Guatemala, Ireland* and *Kazakhstan*.

606 For example, *Brazil* and *Costa Rica*.

607 For example, *Estonia, Georgia, Guatemala, Ireland* and *Japan*.

608 For example, *Indonesia*.

609 For example, *Canada* and *Finland*.

610 For example, *Canada, Ecuador, Indonesia, New Zealand* and *Spain*.

611 For example, *Canada, Estonia, Germany, Guatemala, Indonesia, Mexico, New Zealand* and *United States of America*.

612 CEACR, Convention No. 111: Cyprus, direct request, 2019; Greece, observation, 2020; Slovakia, observation, 2019; Sweden, direct request, 2021.

613 For example, *Colombia, Guatemala, Indonesia, Ireland* and *Latvia*.

to address discrimination effectively. The Committee continues to encourage governments to provide information and analysis, including statistical data disaggregated by sex on participation in education, vocational training and the various sectors and occupations in the public and private sectors, and where possible, the informal economy.

301. The Committee also notes that a number of governments have provided detailed statistics on elements that are particularly relevant to Convention No. 156, including data on hours of unpaid care work disaggregated by sex,[614] as well as data on workers in flexible working-time arrangements,[615] workers entitled to or benefiting from maternity, paternity and parental leave and allowances,[616] and data on other types of leave, such as the number of workers benefiting from childcare leave, leave to attend to children's schooling, leave related to dependent members of the family, and reduced working hours to care for disabled children.[617] The Committee notes that this data is rarely disaggregated by the family situation of workers, for example indicating the number of lower-aged children in the household or single parenthood, which could be very helpful in fully evaluating the needs and preferences of workers with family responsibilities. In this regard, it observes that the Eurostat database provides statistical information on the labour status of the population disaggregated by care responsibilities, household composition, educational attainment level and use of childcare facilities.[618] The Committee also notes that data on family composition has been provided by some countries, for example indicating the average number of children, family dependants and composition of households,[619] including single-parent households in *Italy* and households with same-sex parents in *Finland*. *Canada* also has statistics on the number of men and women in collective dwellings.

302. ***The Committee welcomes the data provided by governments and recalls that the systematic collection of data is essential to effectively monitor and ensure the implementation of Conventions Nos 111 and 156 in practice. The Committee encourages governments to undertake or to continue their efforts to establish methods for the collection and analysis of relevant data disaggregated by sex and gender, as well as, where possible, other factors such as marital status, family situation and family responsibilities.***

303. The Committee has often requested information on evaluations of the impact and the results achieved by gender equality policies, plans of action and other measures[620] and, it has sometimes encouraged governments to undertake such evaluations.[621] The Committee welcomes the cases in which governments have confirmed that they had or were intending to carry out evaluations of policies and measures, and have provided the corresponding information, where available.[622] However, the lack of information on the monitoring and evaluation of policies has been brought to the attention of the Committee on certain occasions by

614 For example, *Canada, Estonia* and *Guatemala*. Regarding the recognition of unpaid care work as "work" for statistical purposes, see ILO, Resolution concerning statistics on work relationships, 20th International Conference of Labour Statisticians, 2018.

615 For example, *Australia*, *Ireland* and *Republic of Korea.*

616 For example, *Australia, Canada, Estonia, Finland, Ireland, Italy* and *United States of America.*

617 For example, *Greece* and *Ireland*.

618 See https://ec.europa.eu/eurostat/web/lfs/data/database.

619 For example, *Colombia*, *Estonia, Finland, Honduras, Italy* and *Mexico*.

620 CEACR, Convention No. 111: *Australia*, observation, 2019; *Comoros*, direct request, 2020; *Djibouti*, direct request, 2017; *Equatorial Guinea*, direct request, 2021; *Netherlands*, observation, 2020; *Peru*, direct request, 2021; *Seychelles*, direct request, 2021; *Suriname*, direct request, 2020; *Sweden*, direct request, 2021.

621 CEACR, Convention No. 111: *Malawi*, direct request, 2021; *Montenegro*, direct request, 2020; *Morocco*, observation, 2020 (for public service); *Viet Nam*, direct request, 2021.

622 CEACR, Convention No. 111: *Gambia*, direct request, 2020; *Luxembourg*, direct request, 2020; *Mali*, direct request, 2020; *Morocco*, observation, 2020 (for the private sector); *Norway*, direct request, 2020; *Poland,* observation, 2021; *Seychelles*, direct request, 2021; *Spain*, direct request and observation, 2021; *Switzerland*, direct request, 2021; *Togo*, direct request, 2021; *Trinidad and Tobago*, direct request, 2021; *Turkmenistan,* direct request, 2021.

the social partners.[623] In terms of the evaluation and monitoring of the policy and normative framework, the Committee notes that some laws provide for the evaluation of provisions in collective agreements and has requested information on their application in practice.[624] In *Czechia*, the "Information on Working Conditions" survey, which monitors working and wage conditions by analysing collective agreements, provides an overview of trends in collective bargaining and provides information to social partners for further bargaining at the company level or when negotiating a higher-level collective agreement. Governments also refer to evaluation exercises of legislation with a view to identifying the need for potential amendments.[625]

304. ***The Committee recalls that it is essential to follow up on the results and effectiveness of the plans and policies implemented, and that employers' and workers' organizations can play an important role in the formulation, promotion and evaluation of such plans and policies.***

305. Convention No. 183 calls for maternity protection provisions to be subject to periodic examinations. More specifically, Article 11 provides for the examination of the appropriateness of extending the length of maternity leave and of increasing the rate of maternity cash benefits. In this regard, the Committee notes the observations of the International Organisation of Employers (IOE) according to which, during the preparatory work, the Employers' group expressed concern regarding the provision on periodic reviews which would imply an expectation that maternity leave should be extended, and the rate of benefit increased, whereas these matters should be left to the discretion of governments and social partners. In this respect, the Committee further observes that, during the discussions on Article 11 of the Convention, it was also noted that such periodic reviews would encourage progressive or continuing improvements, particularly in countries with insufficiently developed economies and social security systems, but that the frequency of the periodic review process could very well be less for those countries providing high levels of protection.[626] Indeed, the Convention allows some degree of flexibility regarding the periodicity and form of such examinations, which may depend on national circumstances, and does not require the establishment of a specific review mechanism in the sense that existing statutory or administrative review machinery or tripartite social dialogue bodies may satisfy the requirements regarding periodical reviews.[627]

306. Although the Convention provides some flexibility for conducting periodic examinations, it requires Member States to ensure that the representative organizations of employers and workers are consulted during this process. In this regard, the Committee notes the indication by some governments that reviews of the national legislation on maternity protection are conducted periodically in consultation with the social partners.[628] For example, in *Suriname*, the Maternity Protection Act of 2019 is subject to review every three years. In *Lithuania*, the Act on Sickness and Maternity Social Insurance is regularly discussed at the meetings of the Tripartite Council. The Government of *Seychelles* indicates that the appropriateness of extending the period of maternity leave has been examined on several occasions, which has led to the extension of the duration of maternity leave. ***The Committee encourages Member States to conduct periodic examinations of the appropriateness of extending the period of maternity leave and increasing the amount or rate of maternity cash benefits in consultation with the representative organizations of employers and workers.***

623 CEACR, Convention No. 111: *Honduras*, direct request, 2021; *Peru*, observation, 2021; *United Kingdom of Great Britain and Northern Ireland*, direct request, 2021.

624 CEACR, Convention No. 111: *Portugal*, direct request, 2021.

625 CEACR, Convention No. 111: *Germany*, direct request, 2020; *Netherlands*, direct request, 2020.

626 ILO, *Record of Proceedings,* 1999, *Provisional Record* No. 20, para. 9; Report IV(2A) on Convention No. 183, 108.

627 ILO, *Record of Proceedings,* 1999, *Provisional Record* No. 20, para. 331.

628 For example, *Botswana, Cabo Verde, Cook Islands, Czechia, Dominican Republic, Iceland, Lithuania, Seychelles* and *Suriname*.

3. The fundamental role of social dialogue and tripartite participation

Convention No. 111, Article 3(a)
Recommendation No. 111, Paragraphs 2(e) and 9
Convention No. 156, Article 11
Recommendation No. 165, Paragraph 5
Convention No. 183, Articles 2(2), 3, 4(4), and 6(8)(b)
Recommendation No. 191, Paragraph 2

307. As recognized in the ILO Centenary Declaration for the Future of Work, tripartism and social dialogue are the basis for the effective realization of gender equality in opportunities and treatment.[629] Conventions Nos 111 and 156 give prominent importance to the role of workers' and employers' organizations in ensuring their full implementation. The close involvement of these organizations assists in ensuring that the measures adopted enjoy wide support and that policies are effectively implemented,[630] helps in devising further positive measures in response to needs and realities and contributes to building ownership of the objectives of the Conventions by all the actors concerned. The Committee recalls that "cooperation", as required by Convention No. 111, goes beyond "consultation" and includes work performed jointly.[631] Convention No. 156 further provides for the right of employers' and workers' organizations to participate in devising and applying measures designed to give effect to the provisions of the Convention. The Committee notes that, while emphasizing the key role of the social partners, the provisions of both Conventions allow for flexibility in the manner in which such collaboration and participation take place, which responds to the diverse nature of social dialogue and labour relations systems.[632]

308. Tripartite consultations and social dialogue are also essential tools for the implementation of the maternity protection standards. In comparison with the earlier Conventions Nos 3 and 103, the role of the social partners within the framework of social dialogue is significantly strengthened in Convention No. 183 and Recommendation No. 191.[633] In particular, Convention No. 183 calls for the participation of the representative organizations of employers and workers in the implementation of provisions covering such aspects as the scope of protection, health protection, paid maternity leave and the financing of maternity benefits. More specifically, the social partners have to be involved in cases in which Member States wish to have recourse to the flexibility provisions of the Convention. For example, tripartite consultations are required if Members envisage the exclusion of certain categories of workers from the scope of protection.[634] In other cases, the Convention sets out stricter requirements concerning agreement with the social partners for the use of flexibility provisions.[635]

629 ILO, Centenary Declaration, Part III(A)(i).

630 2012 General Survey, para. 858.

631 2012 General Survey, para. 655.

632 This provision contains no requirement for governments to obtain the agreement of employers' and workers' organizations to the measures designed, and the form and level of their participation may reasonably vary according to the nature of the measures concerned. See 1993 General Survey, para. 53.

633 Report IV(2A) on Convention No. 183, 3.

634 Convention No. 183, Art. 2(2).

635 For example, in accordance with Art. 4(4) of Convention No. 183, agreement at the national level by the government and the representative organizations of employers and workers is required if the period of compulsory postnatal leave is to be other than six weeks.

309. Most governments also indicate that workers' and employers' organizations participate in the formulation, evaluation and review of national equality policies and other national policy measures, mostly through tripartite commissions and similar bodies.[636] It is also often reported that social partners participate or are consulted in legislative amendments.[637] The Maldives Trade Union Congress (MTUC) *(Maldives*) and the Independent and Self-Governing Trade Union "Solidarnosc" (*Poland*) indicate they encounter challenges in participating to the formulation, evaluation and review of national equality policies. In some cases, special means of collaboration have been created regarding matters of equality and non-discrimination, such as the Dialogue group on combating discrimination in enterprises in *France*[638] and the Memorandum of Cooperation between the Government of *Slovakia* and the Confederation of Trade Unions of the Slovak Republic for the implementation of gender equality.[639] The Committee also recalls that national policies on equality often require the adoption of measures at the workplace or enterprise level, such as workplace policies and codes of conduct, to prohibit and address discrimination and promote gender equality.[640] In this regard, the International Organisation of Employers (IOE) highlights the huge efforts made by the private sector to apply the principle of equality, especially through collective agreements, the adoption of voluntary codes of conduct, wage mapping and action plans. It also indicates that "the lack of implementation of the anti-discrimination Conventions is primarily related to societal perceptions based on historical attitudes and stereotypes, and considers that policies should not place a burden on enterprises which might impair their sustainability and their ability to create jobs, and need to take into account the needs of sustainable enterprises".

310. Despite the central role of social dialogue, women continue to be under-represented in social dialogue institutions, particularly due to their uneven participation in the labour force and their greater presence in forms of work and work arrangements that fall outside the scope of labour legislation, social security and collective agreements.[641] The Committee notes that laws in some countries require workers' and employers' organizations to adopt measures guaranteeing gender equality within their organizations. In other countries, quotas are applied to ensure the inclusion of women in workers' and employers' organizations. For instance, the "Women Worker's Charter" of *Algeria* aims to promote social dialogue and women's autonomy through the reconciliation of family and work responsibilities and the application of quotas for union representation.

311. Measures have also been taken by workers' and employers' organizations to promote and increase the presence of women in decision-making positions. For instance, the General Confederation of Labour of the Argentine Republic (CGT–RA) *(Argentina)* indicates that it has modified its statutes to require the direction of each of its secretariats to be jointly exercised by a man and a woman. The Committee also notes that workers' organizations such as the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the Trade Union Congress (TUC) currently have women leaders. The Committee welcomes that some countries such as *Tajikistan* have provided statistical data on the number of women workers unionized.

636 For example, *Algeria, Argentina* (including CGT–RA), *Bulgaria, Colombia*, *Georgia, Iceland, Japan, Latvia* (the Free Trade Union Confederation of Latvia (FTUCL)), *Namibia Netherlands, Serbia*, *Turkmenistan* and *United States of America*.

637 For example, *Bulgaria*, *Colombia* and *Turkmenistan*.

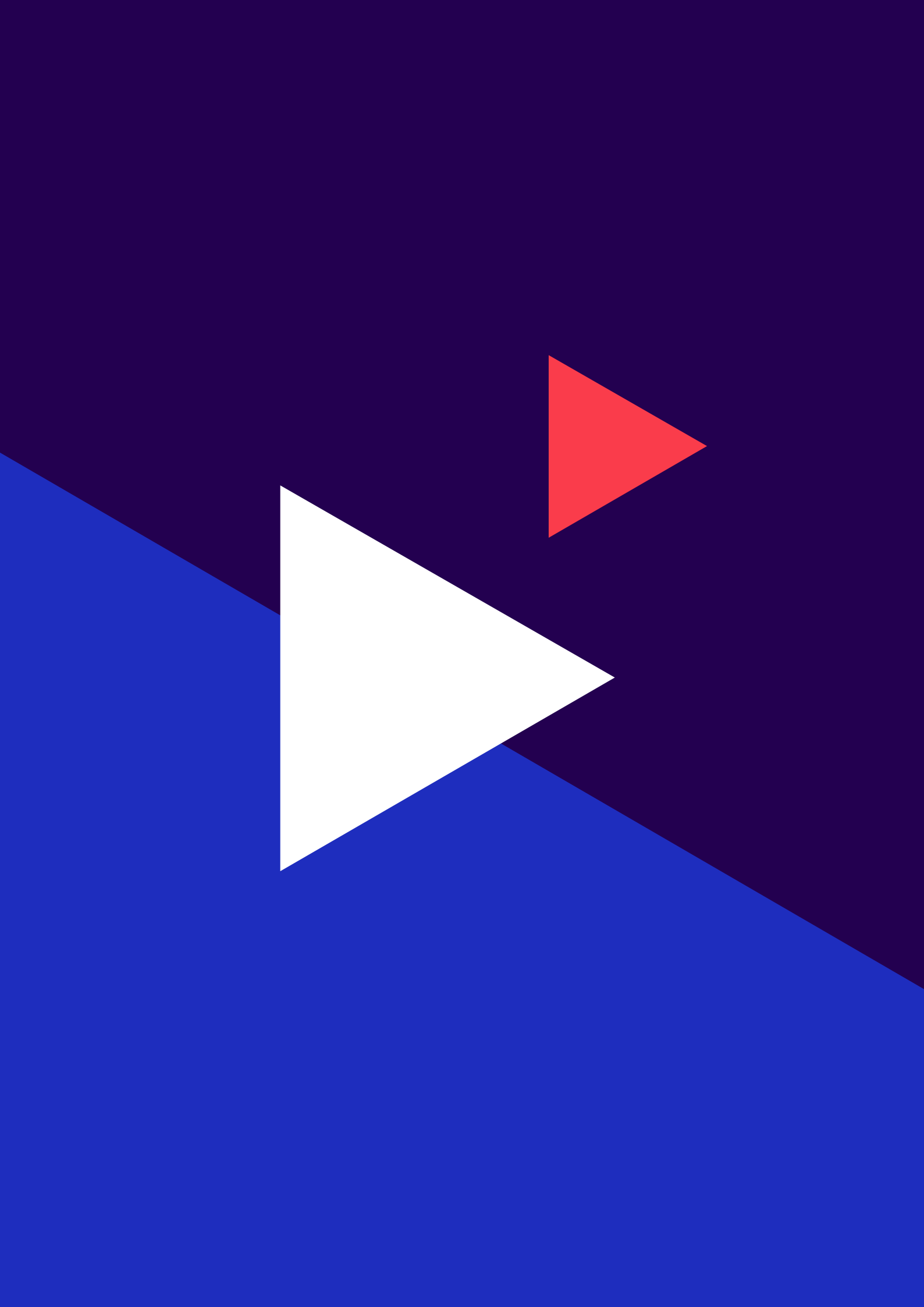
638 CEACR, Convention No. 111: *France*, observation, 2018.

639 CEACR, Convention No. 111: *Slovakia*, direct request, 2021.

640 For example, *Belgium, France, Portugal, Spain, Sweden* and *Switzerland*.

641 ILO, *The Contribution of Social Dialogue to Gender Equality*, 2021, 5. See also ILO, *Social Dialogue Report 2022*.

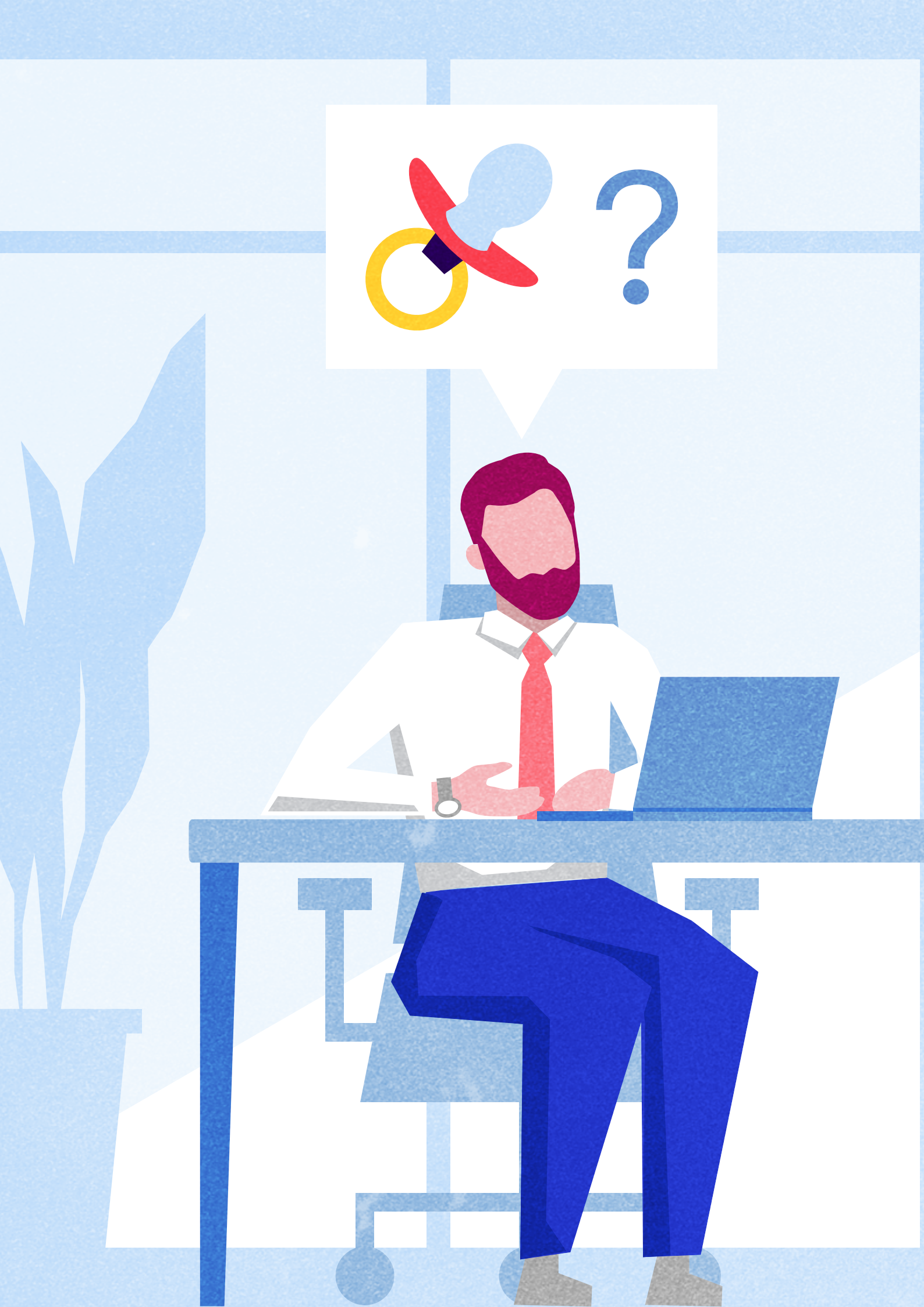
312. ***The Committee recalls that employers' and workers' organizations have a key role to play in the implementation of Conventions Nos 111 and 156, and that their effective application is often hindered by the absence of genuine social dialogue. In this regard, the Committee wishes to recall the importance of the social partners and interested groups reaching agreement on the design, monitoring, implementation and evaluation of the measures and plans adopted to give effect to the instruments with a view to ensuring their relevance, raising awareness of their existence, promoting their wider acceptance and ownership and enhancing their effectiveness. The Committee also encourages governments to take measures to promote the increased presence and representation of women in social dialogue institutions. Recalling the crucial role of the social partners in the implementation of the provisions on maternity protection, the Committee further encourages governments to promote broad, inclusive and effective social dialogue with a view to ensuring compliance with Convention No. 183 and Recommendation No. 191.***



Part II. Achieving gender equality at work through labour rights and policies

313. International labour standards do not merely seek the prohibition of discrimination in particular areas, but also the active promotion of conditions in which workers can enjoy full and genuine equality.[642] This includes measures to promote equal access to employment and occupation, to safeguard the employment of women workers during maternity, to enable workers to balance work and family responsibilities without undue difficulties, and to address the norms and stereotypes that underpin gender inequalities. This Part explores the different measures set by Conventions No. 111, 156 and 183, and their respective supplementing Recommendations in order to create the necessary conditions in employment and occupation to ensure: (i) that men and women enjoy equality of opportunity and treatment while they access, remain and progress in employment and occupation, (ii) that women enjoy effective maternity protection, and (iii) that workers with family responsibilities can engage and remain in employment without conflict between work and their family responsibilities. This part also examines the measures adopted to ensure an effective enforcement and implementation of the instruments examined.

642 1993 General Survey, para. 96.



5 Protecting against discrimination and ensuring equality at all stages of employment and occupation



Convention No. 111, Articles 1 and 2
Recommendation No. 111, Paragraph 2(d)
Convention No. 156, Article 3
Recommendation No. 165, Paragraphs 6, 7, 8 and 15
Convention No. 183, Article 9(1)
Recommendation No. 191, Paragraph 5

314. The standards examined in this General Survey are key to ensuring gender equality at all stages of employment and occupation.[643] The Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, provide the overall framework articulated through a national equality policy (Article 2 of Convention No. 111). The ILO maternity protection standards, in particular the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000, address discrimination based on maternity more specifically and call for measures to prevent it and for the protection of women's employment during pregnancy, maternity leave and a period following their return to work. The Workers with Family Responsibilities Convention, 1981 (No. 156), further develops this framework by providing for the right of workers with family responsibilities to engage in employment without being subject to discrimination (Article 3),[644] and the Workers with Family Responsibilities Recommendation, 1981 (No. 165), provides, in similar terms, for equality of treatment in relation to preparation for employment, access to employment, advancement within employment and employment security (Paragraph 15).

315. Chapter V explores how Conventions Nos 111, 183 and 156, and their accompanying Recommendations, are implemented to tackle gender inequality in accessing, advancing and remaining in employment and occupation.

643 Several ILO standards are relevant to address the issue of discrimination in employment. See introduction of this General Survey, para. 5.

644 ILO, *Workers with Family Responsibilities: General Survey of the Reports on the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981*, Report III (Part 4B), International Labour Conference, 80th Session, 1993 (hereinafter "1993 General Survey"), para. 96.

1. Accessing more and better jobs to achieve gender equality: The continuing challenge

Convention No. 111, Articles 1(3) and 3
Recommendation No. 111, Paragraphs 2(b)(i), 2(b)(ii), 3(a)(ii) and 3(b)
Convention No. 156, Articles 4(a) and 7
Recommendation No. 165, Paragraphs 12, 13, 14 and 16
Convention No. 183, Article 9(2)

316. Ensuring gender equality at all stages of employment and occupation starts by promoting equal access to all opportunities. This involves both removing restrictions or limitations on access to employment, and ensuring equal access to the services,[645] capacities and skills necessary for that purpose. However, this is an area where progress is still needed. Women, particularly those from socially excluded and disadvantaged groups vulnerable to discrimination, as well as LGBTIQ+ persons, still face restrictions in access to skills, lifelong learning and the labour market due to a range of pervasive socio-cultural norms and socio-economic and structural barriers.[646] The International Trade Union Confederation (ITUC) and the General Confederation of Labour of the Argentine Republic (CGT–RA) *(Argentina)* also further emphasize that women's access to skills development does not always lead to an increase in women's labour force participation or more opportunities for professional development, mainly due to structural, economic, social and cultural barriers as well as gender-based discrimination.

317. Furthermore, specific jobs, sectors or occupations are often characterized by a concentration of men or women in the workforce. Women are not only estimated to have lower chances of being employed than men but are also more likely to be at the bottom of the professional ladder[647] due, among other reasons, to occupational gender segregation, the gendered composition of the workforce and the disproportionate uptake of unpaid care work.[648]

318. Under the terms of Article 1(3), Convention No. 111 covers equality and non-discrimination in training and in access to employment and particular occupations, including through placement services and other employment promotion measures.[649] Protection against discrimination in access to employment on grounds of maternity is also explicitly covered by Convention No. 183, which is the first ILO maternity protection instrument to extend protection against discrimination by covering not only women workers who are already employed, but also women seeking employment (Article 9(1)). Convention No. 156 also addresses the labour market integration of workers with family responsibilities (Article 7) and the exercise of their right to free choice of employment (Article 4(a)). Recommendation No. 165 similarly refers to equality for workers with family responsibilities "in employment and occupation" as understood in Convention No. 111 (paragraphs 6 and 8) and "in relation to preparation for employment [and] access to employment" (paragraph 15).[650]

645 ILO, *Discrimination in Respect of Employment and Occupation: General Conclusions on the Reports relating to the Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in respect of Employment and Occupation, 1958*, Report III (Part IV), Part Three, International Labour Conference, 47th Session, 1963 (hereinafter "1963 General Survey"), para. 33.

646 ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, Report VI, International Labour Conference, 109th Session, 2021, para. 250.

647 ILO, *A Quantum Leap for Gender Equality: For a Better Future of Work for All*, 2019, 22.

648 ILO, *Women at Work: Trends 2016*, 2016, 12–16; ILO, *A Quantum Leap for Gender Equality*, 32–38.

649 ILO, *Equality in Employment and Occupation: General Survey of the Reports on the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958*, Report III (Part 4B), International Labour Conference, 75th Session, 1988 (hereinafter "1988 General Survey"), para. 76; ILO, *Equality in Employment and Occupation: Special Survey on Equality in Employment and Occupation in respect of Convention No. 111*, Report III (Part 4B), International Labour Conference, 83rd Session, 1996 (hereinafter "1996 Special Survey"), paras 65 and 81; ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report III (Part 1B), International Labour Conference, 101st Session, 2012 (hereinafter "2012 General Survey"), paras 752–753.

650 1993 General Survey, paras 97–100.

1.1. Access to education and training: Setting the basis for equal opportunities for men and women

319. Article 3(e) of Convention No. 111 requires the observance of the national equality policy in vocational training under the direction of a national authority. Recommendation No. 111 further refers to: (1) equality of opportunity and treatment of all persons in access to training of their own choice on the basis of individual suitability (Paragraph 2(b)(ii)); (2) ensuring non-discrimination in the activities of vocational training under the direction of a national authority (Paragraph 3(a)(ii));[651] and (3) promoting non-discrimination in relation to other vocational training services, where practicable and necessary (Paragraph 3(b)).[652] Article 7 of Convention No. 156 also sees vocational guidance and training as a means of enabling workers with family responsibilities to become integrated in the labour force, and Recommendation No. 165 indicates that vocational training facilities should be made available to such workers (Paragraph 13).

320. Equality in education and training is of paramount importance in determining access to employment and occupation, and particularly to any job or occupation.[653] Moreover, addressing discrimination and inequalities in training may help prevent their perpetuation and aggravation in employment and occupation.[654] Discrimination in education and training may arise out of laws and regulations, as well as practices based on stereotypes.[655] Gender-related barriers in this regard may include such factors as the need to travel long distances, poor infrastructure (including the lack of separate washrooms), gender-based violence and harassment, and gender dynamics, roles and stereotypes according to which household chores and care work remain the primary responsibility of women.[656]

321. ***When adopting education and training measures or policies, due consideration should be given to ensuring effective gender equality and to addressing the particular needs of specific populations and groups, including women. This encompasses ensuring that women and girls have equal opportunities in access to education, training and vocational training opportunities, as well as access to more diversified areas, including courses leading to occupations in which men have traditionally been employed.*** [657] ***Both direct and indirect discrimination relating to access to vocational training need to be addressed,***[658] ***particularly in light of the underlying causes of inequality.***

---

651 In this regard, the Committee also draws attention to Art. 1 of the Human Resources Development Convention, 1975 (No. 142), and highlights some of the functions that are most appropriate for governments to perform within any vocational education and training system, such as ensuring that everybody has access to training, vocational guidance and labour market information. ILO, *Promoting Employment and Decent Work in a Changing Landscape*, Report III (Part B), International Labour Conference, 109th Session, 2020 (hereinafter "2020 General Survey"), paras 107, 128 and 129.

652 The Committee recalls that "vocational training", as referred to in Convention No. 111, is understood in a broad sense, and includes general education necessary to obtain access to any given employment or occupation, as well as specialized vocational training, apprenticeships, technical education and "on-the-job" training. It also covers the process and conditions of training. 1963 General Survey, para. 33; 1988 General Survey, para. 78; 1996 Special Survey, paras 70 and 73; 2012 General Survey, para. 750.

653 2012 General Survey, para. 719.

654 1988 General Survey, para. 76; 1996 Special Survey, paras 65 and 69–71; 2012 General Survey, para. 751.

655 1996 Special Survey, para. 73.

656 ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, paras 136–140 and 251. See also United Nations Children's Fund (UNICEF), UN Women and Plan International, *A New Era for Girls: Taking Stock of 25 Years of Progress*, 2020, 16; United Nations Education, Scientific and Cultural Organization (UNESCO), *Global Education Monitoring Report 2020, Gender Report: A New Generation – 25 Years of Efforts for Gender Equality in Education*, 2020.

657 2012 General Survey, para. 751.

658 1988 General Survey, para. 81.

322. The Committee notes that provisions prohibiting discrimination in a number of countries explicitly cover training or vocational training.[659] In some cases, gender equality and non-discrimination considerations are included in legislative and regulatory provisions respecting education and training.[660] The equality and education policies in a number of countries also address equal access to education and training for men and women.[661]

Girls' equal access to universal, compulsory and free education

323. Education that is universal, compulsory and free of charge to the same level for everyone is one of the basic starting points for policies to promote equality of opportunity and treatment in employment and occupation.[662] Despite progress in closing gender gaps in enrolment,[663] girls continue to face exclusion from school.[664] The Committee has noted that challenges persist in securing the literacy of girls and their access to, and completion of education, particularly for girls in rural areas, [665] women and girls belonging to indigenous peoples' [666] or of African descent,[667] and Muslim women and girls using a full-face veil in schools,[668] as well as due to threats by non-State groups.[669]

324. Some governments have reported measures to promote or improve girl's access to education and training, such as the expansion of school infrastructure, financial aid, the provision of canteen services to promote the schooling of children from poor backgrounds and other support measures for girls.[670] ILO research also points to gender-responsive budgeting as a tool to increase investment in girls' education and raise their schooling rates.[671] In *Algeria*, the Government indicates that the increase in the number of education centres has helped to bring schools closer to students' homes, particularly in rural areas, contributing to an increase of schooling rates of girls, and hence their access to employment.

659 For example, *Algeria*, *Austria*, *Benin*, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Brazil, Burundi*, *Côte d'Ivoire*, *Cyprus*, *Georgia*, *Grenada*, *Honduras*, *Hungary*, *Iceland*, *Iraq, Italy*, *Latvia*, *Mexico*, *Montenegro*, *Morocco*, *Poland*, *Portugal*, *Serbia*, *Slovakia*, *Slovenia*, *Togo*, *Türkiye* and *Viet Nam*.

660 For example, *Argentina, Benin, Honduras, Kazakhstan*, *Lithuania*, *Montenegro*, *Nicaragua*, *Niger*, *Peru, Portugal*, *San Marino*, *Uruguay*, *Bolivarian Republic of Venezuela* and *Viet Nam*.

661 For example, in *Cambodia*, *Costa Rica*, *Guatemala*, *Iceland*, *Panama* and *Portugal*.

662 1988 General Survey, para. 78; 1996 Special Survey, para. 71.

663 According to UNESCO, over the past 25 years, the access of girls to education has seen a generational leap and dramatically improved. See UNESCO, *Global Education Monitoring Report 2020, Gender Report*, 1; see also ILO, *A Quantum Leap for Gender Equality*, 22.

664 Three quarters of children of primary school age who may never set foot in school are girls. See UNESCO, *Global Education Monitoring Report 2020, Gender Report*, 1.

665 For example, Committee of Experts on the Application of Conventions and Recommendations (CEACR), Convention No. 111: *Afghanistan*, observation, 2018; *Congo*, direct request, 2017; *Iraq*, observation, 2021; *New Zealand*, direct request, 2020; *Solomon Islands*, direct request, 2017. See also 2012 General Survey, paras 602 and 604.

666 For example, CEACR, Convention No. 111: *Australia*, observation, 2019; *Guatemala*, direct request, 2020; *Panama*, direct request, 2021.

667 For example, CEACR, Convention No. 111: *Guyana*, observation, 2019.

668 For example, CEACR, Convention No. 111: *Romania*, observation, 2018.

669 For example, CEACR, Convention No. 111: *Afghanistan*, observation, 2018.

670 For example, *Algeria*, *Benin*, *Cambodia*, *Côte d'Ivoire*, *Djibouti*, *Ghana*, *Guinea-Bissau*, *Malawi*, *Niger*, *Nigeria*, *Togo* and *Zambia*.

671 Gender-responsive budgeting has led to higher levels of investment in girls' education. ILO, *A Quantum Leap for Gender Equality*, 87.

325. Early marriage (before the age of 18)[672] and early pregnancies (before the age of 20)[673] also affect girls' education. In relation to Convention No. 111, the Committee has noted the existence of legal prohibitions on pregnant girls accessing education, as well as school drop-outs related to early marriage and pregnancies and challenges to returning to school after childbirth.[674] The Committee welcomes the lifting of the ban on pregnant girls attending school in *Sierra Leone* and of the prohibition of impeding access by women to education for reasons of pregnancy in *El Salvador*.[675] Measures to support and facilitate the return to school of girls during and after pregnancy have also been reported, for instance in *Cabo Verde* under Legislative Decree No. 47/2017, *Zambia* through the Girls Education and Women's Empowerment and Livelihoods (GEWEL) project, and *Panama* under Act No. 29 of 2002, as amended by Act No. 60 of 2016.

326. Measures to address gender-related stereotypes regarding the access of girls to education have also been undertaken through awareness-raising action.[676] The Governments of *Botswana* and *Niger* refer to a number of measures to engage with civil society, including community, religious and traditional leaders, regarding gender equality issues, including the promotion of schooling for girls.[677] In *Algeria*, a communication and information programme has been set up to raise awareness among girls and women of the importance of training.

327. ***With a view to ensuring equal opportunities in access to education and training, governments need to continue their efforts to promote and ensure the school enrolment and attendance of girls and to prevent them dropping out, including by taking measures to combat gender-related stereotypes and prejudice, and to promote the retention in and return to school of girls in the event of pregnancy.***[678]

Challenges for men and women workers with family responsibilities to access lifelong learning

328. Women also face challenges in accessing other forms of vocational training, skills development and lifelong learning opportunities. For instance, women tend to participate less than men in work-related learning and are generally under-represented in apprenticeship programmes even though such programmes allow for the acquisition of skills that are in demand and provide a foundation for lifelong careers.[679] For lifelong learning to be able promote gender equality effectively, training programmes need to be responsive to the life cycles of learners and their schedules, and their cost and content has to be adapted to learners' specific needs.[680]

672 Committee on the Rights of the Child and Committee on the Elimination of Discrimination against Women, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, CEDAW/C/GC/31/Rev.1-CRC/C/GC/18/Rev.1, 2019, para. 20.

673 The 2011 *WHO Guidelines on Preventing Early Pregnancy and Poor Reproductive Health Outcomes Among Adolescents in Developing Countries* recommend the reduction of pregnancy before the age of 20.

674 For example, see CEACR, Convention No. 111: *Cameroon*, direct request, 2019; *Guinea-Bissau*, observation, 2020; *Madagascar*, direct request, 2016; *New Zealand*, direct request, 2020; *Solomon Islands*, direct request, 2017; *Zimbabwe*, direct request, 2018.

675 CEACR, Convention No. 156: *El Salvador*, direct request, 2011; and Convention No. 111: *Sierra Leone*, direct request, 2021.

676 For instance, *El Salvador*, *Guatemala* and *Mauritius*.

677 CEACR, Convention No. 111: *Botswana*, direct request, 2016; *Niger*, direct request, 2021.

678 The Committee draws attention, in this regard, to its comments on the implementation of the Minimum Age Convention, 1973 (No. 138). See 2012 General Survey, paras 374–375.

679 ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, paras 136–140 and 253.

680 ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, para. 253.

329. A number of governments have provided information on programmes aimed at providing better access to general training for women,[681] whereas some refer to specific training programmes and centres addressing women[682] or specific groups, such as indigenous women, women in rural areas or women in situations of poverty.[683] Other measures include the adaptation of selection criteria and quotas for women in training programmes,[684] financial support for their participation,[685] and the provision of distance learning or "mobile" education units.[686] In *Belgium*, measures have been taken to adapt the infrastructure and equipment to receive women in training centres, including changing rooms, sanitary rooms and work equipment. In *Viet Nam*, the State has a policy of supporting training centres in which over 50 per cent of students are women. In *Mauritius*, advertisements for the training programme "Skills for Work Scholarship" especially encourage applications from women.

330. Participation in education and training may also be affected by the existence of family responsibilities. For instance, research in the European Union shows that, among adults wishing to participate in adult learning, but who did not do so, family responsibilities were among the most common barriers, particularly for women.[687] The Committee recalls that, in its general observation of 2020 on Convention No. 156, it called for greater efforts, through active employment policies, to facilitate the entry and re-entry of workers with family responsibilities into the labour force.[688] With respect to workers with family responsibilities, a number of governments refer to the provision of, or the right to education and training measures in general,[689] while some provide information on various measures focusing on helping such workers become integrated in the labour force. In some countries, the recognition in law of the right to non-discrimination on grounds of family responsibilities, family status or marital status explicitly applies to access to education and training, including vocational training.[690] Other measures are aimed at facilitating the uptake by these workers of education and training programmes, such as priority access to training and specifically dedicated programmes. In *Portugal*, section 30(3) of the Labour Code provides for priority access to training for workers with family responsibilities. In *Guatemala*, the first job social scholarship, which is intended to help unemployed persons aged 18 to 29 years find employment, and the middle school social scholarship, which helps persons aged 11 to 24 to pursue middle school, include single mothers among their priority target groups. In the *Russian Federation*, the employment promotion programme of the National Demography Project seeks to retrain and upgrade the qualifications of women on parental leave caring for a child under the age of 3, as well as women with children of preschool age.

331. Other countries have also adopted work–family balance measures, such as flexible training schedules and patterns.[691] Measures also include the provision of childcare services or financial support for childcare for persons accessing education and training.[692] For instance, in *Latvia*, section 50(3) of the Law on Higher Education Institutions provides students with the

681 For example, *Burkina Faso*, *Cambodia*, *Mauritius*, *Panama* and *Togo*.

682 For example, *Belgium* (Brussels Capital), *Cambodia*, *Honduras*, *Malaysia* and *Mauritius*.

683 For example, *Guatemala*, *Fiji* and *Panama*.

684 For example, *Belgium* (Brussels Capital) and *Nicaragua*.

685 For example, *Viet Nam* (Law on Vocational Education and Training 2012 and "Supporting women in vocational training and job creation in the period 2012–2015" Plan).

686 For example, *Greece*, *Guatemala*, *Honduras*, *Mauritius*, *Panama*, *Sweden* and *Viet Nam*.

687 UNESCO, *Global Education Monitoring Report 2020, Gender Report*, 17.

688 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020.

689 For example, *Canada*, *Côte d'Ivoire*, *Grenada*, *Guatemala*, *Indonesia*, *Latvia*, *Mauritius*, *Nepal*, *Saudi Arabia*, *Senegal*, *Seychelles*, *South Africa* and *Suriname*.

690 For instance, *Croatia*, *Greece*, *Namibia*, *Russian Federation* and *Switzerland*.

691 For example, *Ireland*, *Lithuania*, *Netherlands* and *Viet Nam*.

692 For example, *Japan*, *Portugal* and *Sweden*.

right to suspend and resume studies in accordance with prescribed procedures, which include maternity leave, and a forthcoming regulation on a new model for doctorates envisages their extension for up to two years in the case of maternity leave. In *Belgium*, the Regional Office for Employment in Brussels (Actiris) has set up a network of partner structures to care for the children of parents while they are engaged in training. In *New Zealand*, the Training Incentive Allowance, which is welcomed by the New Zealand Council of Trade Unions (NZCTU), supports single parents, persons with disabilities and carers through benefits to cover costs associated with studying for a specific qualification level, such as course fees, childcare and care costs and transport.

332. The Committee welcomes the statistical data provided by several governments on the number of women benefiting from education and training.[693] The Committee also notes the importance of information on the numbers of workers with family responsibilities who benefit from training programmes,[694] and welcomes the statistical information provided by some governments on this subject.[695]

333. The Committee notes that reference is made in some cases to measures specifically addressing the situation of women with family responsibilities, such as special training programmes or centres to help them enter or re-enter the labour market after a career break, or to reconcile work and family responsibilities.[696] ***Measures are required to enable workers with family responsibilities to engage fully in vocational training, including by preventing any discrimination in access to training, and facilitating the integration of family responsibilities with participation in training programmes. The Committee emphasizes the importance of targeted training programmes benefiting both women and men workers with family responsibilities to prepare them to integrate the labour force. Such programmes should not only provide information on employment rights, community services and facilities and career planning, but should also focus on building confidence and social skills.***

334. ***The Committee draws attention to the fact that measures aimed at helping workers with family responsibilities to receive training to enter or re-enter the labour market should target both men and women so as to ensure that they do not reinforce stereotypes regarding the roles of men and women in the family and society. At the same time, taking into consideration that women often face additional barriers due to disproportionate family responsibilities, the Committee emphasises the importance of adopting measures that aim to specifically promote and facilitate women's access to training.***

Addressing gender segregation in vocational training

335. Patterns of occupational segregation start well before the search for employment begins. Gender stereotypes or norms that guide boys and girls towards different fields of education and training perpetuate structural gender inequalities and impinge on women's prospects for employment, professional advancement and access to decent working conditions, particularly where training and education for women does not match labour market needs or leads them into sectors or jobs which, often female-dominated, offer lower job security

693 For example, *Brazil*, *Cambodia*, *Canada*, *Colombia*, *Cyprus*, *Dominican Republic*, *Finland*, *Guatemala*, *Ireland*, *Latvia*, *Mauritius*, *Oman*, *Panama*, *Peru*, *Portugal*, *Sri Lanka*, *Tajikistan* and *Viet Nam* (including disaggregated data on rural women workers).

694 See CEACR, Convention No. 156: *Belize*, direct request, 2021; *Greece*, direct request, 2020; *Portugal*, direct request, 2021; *Serbia*, direct request, 2017.

695 For example, *Greece*, *Ireland*, *Portugal* and *San Marino*.

696 For instance, *Albania*, *Algeria*, *Japan*, *Mauritius* and *Republic of Korea*.

and working conditions, lower remuneration and poorer social security coverage.[697] From the information received,[698] women and girls still appear to be concentrated in traditionally female-dominated fields of study and training, such as education, health, social work, cosmetics, handicrafts, sewing and textiles, hotels and tourism, and under-represented in fields such as manufacturing, construction, transport, science, technology, engineering and mathematics. The International Transport Workers' Federation (ITF) notes, in this regard, that there is a persistent divide in skills development, as well as obstacles to women's education in rural and informal economies.

336. Broadening the areas in which girls and women receive education and training is essential to promoting the presence of women in a wider range of jobs, including those with greater opportunities for advancement and promotion.[699] In this regard, training and instruction programmes that guide boys and girls towards different occupations should be avoided.[700] Education, outreach and training programmes must encourage and enable girls, boys and young women and men to venture more into non-stereotypical fields of study and work.[701]

337. The Committee received a wealth of information regarding the efforts made by Member States to promote the access of girls and women to education and training in traditionally male-dominated areas, through measures such as the establishment of specific admission criteria for women, the offering of specific courses and training, and the provision of targeted scholarships.[702] For instance, specific admission criteria were applied in *Zambia* to women accessing vocational training and education in which they are under-represented, and scholarships were awarded to women in technical education in *Togo*. In *Portugal*, section 30 of the Labour Code calls for giving preference for vocational training in a specific occupation to the sex that is less represented in that occupation. The General Confederation of Labour of the Argentine Republic (CGT–RA) *(Argentina)* also indicates that participation slots in "Argentina Programa", a training programme on computer coding, were allocated at equal rates to men and women, with a part also awarded to non-binary persons.

338. More particularly, measures have been adopted in numerous countries to introduce girls to the study of science, technology, engineering and mathematics (STEM) and information technologies (IT), including the organization of challenges and competitions, information campaigns and the promotion of role models.[703] For instance, in *Austria*, the interest of girls in STEM subjects, apprenticeships and careers is promoted since early childhood through the programmes "Girls' Day in the Civil Service" and "MINI Girls' Day in the Civil Service", the "meine Technik" platform and a country-wide STEM competition. In *Japan*, the Women's Education Center has implemented a camp-style experience to help high school girls discover possibilities in the fields of science and technology through interaction with researchers, engineers and science and engineering students. In relation to the reform of the education system, the Government of *France* indicates that an action plan will be implemented to encourage

697 ILO research finds that, even in management positions, women are over-represented in support functions (human resources, finance and administration), while men are over-represented in functions related to operations, research and development, and profit and loss management, that are considered more strategic for enterprises and can often be a springboard to CEO or board-level positions. ILO, *Women in Business and Management: The Business Case for Change*, 2019, 44.

698 For example, from *Latvia*, *Lithuania*, *New Zealand* and *Panama,* as well as from the Confederation of Labour of Russia (KTR) *(Russian Federation)*. See also UNESCO, *Global Education Monitoring Report 2020, Gender Report*, 1.

699 1988 General Survey, para. 82; 2012 General Survey, para. 750.

700 1988 General Survey, para. 82. See also, CEACR, Convention No. 111: *Cameroon*, direct request, 2019; *India*, direct request, 2019.

701 ILO, *Women at Work: Trends 2016*, 42 and 43.

702 For example, *Austria, Croatia, Mauritius*, *Portugal*, *Sweden*, *Togo*, *Turkmenistan* and *United States of America.* Regarding other measures, see also ILO, *A Quantum Leap for Gender Equality*, 88; ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, para. 252; UNESCO, *Global Education Monitoring Report 2020, Gender Report*.

703 For example, in *Australia* (Victoria), *Austria*, *Benin*, *Cambodia*, *Croatia*, *Cyprus*, *Denmark*, *Finland*, *Greece*, *Japan*, *Latvia*, *Türkiye*, and *Turkmenistan*.

10,000 more girls to study mathematics by 2024. In *Norway*, initiatives have been established to achieve a less gender-divided education, such as awarding additional points to the under-represented gender in university applications, and projects such as "Men in Healthcare" or "Girls and Technology".[704] The Korean Confederation of Trade Unions (KCTU) *(Republic of Korea)* also highlights that occupational segregation can be addressed through trade unions' engagement and refers to the National Construction Skills Training and Employment Assistance Centre established by the Korean Federation of Construction Industry Trade Unions (KFCITU), which actively recruits women participants.

339. In a world of work that is constantly becoming more digitalized, the gender digital divide also remains a challenge to be addressed. According to ILO research, women globally lag behind men in their access to mobile phones and the internet, and some of the largest gaps in technology access are in regions where women also struggle the most to participate in the workforce and find quality jobs.[705] A forward-looking approach is necessary to equip women and other groups on an equal footing for the jobs of the future. Measures to close the gender digital divide, including through gender-responsive education and training, are essential to ensure that women and girls are not left behind in the labour market of the future.[706] Furthermore, the acquisition of digital skills by women is crucial both to enable them to work in emerging jobs and industries, and also to promote their access to information and communication technology (ICT) for purposes of accessing job opportunities and markets and improving their networking capabilities. The International Trade Union Confederation (ITUC) also stresses the potential of green jobs for employment creation, especially for women.[707]

340. ***It is essential that vocational guidance and training measures address horizontal and vertical gender segregation in the labour market by promoting women's access to a wider range of jobs and training, as well as to jobs at higher levels, particularly in occupations predominantly occupied by men and in sectors where women are less represented, such as STEM, ICT, construction and trade.***

1.2. Equal access to vocational guidance and equality in placement and employment services

341. Vocational guidance offers special assistance in choosing an occupation, for example through the dissemination of information about occupations, the preparation of recommendations in light of personal aptitudes and social needs, and the joint participation of teachers and parents in fostering children's choices of occupation.[708] Like training, it plays a key role in determining possibilities for gaining access to employment and occupation.[709] Women may sometimes have limited access to employment and placement services due to their literacy level or lack of ITCrelated skills, which may prevent them from benefiting from training or employment programmes, or simply from seeking assistance from such services. Women may also be less able to physically access employment service centres due to social and cultural restrictions,[710] their disproportionate share of unpaid care work or a lack of security in transport, particularly in rural areas.

704 CEACR, Convention No. 111: *Norway*, direct request, 2021.

705 ILO and Gallup, *Towards a Better Future for Women and Work: Voices of Women and Men*, 2017, 55.

706 See also ILO, *A Quantum Leap for Gender Equality*, 88; UNICEF, UN Women, and Plan International, *A New Era for Girls*, 15.

707 See also ILO, *Green Recovery with Jobs through Employment Policies: Guidelines for Shaping Employment Policies that Support a Green Recovery and a Just Transition*, 2022, 9–10.

708 1988 General Survey, para. 85.

709 1988 General Survey, para. 76; 1996 Special Survey, paras 65, 69–71; 2012 General Survey, para. 751.

710 Naoko Otobe, *Resource Guide on Gender Issues in Employment and Labour Market Policies: Working towards Women's Economic Empowerment and Gender Equality* (ILO, 2014), 56.

342. Recommendation No. 111 indicates that the national equality policy should have regard to the principle of equality of opportunity and treatment in respect of access to vocational guidance and placement services (Paragraph 2(b)(i)). This relates to both public vocational guidance and placement services "under the direction of a national authority" (Article 3(e)) of Convention No. 111 and Paragraph 3(a)(ii) of Recommendation No. 111)[711] and private services (Paragraph 3(b) of Recommendation No. 111). Public and private employment agencies play a key role in this regard.[712]

343. In some countries, access to vocational guidance is explicitly included within the scope of the prohibition of discrimination based on sex.[713] The Committee recalls in this regard that measures relating to placement and employment services should not be limited to requiring them to refrain from direct or indirect discrimination, but that they should also take into account equality of opportunity and treatment in their activities.[714] The Committee notes the measures adopted to facilitate the access of women to employment and placement services, such as vocational guidance programmes, units or fairs.[715] The Government of Brussels-Capital in *Belgium* refers to reserved slots or priority of access for women to vocational guidance services, and gender equality training for job counsellors and other personnel in these services.[716] In *Malta,* training on gender equality is provided for job counsellors. ILO research also takes note of the use of more easily accessible public venues, such as post offices and community centres, for the posting of job vacancies and vocational training courses.[717]

344. Article 7 of Convention No. 156 refers specifically to vocational guidance in relation to the labour force integration of workers with family responsibilities. According to Recommendation No. 165, services should be made available to enable these workers to enter or re-enter employment, within the framework of existing services for all workers or along lines appropriate to national conditions, and vocational guidance, counselling, information and placement services should be provided free of charge to such workers. Such services should be staffed by suitably trained personnel and be able to respond adequately to the special needs of workers with family responsibilities (Paragraphs 12 and 14).

345. The Committee notes the indication by a number of governments that counselling and placement services are provided to all workers in general.[718] Some also point to specific vocational guidance programmes and services for workers with family responsibilities.[719] In *Peru*, the Sectoral Plan for Equality and Non-Discrimination in Employment and Occupation 2018–21 and the National Employability Programme promote vocational training and self-employment services focused on men and women who are heads of households and have children. Other governments refer to services to facilitate childcare for jobseekers with family responsibilities. In *Albania*, some employment programmes include financial support to cover kindergarten and

711 1996 Special Survey, paras 92–93.

712 The Committee draws attention to Article 7 of the Employment Service Convention, 1948 (No. 88) (requiring programmes in public employment agencies with adequate measures to cater to the needs of particular groups), and Article 5 of the Private Employment Agencies Convention, 1997 (No. 181) (requiring the treatment of workers without discrimination in private employment agencies). Regarding measures to address women's needs in relation to employment and placement agencies, see 1988 General Survey, para. 93; ILO, *General Survey concerning Employment Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 99th Session, 2010, paras 354–356, 568–576 and 629–639; and the 2012 General Survey, para. 75.

713 For instance, in *Albania*, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Georgia*, *Greece*, *Iceland*, *Italy*, *Portugal*, *Slovakia*, *Slovenia* and *Türkiye*.

714 1988 General Survey, para. 94.

715 For instance, *Belgium* (Brussels-Capital), *El Salvador*, *Guatemala*, *Honduras*, *Panama*, *Republic of Korea* and *Sweden*.

716 CEACR, Convention No. 111: *Serbia*, direct request, 2017.

717 Otobe, *Resource Guide on Gender Issues in Employment and Labour Market Policies*, 56.

718 For example, *Canada*, *Lithuania*, *Mauritius*, *Portugal*, *Sweden* and *Zimbabwe*.

719 For example, *Australia*, *Belgium*, *Chile* and *Japan*.

nursery costs. In *Bulgaria*, the "Support Motherhood" programme provides free childcare for children aged 1–3 years for jobseekers registered with the labour office.[720] The Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS) *(Dominican Republic*) also indicate that the programme "Supérate" aims to facilitate the entry into the labour market of persons in disadvantaged situations, including women heading single-parent households.

346. The Committee recalls that the effectiveness of such services is a key element of Paragraph 14 of Recommendation No. 165, as the words "enable workers" were adopted on the understanding that, whatever the nature of the services provided, they should be as effective as possible.[721] The Committee has sometimes requested statistical information in this regard.[722] It notes that some governments have provided data on the number of men and women benefiting from employment and placement services, including those who have received training or counselling and those who have found a job through such services.[723] However, the Committee notes that data disaggregated by family situation seems to be less readily available. In this regard, the Committee notes the data provided on the number of persons with dependent children and other dependent persons participating in vocational training and vocational guidance in *Portugal*, and statistical data for *Mauritius* indicating that, for both male and female jobseekers registered with placement services, the likelihood of being placed by Employment Information Centres decreases as the number of dependants increases.[724]

347. Vocational guidance and employment services play an important role in opening up a broad range of occupations free from stereotypes and archaic conceptions for women.[725] The Committee notes that, for instance, in *Germany*, Book III, section 29, of the Social Security Code requires employment agencies to seek to expand the career choices available to women and men. In the *Russian Federation*, the 2021 mentoring project "Women's League" encourages the informal transfer of best practices, experience and values by successful women leaders for the personal development of young girls, and helps them develop relevant skills and competencies and determine the most effective educational and professional trajectory. The Federal Chamber of Labour (BAK) *(Austria)* refers to the Public Employment Service programme "Women in Technical Occupations".

348. ***Governments are encouraged to take measures to ensure gender equality in access to vocational training and guidance services, as well as employment and job placement services, within the framework of policies to promote equality of opportunity and treatment in access to employment and occupation. The measures taken should aim to ensure that all workers, and particularly women workers and workers with family responsibilities, are able to have access in practice to the opportunities available.***

349. ***With a view to ensuring effective access to vocational guidance services, awareness-raising measures should be taken to combat gender bias and sexist stereotypes concerning the vocational aspirations and capabilities of women and workers with family responsibilities and their suitability or competence for certain jobs.***

720 CEACR, Convention No. 156: *Bulgaria*, direct request, 2018.

721 1993 General Survey, para. 105.

722 See CEACR, Convention No. 156: *Greece*, direct request, 2020; *Lithuania*, direct request, 2018; *Mauritius*, direct request, 2016; *San Marino*, direct request, 2020; *Serbia*, direct request, 2017.

723 For example, *Algeria*, *Australia*, *Chile*, *Cyprus*, *El Salvador*, *Lithuania*, *Mauritius*, *Panama*, *Portugal*, *Serbia*, *Spain* and *Viet Nam*.

724 CEACR, Convention No. 156: *Mauritius*, direct request, 2016.

725 1988 General Survey, para. 85.

1.3. Gender equality in recruitment procedures and job advertisements

350. The principle of equality set out in Convention No. 111 means that every person has the right for their application for a chosen job to be considered equitably and without discrimination. Article 3(d) of Convention No. 111 calls on Member States to pursue the equality policy in respect of employment under the direct control of a national authority, and Recommendation No. 111 adds, in Paragraph 2(c), that government agencies should apply non-discriminatory employment policies in all their activities. Paragraph 3(a) and (b) of Recommendation No. 111 indicates that Member States should promote the principle of equality where practicable and necessary in respect of other employment, and Paragraph 2(d) adds that employers should not practice or countenance discrimination in engaging or training any person for employment.

351. It is important for recruitment procedures to be based on equal opportunities and objective criteria, competence or merit, and to be free from gender bias, as well as to exclude requirements not connected with the performance of the activity or the working conditions of the job.[726] However, challenges remain in attaining non-discrimination and gender equality in recruitment. For instance, the Committee has noted that one of the reasons for occupational gender segregation is the presupposition that women have to be restricted to certain occupations, resulting in biased recruitment.[727]

352. As the Committee has previously noted, discriminatory job advertisements are a major concern.[728] As the starting point of the recruitment procedure, discriminatory job advertisements can perpetuate and aggravate sex and gender inequalities. Their elimination not only tackles direct discrimination[729] (such as express restrictions on, or the exclusion of a specific profile), but also contributes to addressing indirect discrimination (such as requirements that are not considered inherent requirements of the job and which indirectly exclude a specific group).[730]

353. The Committee notes that legislative and regulatory provisions in a good number of countries explicitly prohibit discrimination during recruitment, hiring or placement or in establishing or applying selection criteria.[731] In line with the trends identified in previous General Surveys on Convention No. 111,[732] legal prohibitions of discriminatory job offers and advertisements based on sex have continued to be adopted in a number of countries.[733] Some legal provisions prohibit the refusal of employment based on discriminatory grounds,[734] or discrimination against a prospective employee or jobseeker.[735] Regarding the adoption of measures to revise job offers, information has been provided on the number of job offers revised and accepted by the public employment service in *Portugal*. In *Guatemala*, the authorization of the labour inspectorate and the National Office for Women is needed to publish employment offers specifying a particular sex.

726 1988 General Survey, para. 95; 2012 General Survey, para. 754.

727 1988 General Survey, para. 97.

728 2012 General Survey, para. 754.

729 The Committee nevertheless recalls that Convention No. 111 provides that any distinctions, exclusions or preferences in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination (Art. 1(2)).

730 1988 General Survey, para. 97.

731 For example, *Azerbaijan*, *Belgium*, *Benin*, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Brazil*, *Burundi*, *Cabo Verde*, *Côte d'Ivoire*, *Croatia*, *Ecuador*, *France*, *Georgia*, *Germany*, *Grenada*, *Hungary*, *Iceland*, *Italy*, *Morocco*, *Namibia*, *Portugal*, *Serbia*, *Slovakia*, *Slovenia*, *Switzerland* and *Türkiye*.

732 1988 General Survey, para. 96.

733 For example, *Armenia*, *Belgium*, *Brazil*, *Bulgaria*, *Honduras*, *Hungary*, *Italy*, *Latvia*, *Namibia*, *Peru*, *Portugal*, *Russian Federation*, *Serbia*, *Slovenia*, *Türkiye* and *Bolivarian Republic of Venezuela*.

734 For example, *Armenia*, *Bahamas*, *Brazil*, *Bulgaria*, *Poland*, *Portugal*, *Trinidad and Tobago* and *Viet Nam*.

735 For example, *Ghana*, *Latvia*, *Portugal*, *Slovenia*, *Sweden* and *Zimbabwe*.

354. A number of provisions go into further detail by prohibiting requests during recruitment procedures for personal details and information about applicants that is not directly relevant to the job.[736] The Committee notes that such measures can contribute to preventing discrimination relating to matters such as present and future family planning, marital or family status, as well as sexual orientation and gender identity.[737] For instance, in *Ecuador*, section 5 of the Regulations to eradicate labour discrimination prohibits any requirement in selection procedures for job applicants to provide information on their civil status or photos in their resume, and any rules preventing them from wearing clothing that reveals their ethnicity or gender identity. The Government of *Switzerland* also refers to the possibility for job candidates to lie if they are asked undue personal questions and the impossibility of the employer to withdraw from the contract because of such a lie.

355. Reference is also made by governments to measures aiming to raise awareness or promote specific actions by employers to combat prejudice during recruitment. For example, in the *Netherlands*, the Action Plan on Labour Market Discrimination aims to develop tools for employers, human resources officers and members of work councils to combat prejudice during recruitment and selection processes, and a Legislative Proposal on Equal Opportunities in Recruitment and Selection includes the requirement for employers to adopt working methods that prevent discrimination in recruitment and selection. The Government of *Japan* indicates that measures are being taken to inform employers on how to conduct recruitment based on the aptitude and ability of applicants. The Federal Chamber of Labour (BAK) *(Austria)* further indicates that including personnel from human resources departments in structured recruitment processes and promoting an enabling corporate culture may help to prevent gender bias in recruitment.

356. ***The Committee welcomes the inclusion of elements specifically concerning recruitment and job advertisements in measures to prohibit discrimination based on sex and gender in employment and occupation, and emphasizes that measures to review job advertisements, control recruitment procedures, build gender awareness and prevent gender bias among persons responsible for recruitment also make a key contribution to ensuring full respect for gender equality in recruitment procedures.***

357. Measures are also adopted to actively favour the entry of women into male-dominated jobs or sectors, including by dismantling gender stereotypes in recruitment and providing specific support to women jobseekers. In *Guatemala*, the Ministry of Defence has adopted measures to encourage women to enter the defence and military sector, including changes in manuals and selection procedures, the availability of uniforms and access to technical colleges.[738] In *Mauritania*, specific competitions have been held for women candidates for jobs in the public sector. In *Malaysia*, TalentCorp has established the Career Comeback and mentoring programmes to provide better access for women to job opportunities in tech-related sectors. In *Portugal*, higher financial contributions are awarded to employers that hire persons of the under-represented sex. In *Argentina,* the Argentinian Building Workers Union (UOCRA), the Argentinian Construction Chamber (CAMARCO) and the Public Works Ministry constituted a tripartite sectorial committee ("mesa sectorial") to eliminate gender-based violence in

736 For example, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Bulgaria*, *Croatia*, *Ecuador*, *Italy*, *Serbia* and *Slovenia*.

737 Requests for personal information during recruitment procedures may also place LGBTIQ+ persons at a disadvantage, and even implicitly force their outing. ILO, *ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Argentina,* 2015; ILO, *ORGULLO (PRIDE) en el trabajo: Un estudio sobre la discriminación en el trabajo por motivos de orientación sexual e identidad de género en Costa Rica*, 2016; ILO, *FIERTÉ (PRIDE) au travail: Une étude sur la discrimination au travail pour motifs d'orientation sexuelle et d'identité de genre en France*, 2016; Busakorn Suriyasarn, *PRIDE at Work: A Study on Discrimination at Work on the Basis of Sexual Orientation and Gender Identity in Thailand* (ILO, 2015); ILO, *PRIDE at Work: A Study on Discrimination at Work on the Basis of Sexual Orientation and Gender Identity in South Africa*, 2016.

738 CEACR, Convention No. 111: *Guatemala*, direct request, 2021.

the construction sector and promote the entry of women in road maintenance works, and Resolution 245/2021 of the Ministry of Labour, Employment and Social Security promotes the inclusion of women in the automotive transport sector. ***The Committee welcomes these initiatives which are in line with Article 5 of the Convention No.111 calling for the design of special measures, after consultation with representative employers' and workers' organizations, to meet the particular requirements of persons who, for reasons such as sex, family responsibilities, etc. are generally recognized to require special assistance.***

Challenges in accessing jobs due to pregnancy and maternity

358. With regard to maternity, including pregnancy, studies show that some employers may intentionally avoid hiring young women out of a fear that they may avail themselves of "costly" maternity leave at some future point in their careers or that future family responsibilities may prevent them from being available or sufficiently flexible for work.[739] In many countries, pregnancy appears to be a factor not only in women losing their jobs, but also in having difficulty in obtaining a job in the first place. More than an issue of discrimination between men and women, this creates discrimination between women who are pregnant and have young children and women workers without children. There may also be discrimination against breastfeeding women, in comparison with women who do not breastfeed.[740]

359. As noted during the preparatory work for Convention No. 183, the case of women seeking employment is undoubtedly the most important from the point of view of equality of opportunity and treatment between men and women, as well as the most difficult, since motherhood and the associated family responsibilities still strongly influence the image of women at work and may be used by employers as a criterion when selecting candidates for a particular post.[741] The patterns of the "motherhood employment penalty" and the "parenthood employment gap" confirm such dynamics.[742] It is therefore of the utmost importance to adopt clear policies on non-discrimination related specifically to women's reproductive function and to adopt measures to protect women of reproductive age. Accordingly, Article 9(1) of Convention No. 183 requires that ratifying Member States adopt appropriate measures to ensure that maternity does not constitute a source of discrimination in employment, including access to employment.

360. In this respect, the Committee notes that national laws prohibiting discrimination on the grounds of pregnancy or maternity in many countries make particular reference to the recruitment process.[743] The legislation in certain countries further specifies that the prohibition of discriminatory treatment, including on grounds of pregnancy or maternity, applies to

739 These include a 2012 study of discrimination in the European Union which reported that discrimination on the basis of maternity persisted. See Annick Masselot, Eugenia Caracciolo di Torella and Susanne Burri, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood: The Application of EU and National Laws in Practice in 33 European Countries*, European Network of Legal Experts in the Field of Gender Equality, 2012, Brussels, European Commission. See also the summary of such reports in a variety of countries in: ILO, *Maternity and Paternity at Work: Law and Practice across the World*, 2014, 74–75; ILO, *Women at Work: Trends 2016*, 57; ILO, *Care at Work: Investing in Care Leave and Services for a More Gender Equal World of Work*, 2022, 83.

740 Damian Grimshaw and Jill Rubery, *The Motherhood Pay Gap: A Review of the Issues, Theory and International Evidence*, Conditions of Work and Employment Series No. 57 (ILO, 2015), 37–39; ILO, *Maternity and Paternity at Work*, 83.

741 ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103) and Recommendation, 1952 (No. 95)*, Report V(1), International Labour Conference, 87th Session, 1999 (hereinafter "Law and practice report on Convention No. 183"), 49–50.

742 The "parenthood employment gap" consists of the difference between the employment-to-population ratio of mothers and fathers. It has increased from 41.1 to 42.8 percentage points. For example, in *Slovakia*, the Committee noted with concern that, in the framework of the National Employment Strategy up to 2020, the Government acknowledged that the presence of children younger than 6 years of age in the family significantly reduces the employment rate of women (less than 40 per cent), while male employment increases (more than 83 per cent). See ILO, *A Quantum Leap for Gender Equality*, 14. CEACR, Convention No. 156: *Slovakia*, observation, 2018.

743 For example, *Bulgaria*, *Finland*, *France*, *Germany*, *Hungary*, *New Zealand*, *Tajikistan* and *Zimbabwe*.

job advertisements, selection criteria for job applicants, as well as appointment procedures.[744] For example, the Government of *Canada* indicates that the prohibition and prevention of discrimination in employment and occupation, which fall largely under the umbrella of human rights legislation, apply in respect of job advertisements, application forms and interviews. All human rights laws in *Canada* (either directly or by interpretation) prohibit discrimination or harassment on the basis of sex/gender (including pregnancy), and marital or family status (civil status in Quebec). In *Brazil*, private companies are prohibited from adopting subjective criteria in job competitions based on family situation or pregnancy status. In *Azerbaijan*, *Belarus* and *Tajikistan*, employers that refuse to hire a pregnant woman or a woman with a child under three years of age have to provide an explanation in writing of the reasons for the refusal, which can be appealed in court.[745]

361. However, in many countries, despite the existence of the respective legislative provisions, discrimination in employment based on maternity, including in access to employment, remains an issue in practice. Mothers are reportedly significantly less likely to be recommended for recruitment or are offered a starting salary that is on average lower than that of equally qualified women without children.[746] In countries where maternity benefits are fully or partially financed by employers, this often results in a preference by employers not to hire young women. For example, in *Indonesia*, some companies request pregnant workers to resign and to reapply after childbirth to avoid paying maternity benefits.[747] In *Mexico*, employers prefer not to hire women with short contribution periods, as they bear full financial responsibility for providing maternity leave in cases where a woman worker has contributed for fewer than 30 weeks over the previous 12 months.[748] The General Confederation of Portuguese Workers – National Trade Unions (CGTP–IN) *(Portugal*) alleges that, notwithstanding the protective legislation in *Portugal*, women are still frequently asked questions during job interviews about their intentions concerning marriage and/or having children. In addition, the practice still exists in some countries of requiring women to sign blank letters of resignation upon recruitment to force them to leave in the event of pregnancy.[749]

362. ***The Committee recalls that Member States are required to ensure in law and practice that maternity does not constitute a source of discrimination in employment, including access to employment. In this respect, the Committee urges Member States to adopt appropriate safeguards, including the full application of non-discrimination legislation so that women who are seeking jobs, women in employment and women returning to employment are protected from discrimination based on pregnancy or maternity in practice. These legislative provisions should be accompanied by compliance and enforcement measures to ensure effective protection, including penalties for employers in the event of discrimination on the basis of maternity, accompanied by the appropriate compensation and sanctions. The principle of solidarity in financing maternity benefits is also essential to the promotion of non-discrimination at work: when employers are not required to bear the direct cost of maternity benefits, a potential obstacle is removed from the employment of women of childbearing age.***[750]

744 For example, *Belgium*, *Brazil*, *Germany*, *Hungary* and *Sweden*.

745 Similarly, the Government of *Turkmenistan* indicates that it is prohibited to refuse to hire women and to reduce their wages on the grounds of pregnancy or having a child under the age of 3 years (under the age of 18 in the case of a child with disabilities (section 241 of the Labour Code)).

746 ILO, *Breaking Barriers: Unconscious Gender Bias in the Workplace*, Bureau for Employers' Activities (ACT/EMP) Research Note, 2017, 7.

747 Organisation for Economic Co-operation and Development (OECD), *From Promises to Action: Addressing Discriminatory Social Institutions to Accelerate Gender Equality in G20 Countries*, OECD Development Centre, 2019, 128.

748 OECD, *Building an Inclusive Mexico: Policies and Good Governance for Gender Equality*, 2017, 103.

749 OECD, *Women's Economic Empowerment in Selected MENA Countries: The Impact of Legal Frameworks in Algeria, Egypt, Jordan, Libya, Morocco and Tunisia*, Competitiveness and Private Sector Development, 2017, 109.

750 See section 2.2 "Maternity benefits" of Ch. VI.

Challenges in accessing jobs due to family responsibilities

363. Workers with family responsibilities may face many obstacles to a successful transition from home to work, particularly in the case of women, who still carry out most family duties.[751] The Swedish Confederation for Professional Employees (TCO), the Swedish Confederation of Professional Associations (SACO) and the Swedish Trade Union Confederation (LO) (*Sweden*), and the Confederation of Labour of Russia (KTR) (*Russian Federation*) point to the fact that the lack of childcare services may present an impediment for women to access training and jobs. Recommendation No. 165 indicates that marital status, family situation or family responsibilities should not, as such, constitute valid reasons for refusal of employment (Paragraph 16). The Committee recalls that, although the refusal of employment to a worker because of his or her family responsibilities was not addressed in Convention No. 156,[752] the Committee noted in its 1993 General Survey that those countries that had made "family responsibilities" an explicit prohibited ground of discrimination in all aspects of employment also included access to employment, which was a significant change from the situation that prevailed when the instruments were adopted.[753]

364. The Committee observes that provisions respecting discrimination based on family responsibilities, marital status or family situation continue to cover matters related to recruitment, selection criteria and job advertisements.[754] In *France*, it is prohibited to specify the family situation of a candidate in a job advertisement,[755] while in the *Republic of Korea* employers are not allowed to establish requirements relating to the marital status of a female candidate.[756] In *Viet Nam*, section 40(3)(b) of the Law on Gender Equality 2006 prohibits the refusal to recruit or the limitation of recruitment of workers because they are raising children.

365. The Committee observes that affirmative measures have also been adopted in some countries to promote the recruitment of workers with family responsibilities. In *Bulgaria*, sections 53 and 53(a) of the Employment Promotion Act (2001) provide incentives for employers to hire unemployed persons who are single parents (or adoptive parents) and/or mothers with children under 3 years of age, as well as unemployed mothers with children between 3 and 5 years of age. However, the Committee notes that such incentives appear only to be available to mothers or single parents, and not to fathers.[757] In *Slovakia*, the Government indicates that, as a result of the "Work and Family" project, new jobs will be created for which only persons with children under 6 years of age can be hired, with up to 90 per cent of the real expenses being covered for employers in such cases, and up to 50 per cent of the real expenses for employers employing persons with children aged between 6 and 10 years.[758]

366. ***The Committee welcomes the inclusion of elements relating to recruitment and job advertisements in provisions prohibiting discrimination based on family responsibilities, as they are key to ensuring that men and women with family responsibilities are not adversely affected at the recruitment stage. The Committee recalls that measures addressing the situation of workers with family responsibilities need to include both men and women. It also notes that, to fully enable workers with family responsibilities to become integrated in the labour market, it is necessary to ensure that recruitment procedures take into account their specific needs.***

751 See introduction of this General Survey, paras 25–26.

752 ILO, *Record of Proceedings*, International Labour Conference, 67th Session, 1981, *Provisional Record* No. 28, paras 160–162; 1993 General Survey, para. 119.

753 1993 General Survey, para. 123.

754 For example, *Bosnia and Herzegovina*, *Latvia* and *Portugal*.

755 *France* (sections L. 1132-1 and L. 1142-1 of the Labour Code).

756 *Republic of Korea* (sections 2(1) and 7(2) of the Equal Employment Act of 1987).

757 CEACR, Convention No. 156: *Bulgaria*, direct request, 2018.

758 CEACR, Convention No. 156: *Slovakia*, observation, 2018.

Prohibition of pregnancy testing or inquiries during the recruitment process

367. The protection of women from discrimination in the recruitment process should include measures to prevent employers from requesting information from potential candidates on their childbearing plans, which could be used in a discriminatory manner by discouraging the recruitment of women of childbearing age. Such discriminatory practices, including the requirement to undergo pregnancy tests for employment-related purposes, continue to be reported, predominantly in relation to certain categories of vulnerable workers such as migrant workers, domestic workers and workers in the garment sector.[759]

368. In order to combat this practice, Article 9(2) of Convention No. 183 specifically prohibits employers from requiring women to take pregnancy tests when applying for employment, except where required by national laws or regulations in respect of work that is: prohibited or restricted for pregnant or nursing women; or where there is a recognized or significant risk to the health of the woman or the child. Pregnancy testing has also been addressed by the Committee as a form of discrimination based on sex in the context of its examination of Convention No. 111, in relation to which the Committee noted the trend in several countries to explicitly prohibit the requirement of pregnancy testing as a condition for employment.[760]

369. In this regard, the Committee observes that some Member States (24 according to ILO research) have reported the adoption of explicit provisions banning pregnancy testing.[761] Recent examples include *Colombia*, where Act No. 2114 of 2021 prohibits employers from requiring a pregnancy test as a condition of employment or asking employees about their plans to have children.[762] In *Chile*, employers are prohibited from requiring women jobseekers to provide a medical certificate or to undergo a medical examination to verify whether or not they are pregnant.[763] In *Kiribati*, employers are prohibited from requiring employees to undergo medical examinations that include screening for pregnancy as a condition for employment.[764]

370. In some countries, there is a more general prohibition on employers from asking any questions or requesting any information either on (i) pregnancy or (ii) family planning during the recruitment process, which covers the prohibition of pregnancy testing.[765] In *Australia*, it is unlawful to request or require a job applicant to provide information, including by way of completing a form, concerning pregnancy or potential pregnancy.[766] In *Belgium*, case law and collective agreements prohibit employers from asking job applicants questions regarding the topic of pregnancy.

371. In other countries, the prohibition of pregnancy testing also covers the employment period. For example, in *Brazil*, *Colombia* and *Nicaragua*, employers are prohibited from requiring a woman applying for a job to take a pregnancy test or to make a woman undergo such a

759 ILO, *Care at Work*, 90.

760 1996 Special Survey, para. 171; 2012 General Survey, para. 784. See also CEACR, Convention No. 111: *Nicaragua*, direct request 2012; *Uruguay*, direct request, 2021 (Act No. 1868 of 2011); *Bolivarian Republic of Venezuela*, direct request, 2014.

761 *Brazil, Chile, Colombia, El Salvador, France, Lao People's Democratic Republic, Mexico, Montenegro, Nicaragua, Panama, Portugal, Serbia* and *Bolivarian Republic of Venezuela*.

762 World Bank, *Women, Business and the Law 2022*, 2022, 29.

763 *Chile* (section 194 of the Labour Code of 2020).

764 *Kiribati* (section 111(1) of the Employment and Industrial Relations Code of 2015).

765 For example, *Bosnia and Herzegovina*, *Czechia*, *Norway*, *Slovakia* and *Slovenia*.

766 *Australia* (section 27 of the Sex Discrimination Act of 1984).

test without her consent during the course of employment.[767] In *Chile*, pregnancy testing is prohibited in relation to job retention, promotion, mobility or contract renewal.[768]

372. ***The Committee welcomes legislative provisions which prohibit employers from requesting or collecting information on the possible pregnancy or future family plans of job applicants, and which prohibit the requirement of pregnancy testing during the recruitment process and during the period of employment in general, and more broadly protect women from discriminatory treatment during the recruitment procedure.***

373. The Committee notes that in certain countries there are exemptions from the general prohibition of pregnancy testing, as allowed under Article 9(2) of Convention No. 183.[769] For example, in *Albania*, pregnancy tests are prohibited before starting employment, except in cases where work is performed under conditions that may negatively affect pregnancy or may harm the life or health of the mother or child.[770] In *South Sudan*, an employer shall not require a pregnancy test or a certificate of such a test when a woman applies for employment, except if the work is prohibited or restricted for pregnant women by law, or if there is a recognized or significant risk to the health of the pregnant woman.[771]

374. The Committee has observed the existence of a general requirement in some countries to undergo a medical examination prior to recruitment or to obtain a medical certificate to conclude an employment contract.[772] ***In such cases, the Committee has recalled that women jobseekers must not be required to undergo a test for pregnancy during such medical examinations, except in respect of work that is prohibited or restricted for pregnant or nursing women under national laws or regulations or where there is a recognized or significant risk to the health of the woman and child.*** For example, in *Colombia*, the Labour Code requires employers to ensure that pre-employment medical evaluation does not include a pregnancy test.[773]

375. The Committee observes that there remain challenges in the application of Article 9(2) of Convention No. 183. According to ILO research, there are still 100 countries in which the practice of requiring women to take pregnancy tests is not prohibited, and 60 where it is not explicitly prohibited, but covered by other legislation, including related anti-discrimination provisions. Only 8.9 per cent of potential mothers around the world live in the 24 countries in which pregnancy testing is explicitly prohibited by law.[774] In this regard, the Committee observes that a number of governments refer to general provisions prohibiting gender or sex discrimination as a means of preventing employers from requiring a pregnancy test.[775] While such provisions remain at the heart of anti-discrimination legislation, the Committee observes that their general wording may lead to a lack of legal certainty and may not amount to an effective prohibition of pregnancy testing in practice. Further measures may therefore be necessary to ensure that pregnancy testing is explicitly prohibited in law.

767 *Brazil* (section 373-A(IV) of the Legislative Decree of 1943 approving the Consolidation of Labour Laws); *Colombia* (section 241A of the Labour Code); *Nicaragua* (section 2 of Ministerial Agreement No. JCHG-005-05-07).

768 *Chile* (section 194(4) of the Labour Code).

769 For example, *Colombia*, *Portugal* and *Serbia*.

770 *Albania* (section 105/a(1) of the Labour Code of 1995).

771 *South Sudan* (section 116(4) of the Labour Code of 2017).

772 For example, CEACR, Convention No. 183: *Bulgaria*, direct request, 2014; *Senegal*, direct request, 2019.

773 *Colombia* (section 241A of the Labour Code).

774 ILO, *Care at Work*, 90.

775 For example, the Government of *Panama* refers to the constitutional principles prohibiting gender discrimination, while the Government of the *Cook Islands* indicates that, apart from the general prohibition of discrimination, there are no other specific measures in this respect. The Government of *Armenia* indicates that pregnancy testing is prohibited because employers may only request documents concerning the job applicant's state of health for jobs for which an initial medical examination is required, as determined by law.

376. The Committee further notes that, according to recent research, employers in 91 per cent of countries are not prohibited by law from inquiring about family status during hiring processes, which may result in discriminatory treatment of women candidates.[776] The practice of asking women applicants about potential or current pregnancy during job interviews and recruitment procedures is therefore prevalent in some countries.[777] For example, in *France*, 42 per cent of young women candidates indicated that they had been asked by employers about their pregnancy plans.[778] In the *United Kingdom of Great Britain and Northern Ireland*, three quarters of surveyed mothers reported that their pregnancy situation, as known by the employer, had affected their chances of success during job interviews.[779] Similarly, the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS) *(Dominican Republic)* have reported that mandatory pregnancy testing for obtaining or retaining employment is frequent in all enterprises in the *Dominican Republic*, particularly textile enterprises and call centres in the maquila (export-processing) sector.[780] More recently, these unions have alleged that, although there are laws and public policies prohibiting discrimination, cases of discrimination at work occur, including cases of "hidden discrimination", which can include requiring pregnancy tests for certain groups of persons (particularly Haitian workers).

377. ***The Committee considers that the practice of asking job-seeking women or employees for information about family planning or requesting them to undergo pregnancy testing constitutes a serious form of sex discrimination, as prohibited by Convention No. 111, and a violation of the principle of equality of opportunity and treatment in employment and occupation. Noting this trend with particular concern, the Committee urges governments to take all the necessary measures without delay to ensure that mandatory pregnancy testing to secure or retain employment is explicitly prohibited in both law and practice in all cases, except those allowed under Article 9(2) of Convention No. 183. Measures should also be taken to raise awareness of this serious form of sex discrimination.***

776 Katharine Christopherson et al., *Tackling Legal Impediments to Women's Economic Empowerment*, International Monetary Fund (IMF) Working Paper 22/37, 2022, 12.

777 CEACR, Convention No. 183: *Belize*, direct request, 2009; *Dominican Republic*, direct request, 2020. The Committee has also noted the existence of reports of pregnancy testing in: CEACR, Convention No. 111: *Dominican Republic*, observation, 2016; *El Salvador*, observation, 2016; *Guatemala*, direct request, 2020; *United Republic of Tanzania*, observation, 2021.

778 OECD, *From Promises to Action,* 84.

779 United Kingdom Equality and Human Rights Commission, *Pregnancy and Maternity-Related Discrimination and Disadvantage: Experiences of Mothers*, 2016, 159 and 165.

780 CEACR, Convention No. 111: *Dominican Republic*, observation, 2016.

2. Ensuring equal opportunities to advance in employment and occupation

Recommendation No. 111, Paragraph 2(b)(iii)
Recommendation No. 165, Paragraphs 12 and 13

378. Through its coverage of access to employment and occupation, including access to senior positions,[781] Convention No. 111 establishes the right of every person not to be subject to discrimination with regard to promotion earned during the course of employment,[782] in both the private and public sectors.[783] Paragraph 2(b)(iii) of Recommendation No. 111 indicates that the national equality policy adopted under the Convention should have regard to the principle of equality of opportunity and treatment of all persons in respect of advancement in accordance with their individual character, experience, ability and diligence. In relation to workers with family responsibilities, by establishing in Article 3 the right of persons with family responsibilities to engage in employment without discrimination, Convention No. 156 also covers promotion in employment and occupation.

379. Equality of opportunity in relation to promotion and access to higher level jobs is a crucial element in the achievement of gender equality at work and contributes to economic success.[784] It would nevertheless appear that women's under-representation in higher and management level positions (vertical occupational gender segregation) continues to persist.[785] According to ILO research, only 27.1 per cent of managers and leaders globally are women, a figure that has changed very little over the past 30 years.[786] Family responsibilities, gender stereotypes and a masculine corporate culture have been identified as the main barriers to women's leadership.[787] Data points to the existence of a "motherhood leadership penalty", as mothers of children aged 0–5 years have the lowest participation rates in managerial and leadership positions, compared with both their male counterparts and with men and women without young children. ILO research also indicates that, even when women and men have career interruptions for childcare, men are not necessarily as penalized as women.[788] Moreover, gender stereotypes and norms may reinforce the idea that women, because of their gender, aspirations, preferences, capabilities or expected role in society, including in caring for the family, are unfit for certain jobs.[789]

781 1963 General Survey, para. 35; 1988 General Survey, para. 107.

782 1988 General Survey, para. 108; 1996 Special Survey, para. 103.

783 1988 General Survey, para. 110.

784 ILO, *A Quantum Leap for Gender Equality*, 29; ILO, *Women in Business and Management*, 16–23.

785 Difficulties found by women to access such positions are often referred to as the "glass ceiling". Similarly, the phenomenon of a "gay glass ceiling" has also been identified for LGBTIQ+ people. See Gurchaten Sandhu, "The Future of Work for LGBTI People", in *The Future of Diversity*, eds Christiane Kuptsch and Éric Charest (Geneva: ILO, 2021), 127.

786 ILO, *A Quantum Leap for Gender Equality*, 29. According to such data, in 2018, the share of women in managerial and leadership positions ranged from 11.1 per cent in the Arab States to 39 per cent in the Americas. The Americas experienced the largest increase over the 27 years (8.8 percentage points), followed by Asia and the Pacific (4.8 percentage points) and Europe and Central Asia (3.7 percentage points). In Africa, women's share of representation in top positions is around 20 per cent.

787 ILO and Gallup, *Towards a Better Future for Women and Work*, 44; ILO, *A Quantum Leap for Gender Equality*, 42; ILO, *Women in Business and Management*, 66.

788 ILO, *A Quantum Leap for Gender Equality*, 41 and 72.

789 2012 General Survey, para. 673.

2.1. Promotion procedures

380. Gender sensitive recruitment, retention and promotion policies are the most effective tools to increase the share of women in higher-level and managerial jobs. Effective practices in this respect include the review of merit-based recruitment and promotion and the control of gender bias, the promotion of gender diversity and inclusion within enterprise organizational culture, particularly when accompanied by flexible work arrangements that support work–life balance for all employees, and managerial responsibility for supporting and promoting gender diversity measures.[790]

381. In addition to measures to ensure equal access to all jobs,[791] promotion procedures are pivotal to addressing vertical occupational segregation.[792] The Committee notes that many provisions prohibiting discrimination based on sex specifically cover promotion or career advancement.[793] A number of provisions also refer in this regard to discrimination based on family responsibilities, marital status and family situation,[794] as well as maternity or pregnancy.[795]

382. It is important to ensure that requirements and criteria for promotion and selection are not based on gender stereotypes and that they are applied without gender bias, with particular attention being paid to addressing indirect discrimination. The Committee particularly recalls that, while the use of promotion criteria (such as performance, qualifications, merit, seniority, experience, past training and fitness to perform the tasks of the new post) may, at first sight, seem to ensure that there is no place for discriminatory differences, it is necessary to review how such criteria are taken into account in order to prevent indirect discrimination.[796] For instance, the Committee has observed that emphasis on "unbroken service" and methods of calculating seniority could particularly affect women, as interruptions of their working lives due to pregnancy or motherhood are not always taken into account in the calculation of seniority.[797] The Committee has noted in this regard the observations by the Trade Union Confederation of Workers' Commissions (CCOO) *(Spain)* that, in *Spain,* the indication in certain agreements that, "in the event of equal skills and capacities, the person with the greatest seniority in the enterprise shall be chosen", benefits men, as women tend to enter the labour market later, and also have career interruptions due to their unpaid care work.[798] In some countries, specific provisions rectify this type of discrimination by calling for periods of absence from work on account of childbirth or pregnancy to be treated as a periods of employment for the purposes of advancement.[799]

790 ILO, *Women in Business and Management*, 75 and 79.

791 In this regard, the Committee also refers to section 1 of this Chapter on accessing more and better jobs.

792 1988 General Survey, para. 110.

793 For example, *Albania*, *Algeria*, *Australia*, *Austria*, *Belgium*, *Benin*, *Bosnia and Herzegovina* (Federation of Bosnia and Herzegovina), *Brazil*, *Bulgaria*, *Burundi*, *Côte d'Ivoire*, *Denmark*, *Ecuador*, *France*, *Guinea*, *Grenada*, *Honduras*, *Iceland*, *Italy*, *Latvia*, *Mexico*, *Montenegro*, *Morocco*, *Namibia*, *Netherlands*, *Niger*, *North Macedonia*, *Norway*, *Peru*, *Poland*, *Portugal*, *Senegal*, *Serbia*, *Slovakia*, *Slovenia*, *Sweden*, *Switzerland*, *Trinidad and Tobago*, *Türkiye*, *Bolivarian Republic of Venezuela* and *Yemen*.

794 For example, *Australia*, *Bulgaria*, *France*, *Latvia*, *Mali*, *North Macedonia*, *Norway*, *Portugal*, *Slovakia*, *Sweden* and *Türkiye*.

795 For example, *Australia*, *Bulgaria*, *Chile*, *France*, *Iceland*, *Lithuania*, *Mali*, *Netherlands*, *North Macedonia*, *Norway*, *Portugal*, *Serbia* and *Slovakia*.

796 1988 General Survey, para. 109.

797 1988 General Survey, para. 111; 1996 Special Survey, para. 105; 2012 General Survey, para. 757.

798 CEACR, Convention No. 111: *Spain*, observation, 2018.

799 1988 General Survey, para. 111.

383. ***In order to achieve equality of opportunity and treatment in advancement in employment and occupation, it is indispensable to ensure that promotion procedures apply objective criteria that are not based on or do not reinforce gender stereotypes in order to prevent any direct or indirect discrimination arising from the application of such criteria.***

384. Differences in professional advancement, particularly between men and women, are also likely to be due to difficulties in reconciling work with family responsibilities. ILO research shows that the requirement of constant availability ("anytime, anywhere" availability) is often considered an element of a top-level career, particularly with today's digital connectivity.[800] As women often shoulder a disproportionate proportion of unpaid care work, they frequently struggle to balance work and family responsibilities when they are in managerial positions.[801] This has not improved with the COVID-19 pandemic, which has exacerbated pre-existing gender inequalities in the labour market and the imbalance between women and men in relation to housework and family responsibilities.[802] Where men share the burden of unpaid care work more equally with women, a greater proportion of women are found in managerial positions.[803] In this respect, the adoption of measures to facilitate the balancing of work and family life, such as the availability of childcare services and childcare subsidies for employees, as well as measures covering care for older, disabled or sick family members, contribute to more women reaching managerial and leadership positions.[804]

385. ***Measures to facilitate the reconciliation of work and family responsibilities, and to promote an equal distribution of care responsibilities between men and women, are key to building an enabling environment in which women workers and workers with family responsibilities can enjoy effective equality of opportunity in professional and career advancement.***

386. Other examples of measures to promote a greater presence by women in high-level positions include mentoring and training programmes and career counselling for women, targets and quotas, databases of the profiles of qualified women, and measures to change a masculine organizational culture, including through awareness-raising.[805] In *Senegal*, the revised Guide on education personnel movements includes the establishment of a quota of 10 per cent of positions of responsibility for women and bonus points for women workers applying for such positions. The French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE-CGC) *(France)* also refers to the "Rixain Law", which establishes a quota of 40 per cent to management posts of big companies in France, with non-compliance being subject to a monetary sanction. ***A range of proactive measures that promote the presence of women in high-level and managerial positions contribute to addressing vertical gender segregation and are a necessary element to build an*** **enabling** ***working environment to achieve effective gender equality in advancement and promotion, as they foster an inclusive and gender-aware workplace culture without stigma for women workers and workers with family responsibilities, particularly regarding perceptions of gender roles in relation to high-level and managerial positions.***

800 ILO, *Women in Business and Management*, xiii and 66–67. Workers organizations from *Sweden* (the Swedish Confederation for Professional Employees (TCO), the Swedish Confederation of Professional Associations (SACO) and the Swedish Trade Union Confederation (LO)) also refer to research showing that female professionals face a lower probability of reaching high positions on the labour market than men due to expectations of future absences from work, and that male professionals who take parental leave also show such a lower probability which is related to the length of their absence.

801 ILO, *A Quantum Leap for Gender Equality*, 41; ILO, *Women in Business and Management*, 66.

802 ILO, *Care at Work*, 2022, 5.

803 ILO research suggests that supporting workers with family responsibilities throughout their life cycle, for instance through the "caring company model" in the private sector, can also increase women's opportunities to reach managerial and leadership positions. ILO, *A Quantum Leap for Gender Equality*, 82.

804 ILO, *Care at Work*, 138; ILO, *A Quantum Leap for Gender Equality*, 81.

805 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 2018, 322; ILO, *A Quantum Leap for Gender Equality*, 72.

2.2. Skilling, reskilling and upskilling to access higher positions

387. The Committee also observes that skilling, reskilling and upskilling are of the utmost importance, not only for access to employment and occupation, but also for workers to advance in their working lives. Regular training and lifelong learning are key for workers to keep up with the new skills required in a rapidly changing world of work.[806] Ensuring equal opportunities to training and retraining during employment leads to greater equality in promotion and career advancement.[807] In addition to measures requiring equal access to education and training, as indicated above,[808] the Committee notes that the law in some countries also establishes the right of workers to retraining, continuing education and professional development.[809]

388. It is essential for the particular needs of workers with family responsibilities to be taken into account in this regard. Recommendation No. 165 draws particular attention to the importance of vocational training during employment for workers with family responsibilities. In Paragraph 13, it indicates that, where possible, paid educational leave arrangements to use vocational training facilities should be made available to workers with family responsibilities. In this regard, the Committee welcomes the numerous provisions in national laws and regulations respecting educational leave.[810] The Governments of *Guyana*, *Netherlands*, *Saint Kitts and Nevis* and *Suriname* indicate that educational leave may be provided by companies through their policies or collective agreements. The Committee notes that, while such measures are normally available to all workers, including those with family responsibilities, specific measures focusing on the provision of such leave for workers with family responsibilities appear to be scarce. For instance, in *Austria*, employees may agree on educational leave with their employer for a period of between two months to a year in order to follow a vocational training course, or may agree to part-time work for study purposes. The requirements to receive the related benefits or allowances are lower for workers with responsibilities regarding children under the age of 7, as they are required to study for a minimum of 16 hours a week, instead of 20 hours a week for other workers.

389. During the preparatory work for Convention No. 156 and Recommendation No. 165, some constituents noted that workers with family responsibilities may find it more difficult to avail themselves of the right to paid educational leave, and that services such as child minding and day nurseries could facilitate their attendance at such programmes.[811] Paragraph 13 of the Recommendation therefore calls for the adoption, in countries where paid educational leave is available, of measures to allow workers with family responsibilities to benefit from such leave on an equal basis.[812] The Committee takes note, in this regard, that similar concerns are raised by the Swedish Confederation for Professional Employees (TCO), the Swedish Confederation of Professional Associations (SACO) and the Swedish Trade Union Confederation (LO) *(Sweden)* regarding lack of access to training for part-time employees and employees with temporary employment (who are often women), as well as the Confederation of Christian Trade Unions (CSC), the General Confederation of Liberal Trade Unions of Belgium (CGSLB) and the General Labour Federation of Belgium (FGTB) *(Belgium)* regarding the fact that more men than women benefit from paid educational leave.

---

806 ILO, *A Quantum Leap for Gender Equality*, 88; ILO, *Shaping Skills and Lifelong Learning for the Future of Work*, para. 88.

807 See also 1988 General Survey, para. 110.

808 See section 1 of this Chapter.

809 For example, *Jamaica*, *Qatar* and *Slovenia*.

810 For example, *Armenia*, *Cameroon*, *Croatia*, *Ecuador*, *Egypt* (for examinations), *Georgia*, *Ghana*, *Greece* (for training supervised by the State), *Guatemala*, *Latvia*, *Lithuania*, *Luxembourg*, *Saudi Arabia* (for examinations), *Saint Kitts and Nevis*, *Seychelles*, *Slovenia* (for examinations), *Tajikistan* (for examinations), *Togo* and *Uruguay*.

811 ILO, *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, Report VI(2), International Labour Conference, 66th Session, 1980 (hereinafter "Report VI(2) on Convention No.156"), 38.

812 1993 General Survey, para. 111.

390. ***In light of the central role that continuous training plays in career advancement and promotion, the Committee notes that, in practice, in order to achieve equality of opportunity for workers with family responsibilities, measures are required to facilitate the integration of family responsibilities with vocational training so that workers with family responsibilities are able to avail themselves of the available services. The Committee refers to Chapter VII for further information on such measures.***

3. Remuneration and conditions of work

Recommendation No. 111, Paragraph 2(b)(v), 2(b)(vi) and 2(d)
Recommendation No. 165, Paragraphs 12 and 13

391. Article 1(3) of Convention No. 111 refers to terms and conditions of employment, and Paragraph 2(d) of Recommendation No. 111 indicates that employers should not practice or countenance discrimination in fixing terms and conditions of employment.[813] A number of national laws and regulations prohibiting discrimination include a general reference to conditions of work or employment.[814]

392. Terms and conditions of employment cover a range of items including remuneration for work of equal value and conditions of work (hours of work, rest periods, annual holidays with pay, occupational safety and health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment). Regarding conditions of work, the Committee refers to the relevant chapters below addressing matters such as leave, working time arrangements, occupational safety and health protection, and social security benefits.

3.1. Remuneration

393. Part of the gender pay gap is linked to factors such as occupational gender segregation (and, hence, the likelihood of women being employed in the least well-paid branches of activity and occupations), and differences between women's and men's occupational careers resulting from the difficulty of reconciling work and family responsibilities, rather than to direct discrimination between men and women carrying out work of the same value.[815] In this regard, mothers tend to earn less than women without children (the "motherhood wage penalty"), while fathers are more likely to receive better pay than men without children (the "fatherhood pay gap").[816] ILO research indicates that these dynamics may be related to a number of factors, including career breaks, reduced hours of work, gender-biased hiring and promotion decisions, social pressure compelling women to be the main caregivers and men to work longer hours as breadwinners, and a culture of long working hours which may lead to stigma against workers who choose flexible working arrangements.[817]

813 1988 General Survey, para. 107.

814 For example, *Austria*, *Benin*, *Burundi*, *Cabo Verde*, *Denmark*, *Grenada*, *Hungary*, *Latvia*, *Namibia*, *Serbia*, *Slovakia*, *Slovenia*, *Suriname* (draft Bill on Equality of Treatment regarding Labour), *Switzerland* and *Türkiye*.

815 1988 General Survey, para. 118.

816 ILO, *A Quantum Leap for Gender Equality*, 39–40.

817 ILO, *A Quantum Leap for Gender Equality*, 40; 1988 General Survey, para. 118.

394. Recommendation No. 111 indicates in Paragraph 2(b)(v) that the national policy for the prevention of discrimination in employment and occupation should have regard to the principle that all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of remuneration for work of equal value. The Committee recalls that the principle of equal remuneration for men and women workers for work of equal value is laid down in the Equal Remuneration Convention, 1951 (No. 100), as supplemented by the Equal Remuneration Recommendation, 1951 (No. 90), and refers in this regard to its 1986 and 2012 General Surveys on those instruments.

395. Unlike a number of other instruments on equal treatment, the ILO standards go beyond a reference to "the same" or "similar" work in choosing the "value" of the work as the point of comparison. The notion of paying men and women in accordance with the value of their work necessitates the adoption of techniques to measure and compare objectively the relative value of the jobs performed. Because men and women often perform different jobs that may be valued in different ways by societies, a technique to measure the relative value of jobs with varying content is critical to eliminating discrimination in the remuneration of men and women. When comparing different jobs that may be of equal value yet reflect occupational gender segregation, the 2012 General Survey emphasizes the importance of applying objective job evaluations that are free from gender bias, and it notes objective job-related factors such as skills/qualifications, effort, responsibilities, and working conditions.[818]

396. In recent years, courts and legislatures have increasingly recognized the importance of the job evaluation process as a means of applying the principle of equal pay for work of equal value and addressing the challenge of occupational gender segregation.[819] ***The Committee welcomes the growing interest in and attention to the process of job evaluation to assure that the value of work is rewarded free from gender discrimination***. In this regard, the Committee recognizes the Equal Pay International Coalition (EPIC) led by the ILO, UN Women, and the OECD, which has as its goal to assist stakeholders committed to reduce the gender pay gap and make equal pay for work of equal value a reality across all countries and sectors, as required under target 8.5 of Sustainable Development Goal 8.

397. As previously noted by the Committee, remuneration is explicitly referred to in many laws and regulations prohibiting discrimination, usually in relation to discrimination based on sex.[820] The Committee further notes that, in some countries, provisions addressing discrimination based on maternity, family responsibilities or marital status also cover discrimination in remuneration.[821] The Committee takes note of existing research showing that tackling differences of remuneration linked to motherhood or family responsibilities, such as the motherhood pay gap, is closely linked to a number of policies and measures, including job-protected parental leave, accessible childcare, flexible working and occupational upgrading of part-time work, a cultural environment that supports the fair sharing of unpaid care work, egalitarian tax and benefit rules, and affirmative action in hiring and promotion.[822]

818 2012 General Survey, paras 700–701.

819 See for example: *Enderby v. Frenchay Health Authority and Secretary of State for Health* [1993] IRLE 591, ECJ; *United Kingdom of Great Britain and Northern Ireland* (section 65 of the Equality Act (2010)); *South Africa* (Code of Good Practice on Equal Pay for Work of Equal Value (2015)).

820 1988 General Survey, para. 119.

821 For example, *Brazil*, *Georgia*, *Italy*, *Namibia*, *Slovakia* and *Switzerland*.

822 Grimshaw and Rubery, *The Motherhood Pay Gap*, 2015. See also ILO, *Care at Work*, 61 and 217.

3.2. Social security measures and welfare facilities and benefits

398. The Committee recalls that, under Convention No. 111, the prohibition of discriminatory treatment includes benefits or conditions of entitlement to social security, the application of statutory or occupational schemes, whether voluntary or compulsory, contributions and the calculation of benefits.[823] In this regard, the Committee notes that a number of national provisions on equality and non-discrimination explicitly cover social security or social benefits.[824]

399. However, gaps persist in social security coverage for women. According to ILO research, women's coverage by comprehensive social security systems that include a full range of benefits lags 8 percentage points behind that of men. These gaps reflect and reproduce the labour force participation rates of women and men, higher levels of part-time work, temporary work and informal employment among women, gender pay gaps and a disproportionately higher share of unpaid care work. Women are more represented in sectors and occupations that have less or no coverage, such as part-time work, domestic work and work in the informal economy.[825] The Committee highlights in this the importance of measures aiming to promote the entry of women into the formal economy, as well as to ensure that part-time workers are covered by social security schemes and to facilitate their return to full-time work.

400. In relation to pensionable benefits, ILO data suggests that major disparities persist between men and women regarding coverage by old-age pensions.[826] The Committee recalls that different pensionable ages for men and women can be discriminatory, particularly where the amount of the pension is linked to the length of contributions, with different retirement ages resulting in women receiving lower pensions than men.[827] The Committee welcomes the measures adopted in some countries to recognize and reward periods spent caring for children. For instance, the Committee notes that in *Spain*, a contributory pension supplement has been established to reduce the gender pension gap to less than 5 per cent and is available to mothers and fathers who can show that childcare responsibilities upon the birth or adoption of a child have negatively affected their regular contributions.[828] In *Argentina*, by virtue of Decree 475/2021, women at retirement age who did not attain minimal contributory requirements for retirement benefits may add years of contribution to their records for each child they had or adopted. The Swedish Confederation for Professional Employees (TCO), the Swedish Confederation of Professional Associations (SACO), and the Swedish Trade Union Confederation (LO) *(Sweden)* indicate that the parent who earns less receives extra financial support for their general pension during the child's first four years. ***The Committee encourages governments to take the necessary measures, in cooperation with the social partners, to ensure that there is no direct or indirect discrimination based on sex with respect to the retirement age in the public and private sectors, and that the working life of women is not shortened in a discriminatory manner.***

823 1996 Special Survey, para. 113; 2012 General Survey, para. 760. See also Ch. VII below.

824 For example, *Belgium*, *Benin*, *Côte d'Ivoire*, *Georgia*, *Italy*, *Morocco*, *Namibia*, *Slovenia*, *Türkiye* and *Yemen*.

825 ILO, *World Social Protection Report 2020–22: Social Protection at the Crossroads – In Pursuit of a Better Future*, 2021, 19 and 54.

826 ILO, *World Social Protection Report 2020–22*, 22.

827 CEACR, Convention No. 111: *Chile*, direct request, 2018; *China*, direct request, 2021; *Lao People's Democratic Republic*, direct request, 2020; *Mongolia*, direct request, 2021; *Serbia*, observation, 2016; *Thailand*, direct request, 2021; *Viet Nam*, direct request, 2021.

828 CEACR, Convention No. 156: *Spain*, observation, 2021.

4. Returning to work

Convention No. 156, Article 7
Recommendation No. 165, Paragraphs 12 and 14
Convention No. 183, Article 8(2)
Recommendation No. 191, Paragraph 5

401. In order to promote gender equality throughout the employment cycle, it is essential to address the return to work of both women and men who have interrupted their careers to care for children or other dependent family members. As women tend to shoulder a bigger proportion of unpaid care work in the family, the resulting career interruptions often have a greater effect on their progression and conditions of work. Moreover, research indicates that gender norms in the context of marriage and care affect women's labour force participation rate. For instance, unemployed married women who are part of the labour force are much less likely to return to employment than single women.[829] Ensuring the return to work following such interruptions is therefore a key component of gender equality in employment and occupation.

4.1. Right to return to the same or equivalent position after maternity and parental leave

402. An essential part of employment protection for women consists of ensuring that their absence on maternity leave has no adverse effects on their resumption and continuation of work following leave.[830] Women who become pregnant and go on maternity and parental leave tend to face many obstacles upon their return to work or re-entry into the workforce. Guaranteeing the right to return to work in the same or an equivalent position following maternity leave is important for the retention and progression of women in paid work after childbirth.[831] Where such a right to return is not guaranteed, women may be faced with disadvantage or retrogression in their working conditions and job security. For instance, mothers typically suffer lower and relatively poor-quality labour market participation compared with women living without dependants, and also compared with men and fathers.[832] Furthermore, transitions by mothers to new employers or new jobs within the existing workplace tend to be associated with wage reductions and long-term negative cumulative effects on their wages.[833]

Right to return to work following maternity and other leave arrangements

403. Legal rules establishing the right to return to the same job with the same pay, as required by the maternity protection standards, are therefore critical to addressing gender inequalities at work, and particularly the motherhood employment gap and the motherhood wage penalty.[834] Article 8(2) of Convention No. 183 and Paragraph 5 of Recommendation No. 191 explicitly provide that women are guaranteed the right to return to their positions following the end of maternity leave, or at the very least to an equivalent position paid at the same rate.[835]

829 UN Women, *Families in a Changing World: Progress of the World's Women 2019–2020*, 2019, 122.

830 Law and practice report on Convention No.183, 49.

831 ILO, *Women at Work: Trends 2016*, 59.

832 ILO, *Care at Work*, 119.

833 ILO, *Maternity and Paternity at Work*, 77.

834 This issue has also been addressed by the Committee when examining the application of Convention No. 111, when it has noted that discrimination based on maternity is particularly linked to dismissal or the denial of the return to work following maternity leave. See 2012 General Survey, para. 784.

835 While Conventions Nos 3 and 103 did not specifically provide for the right of women on maternity leave to return to their previous positions, this was considered an implied right. See Law and practice report on Convention No.183, 55.

404. In many countries, the national legislation explicitly establishes the right to return to the same position or an equivalent position following maternity leave, in accordance with Convention No. 183.[836] Recent ILO research shows that this entitlement is available through protective laws in 89 countries, in which 48.7 per cent of potential mothers live. Fifty-six of these 89 countries, in which 34.6 per cent of potential mothers live, guarantee the right to return to the same position or an equivalent position following maternity leave.[837] For example, in *Guatemala*, a woman who is on maternity leave has the right to return to the same or an equivalent position with remuneration corresponding to her aptitudes, ability and competence.[838] Similarly, in *Fiji* and *Vanuatu*, a woman who returns to her employment after maternity leave must be appointed to the same or an equivalent position but may also be appointed to a higher position.[839]

405. The right of women workers to return to the post occupied prior to their leave, paid at the same rate, is safeguarded in many countries at the expiration of maternity leave. This is the case in *Cambodia*, *Mali* and *Tunisia*, for instance, where women are entitled to return to the same and/or an equivalent position after maternity leave. In other countries, this right is guaranteed, more broadly, to workers who take leave to care for a child, regardless of their gender. In this regard, the right to return to work is guaranteed for workers following parental leave in a number of countries.[840] Similarly, in *Ireland*, following the period during which an employee was absent from work on protective leave, which includes maternity, paternity, parental and adoption leave, the employee is entitled to return to work.[841] ***The Committee welcomes this practice which contributes to gender equality by allowing men as well as women to benefit from the right to return to work following a period of leave to care for a child.***

406. In some countries, the legislation allows employers to offer the possibility of returning to an equivalent position when it is not possible for the worker to return to the position held previously.[842] For example, in *Malta*, in cases where it is no longer possible to return to the same job for a valid reason, women workers are entitled to an equivalent or similar position which is consistent with their original contract of employment.[843] In *Finland*, if the same position or an equivalent position is no longer available, employers have to offer women employees returning from maternity leave other work corresponding to their employment contract.[844]

407. Moreover, in certain countries, upon their return to work following maternity leave, the wages of women workers are subject to adjustments according to the general increases in wages during their absence. For example, in *Hungary* and *France*, following the end of maternity leave, women workers' wages are adjusted according to changes in the average annual wages of employees in the same position or professional category.[845] In *Lithuania*, employers have to guarantee workers returning to work from maternity or parental leave the adjusted remuneration to which they would have been entitled if they had continued working.[846] ***The Committee welcomes the good practice observed in certain countries where women's right***

836 For example, *Albania*, *Algeria*, *Australia*, *Bahamas*, *Brazil*, *Côte d'Ivoire*, *Croatia*, *Eswatini*, *France*, *Greece*, *Iceland*, *Iraq*, *Israel*, *Jamaica*, *Kenya*, *Kiribati*, *Malawi*, *Morocco*, *Russian Federation*, *Spain*, *Suriname*, *Viet Nam* and *Zambia*. See also ILO, *Maternity and Paternity at Work*, 80–81.

837 See ILO, *Care at Work*, 88. The region with the highest share of potential mothers (92.8 per cent) living in countries where there is the right to return to the same or an equivalent position following maternity leave is reported to be the Americas.

838 *Guatemala* (section 152(b) of the Labour Code).

839 *Fiji* (section 101(7) of the Employment Relations Act of 2007); *Vanuatu* (section 36(4) of the Employment Act of 1983).

840 For example, *Albania*, *Burkina Faso*, *Croatia*, *Cuba*, *Cyprus*, *Finland*, *Montenegro*, *New Zealand*, *North Macedonia*, *Slovakia* and the *United Kingdom of Great Britain and Northern Ireland*.

841 *Ireland* (sections 26 and 27 of the Maternity Protection Act of 1994).

842 For example, *Croatia*, *Czechia*, *Jamaica*, *Montenegro*, *North Macedonia*, *Poland*, *Portugal*, *Slovakia* and *Vanuatu*.

843 *Malta* (Regulation 11(1) of SL 452.91).

844 *Finland* (Ch. 4, section 9 of the Employment Contracts Act (55/2001)).

845 *Hungary* (section 59 of the Labour Code of 2012); *France* (sections L. 1225-26 and L. 1225-44 of the Labour Code).

846 *Lithuania* (section 131(2) of the Labour Code).

to return to work to the same or equivalent position, after maternity leave, is not only guaranteed, but also accompanied by the maintenance of their employment entitlements accumulated during their period of leave, such as general increases of wages. The Committee also welcomes national practices where this right is broadened and is granted to any parent following a period of leave to care for a child, which contribute to gender equality.

408. The Committee also welcomes national provisions that require vocational training to be provided to workers following their return to work after maternity leave, or other types of leave for family responsibilities.[847] In *Bulgaria* and *Croatia*, workers returning to work from maternity or parental leave have to be provided with training to update their professional skills in the event of technological changes at work or changes in working methods.[848] Similarly, in *France*, workers' training needs are assessed by their employer when they return to work following parental leave.[849] In *Georgia*, following maternity, parental or adoption leave, workers may request to participate in vocational training if it is necessary for the performance of work under the employment agreement, and does not impose a disproportionate burden on the employer. Participation in such training is included in working time and is paid.

409. ***The Committee welcomes as examples of good practice national legislation recognizing the importance of vocational or updated training for workers returning from maternity, parental or adoption leave, and considers that they contribute to gender equality in work or employment, as they allow women to address skills gaps that may have emerged due to their absence on maternity and parental leave and to invest in career advancement.***

410. However, the Committee observes that in a large number of countries there is still no adequate protection for the right of women to return to work following maternity leave. An ILO report found that, in 2021, of the 184 countries for which information is available, 95 still do not have legal provisions that guarantee the right to return to the same or an equivalent position. This means that 51.3 per cent of potential mothers live in countries where there is no guaranteed right to return to the same or an equivalent position following maternity leave.[850]

411. Moreover, in certain countries, women are required to pay a contract termination fee or to repay the wages received during their leave if they do not return to work following maternity leave or resign within a certain period of taking leave. For example, in *Malta*, if a woman resigns without good and sufficient cause within six months of returning to work, she has to repay the employer a sum equivalent to the wages received during maternity leave.[851] In the *Solomon Islands*, if a woman worker who has received the wages due during maternity or additional leave fails without reasonable cause to return to work, she is considered to have abandoned employment without due notice and is required to pay the employer an amount equivalent to the wages payable during the one-month notice period.[852] In *Afghanistan*, if a woman worker does not return to work within five days of the expiry of maternity leave, it is considered to be a lapse of duty and she does not benefit from maternity allowances.[853]

847 However, despite the adoption of laws providing training to workers returning from maternity or parental leave, in practice, according to a global survey of 600 employers, only 29 per cent of organizations have indicated that they provide managers training to support employees through the maternity or paternity leave and return-to-work processes. See United Nations High-Level Panel on Women's Economic Empowerment, *Leave No One Behind: A Call to Action for Gender Equality and Women's Economic Empowerment*, 2016, 34.

848 *Bulgaria* (section 15(2) of the Protection Against Discrimination Act of 2003); *Croatia* (section 36(3) of the Labour Code of 2014).

849 *France* (section L. 6315-1 of the Labour Code).

850 ILO, *Care at Work*, 88. The report adds that large majorities of potential mothers are without job protection in Africa (71.8 per cent) and in the Arab States (74.9 per cent), with women living in *Côte d'Ivoire*, *Iraq*, *Kenya*, *Morocco* and *South Sudan* being notable exceptions.

851 *Malta* (section 36(20) of the Employment and Industrial Relations Act (Ch. 452) of 2002).

852 *Solomon Islands* (section 43(2) of the Labour Act (Ch. 73) of 1981).

853 *Afghanistan* (section 54(3) of the Labour Act of 2007).

The Committee emphasizes that the return to work following maternity leave is a right that women are free to exercise without any coercion whatsoever and is not an obligation. In this regard, the Committee considers that making the payment of wages or benefits during maternity leave conditional on the woman returning to work, or imposing financial penalties on women who do not do so, is discriminatory and an impediment to gender equality, and therefore contrary to ILO standards.

412. In some countries, although the right is established to return to the same position the worker had before taking maternity leave, the possibility is not specified of returning to a similar or equivalent post. For example, in *South Sudan*, following a period of maternity leave, an employee only has the right to return to the position that she held immediately before maternity leave.[854]

413. The Committee further observes that issues persist regarding the application in practice of national legislation establishing the right to return to the same or an equivalent position following maternity or parental leave. In *Serbia*, the Committee has noted that, while the Government explained that employees are reinstated into their posts after maternity or parental leave, the Confederation of Autonomous Trade Unions of Serbia (CATUS) *(Serbia)* indicated that, in practice, women who return to work following maternity leave face a reduction in wages, which appears in a rider to their employment contract, on the grounds that they have lost the capacity for work they would have acquired if they had not been absent.[855] When examining the implementation of Conventions Nos 111 and 156 in *Greece*,[856] the Committee noted allegations that working mothers returning from maternity leave suffer detrimental changes to their working conditions, particularly in the case of women in high-ranking positions, and requested information on the measures adopted to ensure that women are effectively protected (such as awareness-raising activities for workers, employers and their respective organizations on the rights of women workers in relation to pregnancy and maternity). The Federal Chamber of Labour (BAK) *(Austria)* indicates that, even though the principles of ILO instruments have been largely implemented through national legislation, there remain areas in which improvements are needed as, in practice, there are some cases of discrimination against workers who opt to work part-time following their return to work after parental leave, and the size of the damages awarded by the courts is not sufficiently dissuasive.

414. ***The Committee recalls that, in accordance with Article 8(2) of Convention No. 183, women must be guaranteed the right to return to the same position or an equivalent position paid at the same rate at the end of their maternity leave, and that the application of this provision of the Convention must be ensured in law and practice. In this regard, the Committee encourages Member States, in addition to the appropriate legislation, to adopt practical measures, such as awareness-raising activities and sufficiently dissuasive sanctions, to ensure this right for women wishing to return to work following maternity and/or parental leave.***

Maintaining employment-related entitlements and rights during maternity leave

415. Women should not be penalized because they take maternity leave. In accordance with the ILO maternity protection standards, women's social security rights should be maintained during their absence from work for the period of their leave.[857] As highlighted in the Law and practice report for Convention No. 183, the right of women wage-earners to be reinstated in their previous work is not in itself enough to prevent the procreative role of women from

854 *South Sudan* (section 64(6) of the Labour Act).

855 CEACR, Convention No. 183: *Serbia*, direct request, 2013.

856 CEACR, Convention No. 111: *Greece*, direct request, 2021; Convention No. 156: *Greece*, observation, 2021.

857 See also section 2 of this Chapter.

becoming an obstacle to the achievement of equality of opportunity and treatment; the absence of women on maternity and parental leave must not result in the loss or reduction of their entitlements and benefits under their employment contract. To do otherwise would only exacerbate the often considerable differences between men and women wage-earners.[858]

416. Paragraph 5 of Recommendation No. 191 accordingly indicates that the period of maternity leave referred to in Articles 4 and 5 of the Convention should be considered as a period of service for the determination of rights. In the legislation in a number of countries, the period of maternity leave is considered to be a period of service for the purpose of the determination of the employment rights of the workers concerned. For example, in *Albania*, *Bulgaria*, *Croatia*, *Estonia*, *Lithuania*, *Montenegro* and the *United Kingdom of Great Britain and Northern Ireland*, the national legislation provides that a woman employee is entitled to benefit from every improvement in the employment conditions she would have received during her absence. In *Algeria*, *Armenia*, *Cambodia*, *Ghana* and *New Zealand*, the period of maternity leave is considered to be a period of work for the determination of the duration of annual leave. Maternity leave also counts as full service in *Austria*, *Belgium*, *Bulgaria*, *Croatia*, the *Islamic Republic of Iran* and *Tajikistan*.

417. In *Australia*, it is prohibited to refuse advancements or any other benefits in employment on the grounds of pregnancy or potential pregnancy, breastfeeding or family responsibilities.[859] In *Japan*, discriminatory treatment of women workers for reasons of pregnancy or childbirth is prohibited, including demotion, salary reductions and disadvantageous transfers.[860] In *Trinidad and Tobago*, an employee on maternity leave must not be deprived of an opportunity to be considered for promotion for which she is eligible, and which may arise during her period of leave.[861]

418. The maintenance of employment benefits can also take the form of entitlement to continue in the same work without loss of seniority rights.[862] In *Zimbabwe*, rights to seniority and advancement, as well as other customary benefits and rights, continue during the entire leave period.[863] In *Cyprus*, maternity leave may not adversely affect the employee's seniority or her right to promotion or to return to the work in which she was engaged before maternity leave, or to other similar work with the same level of remuneration or remuneration and benefits.[864] In the *Philippines*, although workers receiving maternity benefits can be transferred or reassigned, this must not involve a reduction in rank, status or salary.[865]

419. ***The Committee welcomes the legislative provisions adopted in many countries that maintain the employment rights of women workers during their maternity leave. The Committee encourages Member States to continue taking measures to ensure in law and practice that workers returning to work following maternity-related leave do not face the loss or reduction of entitlements and benefits under the terms of their employment contract.***

858 Law and practice report on Convention No.183, 57.

859 *Australia* (section 14(2) of the Sex Discrimination Act of 1984).

860 *Japan* (section 9 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment).

861 *Trinidad and Tobago* (section 20 of the Maternity Protection Act).

862 For example, *Bahamas*, *Brazil*, *Cyprus*, *Jamaica*, *Kiribati*, *Philippines*, *Spain* and *Vanuatu*.

863 *Zimbabwe* (section 18(7) of the Labour Code of 1984).

864 *Cyprus* (section 7 of the Maternity Protection Act of 1997).

865 *Philippines* (Rule IV, sections 8 and 9, of the Rules and Regulations of RA 11210).

4.2. Returning to work after other types of care-related leave

420. The need to facilitate and support the return to work does not only arise in relation to maternity and parental leave, but also more generally for absences related to family responsibilities. In many countries, while the aim is to keep workers with caring responsibilities attached to the labour market by providing leave entitlements and other flexibility measures, it remains a challenge to ensure the equal uptake of these measures. Women continue to represent a large proportion of the beneficiaries of family-related leave, while the uptake of such leave by men typically leads to a greater reduction in family income (due to the gender pay gap), and men commonly face the fear of stigmatization in the workplace or career disadvantage due to societal factors.[866] Ensuring that workers who are absent due to family responsibilities can re-enter the labour force is key not only to preventing discrimination, but also to enabling both men and women to avail themselves of such leave without fear of not being able to return to work, and accordingly contributes to the more equal distribution of unpaid care work.

421. The Committee notes that, in addition to general measures concerning access to employment and occupation,[867] other more specific measures have been taken at the national level to facilitate the return to work following a period of leave related to family responsibilities. Measures include lifelong learning to help workers return to work following childbirth, parental leave or a period of long-term unemployment due to unpaid family care responsibilities.[868] In this regard, laws and regulations in some countries establish the entitlement of workers to receive the necessary training to perform their work when they return from leave, including when such training is necessary due to technological developments.[869]

422. In some countries, the measures adopted to assist mothers and workers with family responsibilities to return to work include support for entrepreneurship and measures to facilitate the reconciliation of work and family responsibilities.[870] Access to childcare services and facilities, as well as care facilities for other dependants, is also key to enabling workers to return to work.[871] In *Bulgaria*, the "Back to Work" programme provides free care for children up to 3 years of age, thereby promoting the return to work of mothers with small children.[872] In *Czechia*, projects addressed at women returning to work after an absence due to childcare or care for family members, include retraining and support for entrepreneurship, and the promotion of the reconciliation between work and family responsibilities, including through incentives for employers to adopt family-friendly measures and the provision of childcare facilities.[873] In the *Russian Federation*, following the adoption of Presidential Decree No. 606 of 2012, measures have been adopted to provide vocational training or retraining for women who have taken leave to care for children up to the age of 3.[874]

423. The Committee observes that in some countries the return to work is also promoted through social benefits. In *Spain*, the Act No. 6/2017 on urgent reforms for self-employment, establishes a reduction in self-employed workers' contributions for 12 months if they return to

866 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 133.

867 Ensuring the return and reintegration of workers following leave is intrinsically linked with more general measures to promote access to employment and occupation. See also, section 1 of this Chapter.

868 ILO, *A Quantum Leap for Gender Equality*, 89.

869 For example, in *Croatia*, *Portugal* and *Republic of Korea*.

870 For example, in *Austria* and *Republic of Korea*. See also 1988 General Survey, para. 182.

871 CEACR, Convention No. 156: *Russian Federation*, direct request, 2019.

872 CEACR, Convention No. 111: *Bulgaria*, direct request, 2017.

873 CEACR, Convention No. 111: *Czechia*, direct request, 2012.

874 CEACR, Convention No. 156: *Russian Federation*, direct request, 2018.

work within two years of the date of the interruption of their activity.[875] In *Finland*, the partial childcare allowance was replaced in 2014 by a flexible childcare allowance which increases the amount received by parents with children under the age of 3 who work part-time.[876] In *Hungary*, the GINOP 5.3.11 programme provides a monthly allowance for family or workplace nursery care in cases in which it has not been possible to place the child in a nursery due to capacity constraints and offers scholarships for parents raising young children to participate in training to update their knowledge and skills with a view to assisting their return to work and improving their employability. In *El Salvador*, the measures adopted include the modification of eligibility criteria for the provision of grants to women who have had to delay their studies for reasons of maternity, the lifting of the prohibition on the access of women to education for reasons of pregnancy, and the organization of health centres providing care at night.[877]

424. A number of governments have also informed that, while on leave related to family responsibilities, workers maintain employment-related entitlements and their time of leave is taken into account for social security coverage and benefits.[878] In *Croatia*, where the previous length of employment is of relevance to acquiring certain rights, periods of part-time work, short-time work or leave due to intensified childcare or to care for a child with serious developmental disabilities is regarded as full-time work.[879]

425. The Committee observes that statistical information on the number of workers returning to work following maternity or other family-related leave or benefiting from training to assist their return to work, can help to assess the progress made and the difficulties encountered in the application of Convention No. 156. The Committee has requested such information when examining the implementation of the Convention.[880] The Committee has noted the statistics provided by the Government of *Finland* indicating that mothers take partial childcare leave in 80 per cent of cases after having been on parental leave, and then claim the child home care allowance, but that remote working is more common for men than women.[881] It has also noted the statistical information provided by the Government of the *Republic of Korea* on the number of beneficiaries and courses offered, including new vocational education and training courses to help women with interrupted careers to secure decent work in new fields.[882]

426. ***The Committee recalls that measures that address the needs of workers with family responsibilities should be available to men and women workers on an equal footing and emphasizes the importance of regular assessments of the effectiveness of programmes to assist all workers, men and women, to reconcile work and family responsibilities.***

875 CEACR, Convention No. 156: *Spain*, direct request, 2022.

876 CEACR, Convention No. 156: *Finland*, direct request, 2019.

877 CEACR, Convention No. 156: *El Salvador*, direct request, 2017.

878 For example, *Côte d'Ivoire* and *Cyprus*.

879 *Croatia* (art. 32 of the Labour Act).

880 CEACR, Convention No. 156: *Croatia*, direct request, 2020; *Finland*, direct request, 2019; *France*, direct request, 2019; *Republic of Korea*, direct request, 2019; *North Macedonia*, direct request, 2013; *Montenegro*, direct request, 2012 and 2017; *Serbia*, direct request, 2017.

881 CEACR, Convention No. 156: *Finland*, direct request, 2019.

882 CEACR, Convention No. 156: *Republic of Korea*, direct request, 2019.

5. Protection against termination of employment

Recommendation No. 111, Paragraph 2(b)(iv)
Convention No. 156, Article 8
Recommendation No. 165, Paragraphs 15 and 16
Convention No. 183, Article 8(1)

5.1. Termination of employment based on sex and gender

427. Convention No. 111 establishes a general framework for protection against discrimination, including in relation to termination of employment. More particularly, by covering "employment and occupation", the instrument covers "security of tenure", or the guarantee that dismissal must not take place on discriminatory grounds but must be justified by reasons related to the conduct of workers, their ability or fitness to perform their functions, or the strict necessities of the operation of the undertaking.[883] This concerns all the grounds recognized in Article 1(1)(a) of Convention No. 111, including "sex", as well as any additional grounds that may be recognized in accordance with Article 1(1)(b) of Convention No. 111 and Article 8(1) of Convention No. 183. The Committee also recalls that the Termination of Employment Convention, 1982 (No. 158), provides in Article 5(d) that sex, marital status, family responsibilities and pregnancy, among others, do not constitute valid reasons for termination of employment.[884]

428. In a good number of countries discrimination based on sex is prohibited in relation to termination of employment.[885] In other countries, legislation provides that discriminatory dismissal, or provisions in collective agreements that allow it, shall be considered null and void.[886] In a number of countries, specific protection is also provided against dismissal for victims of gender-based violence, such as in *Spain*, where the dismissal of a victim of gender-based violence due to the victim seeking judicial protection is void.

429. The Committee further notes that, in the case of collective dismissals, protection against discrimination should cover both direct and indirect discrimination affecting categories of persons characterized by one of the grounds covered by Convention No. 111. For example, the Committee has previously examined the indirect discrimination that may arise from the application of apparently neutral "last in, first out" rules, or the application of criteria based on occupational skills or length of service, particularly in cases where women generally had less seniority than men. It also had noted, for instance, that rules establishing that workers who are not heads of households should be declared redundant first could be discriminatory when considering the weight given to the idea that the woman's earnings are a "supplementary income" in the household where the man in that household is also working. [887] While these rules appear gender neutral on their face, given that women are disproportionately affected by their application, in part due to the impact of family responsibilities on their employment patterns, consideration should be given to the discriminatory impact that strict application of this rules may have. To this end, the decision must be made using objective and equitable selection criteria that take into account the indirect impact on women as well as the interests of the enterprise. In this respect, the Committee considers that legislation establishing quantitative male-female ratios in the context of collective dismissals are crucial to prevent direct or indirect discrimination based on sex.[888]

883 1988 General Survey, para. 112; 1996 Special Survey, para. 106.

884 1988 General Survey, para. 158; 1996 Special Survey, para. 107.

885 For example, *Albania*, *Austria*, *Belgium*, *Benin*, *Bosnia and Herzegovina*, *Cabo Verde*, *Côte d'Ivoire*, *Grenada*, *Latvia*, *Morocco*, *Namibia*, *Suriname* and *Switzerland*.

886 For instance, *Peru*, *Slovenia* and *Spain*.

887 1988 General Survey, para. 113; 1996 Special Survey, para. 108.

888 1988 General Survey, para. 113.

5.2. Prohibition of dismissal for reasons related to maternity

430. Employment protection in relation to maternity refers to the right of a woman worker not to lose her job during pregnancy or maternity leave, including the period following her return to work. A guarantee for pregnant women and young mothers that they will not lose their job as a result of being pregnant, absent on maternity leave or because they have just had a child, is an essential means of preventing maternity from becoming a source of discrimination against women in employment.[889]

431. The clear prohibition of the dismissal of employees during maternity leave has been a key element of ILO maternity protection standards since the adoption of the Maternity Protection Convention, 1919 (No. 3). Article 4 of Convention No. 3 made it unlawful for an employer to give notice of dismissal to an employee during her absence for maternity leave, as defined in Article 3 of that Convention. The Maternity Protection Convention (Revised), 1952 (No. 103), like Convention No. 3 before it, absolutely prohibits the dismissal of a worker during maternity leave or any extension of such leave that may be necessitated by illness resulting from pregnancy or confinement or notice of dismissal being given during that leave (Article 6).

432. This absolute prohibition of dismissal was removed when Convention No. 183 was adopted. While Article 8(1) of Convention No. 183 provides that it shall be unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on leave, it adds the caveat that such dismissal is permissible on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing.[890] However, to ensure that this possibility is not applied in an abusive manner, Convention No. 183 establishes the necessary safeguards to prevent such dismissals from being related to pregnancy, childbirth or nursing. It does this by shifting the burden of proving that the reasons for dismissal are unrelated to pregnancy, childbirth and its consequences or nursing, to the employer.

433. Legislation has been adopted in the vast majority of countries to protect employment during maternity, usually through the prohibition of dismissal during pregnancy and maternity leave. In many countries, dismissal is prohibited without exception or admissible only under very restrictive circumstances.[891] However, in most countries, although dismissal is prohibited on the grounds of maternity, it is possible to dismiss a pregnant worker on unrelated grounds.[892] ILO research indicates that, of the 184 countries for which information is available, only 13 largely lower-middle to lower income countries have no explicit protection for women against dismissal related to maternity or do not have any protection at all.[893]

434. In a number of countries, the prior consent of a competent body is required to terminate the employment of a pregnant or breastfeeding woman in very restrictive circumstances on grounds not related to pregnancy and maternity. In *Colombia, Costa Rica*, *Slovenia*, and the *Bolivarian Republic of Venezuela*, consent has to be obtained from the labour inspectorate. [894] In *Portugal*, employers have to obtain the prior authorization of the Commission for Equality

889 Law and practice report on Convention No. 183, 49.

890 In parallel, Art. 5(d) and (e) of Convention No. 158, provides that pregnancy and absence from work during maternity leave are not valid reasons for termination of employment.

891 For example, *Albania*, *Bahrain*, *Botswana*, *Brazil*, *Brunei Darussalam*, *Burundi*, *Cambodia*, *Croatia*, *Cyprus*, *Egypt*, *Eritrea*, *France*, *Ghana*, *Greece*, *Indonesia*, *Japan*, *Jordan*, *Kuwait*, *Lesotho*, *Lithuania*, *Malaysia*, *Mauritius*, *Nigeria*, *Oman*, *Peru*, *Qatar*, *Rwanda*, *Saudi Arabia*, *Slovenia*, *Somalia*, *Sri Lanka*, *Sudan*, *Sweden*, *Syrian Arab Republic*, *Uganda* and *Vanuatu*.

892 ILO, *Care at Work*, 83.

893 ILO, *Care at Work*, 83.

894 *Colombia* (section 240 of the Labour Code); *Costa Rica* (section 94 of the Labour Code); *Slovenia* (section 115 of the Employment Relationship Act); and *Bolivarian Republic of Venezuela* (section 332 of LOTTT).

in Work and Employment (CITE).[895] In the *Seychelles*, the termination of employment of a pregnant worker or of a worker on maternity leave requires the authorization of an administrative body.[896] In *Austria*, employers have to obtain the prior consent of the court to dismiss a pregnant or nursing woman and must notify the works council.[897] In *Poland*, an enterprise trade union representing the employee has to consent to the termination of the employment contract of a pregnant worker or a worker who is on maternity leave.[898]

435. In many countries, a decision to terminate an employee's employment contract is considered void if the employer is aware of the employee's pregnancy, or if the employer is duly notified of the pregnancy through the submission of a medical certificate or appropriate documentation within a timeframe specified by law.[899] For example, in *Benin*, *Croatia* and *France*, an employee has 15 days to inform her employer about her pregnancy if it was not known by the employer at the time of dismissal. When notification of pregnancy is received, the dismissal is annulled and the employer is prohibited from either dismissing or notifying dismissal to the employee during the protected period.[900]

436. ***Where there is no absolute prohibition of the termination of employment in relation to maternity, the Committee welcomes the legislative provisions adopted in many countries which require the prior consent of a competent body before the dismissal of a pregnant or breastfeeding woman, and which offer better safeguards. It emphasizes that, while the national legislation in many countries regulates the procedure for the notification to an employer of a worker's pregnancy in case of dismissal, it is important to ensure that, in practice, the timeframe for this notification is sufficient and, in particular, that the worker is aware of the possibility of her dismissal being revoked.***[901]

437. The Committee observes that, despite the legislative prohibition of maternity-related discrimination with regard to termination of employment, such practices are still frequently reported, including more specifically in the case of vulnerable categories of women workers. For example, the Committee has noted reports that migrant workers in *Mauritius* have been subject to termination of employment during pregnancy.[902] One-in-five working mothers surveyed in *Australia* reported that they had been made redundant or dismissed during pregnancy or maternity leave.[903] Furthermore, in some countries, such as *Singapore* and *Malaysia*, migrant women workers are even prohibited from becoming pregnant through the cancellation of their work permits in the event of pregnancy.[904] The Trade Union Congress (TUC) *(United Kingdom of Great Britain and Northern Ireland)* indicates that according to recent research, on average 54,000 women are forced out of their jobs due to pregnancy and maternity discrimination in the *United Kingdom of Great Britain and Northern Ireland* every year.[905]

895 *Portugal* (section 63 of the Labour Code). See also the website of the CITE.

896 *Seychelles* (section 57(3) of the Employment Act of 1995).

897 *Austria* (section 10(3) of the Maternity Protection Act of 1979).

898 *Poland* (section 177(1) of the Labour Code of 1974).

899 For example, *Austria*, *Burundi*, *Estonia*, *North Macedonia*, *Norway*, *Serbia* and *Slovenia*.

900 *Benin* (sections 170 and 171 of the Labour Code); *Croatia* (section 34 of the Labour Code of 2014); *France* (section L. 1225-5 of the Labour Code).

901 In this regard, see World Bank, *Women, Business and the Law 2022*, 73.

902 CEACR, Convention No. 183: *Mauritius*, direct request, 2021.

903 OECD, *From Promises to Action*, 46.

904 ILO, *Securing Decent Work for Nursing Personnel and Domestic Workers, Key Actors in the Care Economy: General Survey on the Nursing Personnel Convention (No. 149) and Recommendation (No. 157), 1977, and the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011,* Report III(B), International Labour Conference, 110th Session, 2022 (hereinafter "2022 General Survey"), para. 970. See also Committee on the Elimination of Discrimination against Women, Concluding observations on the combined third to fifth periodic reports of Malaysia (CEDAW/C/MYS/CO/3-5), para. 43.

905 United Kingdom Equality and Human Rights Commission, *Pregnancy and Maternity-Related Discrimination and Disadvantage*, 13.

438. ***The Committee notes that the termination of a woman's employment as a result of, or during, her pregnancy, absence due to maternity-related leave or during a period of time following her return to work represents a serious violation of gender equality in employment and occupation. It also recalls that such terminations are unlawful except on grounds unrelated to the pregnancy or birth of the child and its consequences or nursing, in accordance with Article 8(1) of Convention No. 183. The Committee therefore urges Member States to take appropriate measures to ensure in law and practice that pregnant and nursing women workers, including particularly vulnerable categories of women, are not subject to the discriminatory practice of wrongful dismissal.***

439. ***Moreover, the Committee recalls the crucial role that social dialogue can play in addressing more effectively discriminatory practices against women arising out of their childbearing role and maternity. In this regard, it emphasizes the importance of consultations with the social partners, including representatives of the women concerned, in the consideration and development of measures to address these issues, in line with the respective ILO standards.***[906]

Period of protection against wrongful dismissal

440. Both Conventions Nos 3 and 103 prohibit the dismissal of a worker during maternity leave or during any extension of such leave that may be necessitated by illness resulting from pregnancy or confinement.[907] The Maternity Protection Recommendation, 1952 (No. 95), which accompanies Convention No. 103, calls for a more extensive period of protection from the date of notification of the pregnancy to the employer until at least one month after the end of maternity leave. Convention No. 183 goes further by calling for protection against dismissal during a period following a woman's return to work after maternity leave but leaves it to national laws and regulations to define that period.

441. Many countries provide for this strict prohibition only with respect to the period of pregnancy and maternity leave.[908] The Committee observes, however, that there is a fairly widespread trend towards the extension of the period during which employment is protected for pregnant women and new mothers, beyond the strict context of maternity leave, thereby extending protection against dismissal for these particularly vulnerable workers.[909] However, the period of protection against dismissal once the worker concerned has returned to work varies significantly between countries. For example, it covers a period of one month in *Belgium*, *France* and the *Republic of Korea*,[910] up to two months in *Austria*,[911] up to three months in the *Dominican Republic*,[912] four months in *Ethiopia*,[913] and up to six months in *El Salvador*.[914] In *Chile* and *Panama*, employment protection against dismissal for pregnant and nursing women includes a period of up to one year following the expiry of maternity leave.[915] In other

906 See also Ch. IV.

907 See Convention No. 3, Art. 4, and Convention No. 103, Art. 6.

908 According to ILO research, 59 countries, representing 14.7 per cent of potential mothers, provide protection during two periods, with most of them covering pregnancy and maternity leave. See ILO, *Care at Work,* 84.

909 In a plurality of countries (88 countries), women are explicitly protected against unlawful dismissal during pregnancy, maternity leave and an additional period prescribed by national laws or regulations, as set out in ILO standards, accounting for 50.6 per cent of all potential mothers worldwide, who live in countries with strong employment protection regimes that cover all three protected periods. See ILO, *Care at Work*, 84.

910 *Belgium* (section 40 of the Labour Act); *France* (section L. 1225-10 of the Labour Code); and *Republic of Korea* (section 23 of the Labour Standards Act of 1997).

911 *Austria* (sections 10(1) and 12(1) of the Maternity Protection Act of 1979).

912 *Dominican Republic* (section 232 of the Labour Code).

913 *Ethiopia* (section 87(6) of the Labour Code of 2019).

914 *El Salvador* (section 113 of the Labour Code).

915 *Chile* (Act No. 20.545, amending art. 201 of the Labour Code); and *Panama* (section 107 of the Labour Code).

countries, the prohibition of the dismissal of women workers on the grounds of pregnancy or childbirth applies to the first year following childbirth.[916]

442. In some countries, particularly in Eastern Europe and Central Asia, employment protection has been extended even further by prohibiting the dismissal of workers with small children up to a certain age. For example, in *Estonia* and *Lithuania*, an employment contract with a worker raising a child under the age of 3 cannot be terminated at the initiative of the employer without any fault on the part of the worker.[917] In *Georgia*, a woman public officer with a child under 3 years of age may not be dismissed due to the reorganization of a public institution.[918] In the *Republic of Moldova*, the duration of employment protection lasts from pregnancy until the child is 6 years old. In *Belarus* and *Kazakhstan*, termination of employment is restricted for single mothers raising a child under the age of 14 or a child with a disability under the age of 18.[919]

443. ***While welcoming the extension of the period of employment protection against dismissal following the end of maternity leave, the Committee considers that it is important to ensure that such extensions do not have the adverse effect of dissuading employers from hiring women with children. At the same time, national legislation regulating the protection against dismissal of women with children which allows women to recover from childbirth and to nurse their children is part of equality of treatment in employment.***

444. The Committee also welcomes the extension in certain countries of employment protection to other concerned persons, such as fathers or other guardians, where parental or other kinds of leave are available. In the *Bolivarian Republic of Venezuela*, a working father enjoys employment protection for up to one year following the birth of his child, including the prohibition of dismissal, transfer or the reduction of working conditions without just cause.[920] In *Greece*, working fathers are protected against dismissal for a period of six months after the birth of their child.[921] In *Chile*, Act No. 20.545 also provides protection against dismissal ("immunity from dismissal") for fathers who have recourse to postnatal parental leave if the mother dies, and for men and women workers who adopt children.[922] In the *Russian Federation*, protection against termination includes not only single fathers, but also other persons who care for the child.[923] In *Mongolia*, the Labour Code prohibits the dismissal of single fathers with children below the age of 3.[924]

445. The Committee also welcomes the fact that, in certain countries, protection against termination of employment is provided in other circumstances, in addition to pregnancy and maternity. For example, in *Indonesia*, it is prohibited to terminate the employment of a worker who is absent from work due to a miscarriage.[925] In *Austria*, the termination of employment of a woman who has had an abortion has no legal force until four weeks after the event.[926] In *Hungary* and *Bulgaria*, it is also prohibited to terminate the employment of a woman undergoing treatment related to reproduction procedures or in-vitro treatment.[927]

916 For example, *Angola*, *Armenia*, *Italy*, *Japan*, *Slovenia*, *Somalia* and *Viet Nam*.

917 *Estonia* (section 92(2) of the Employment Contracts Act of 2008); *Lithuania* (section 57 of the Labour Code).

918 *Georgia* (section 116 of the Act on the Civil Service).

919 *Belarus* (section 268 of the Labour Code); *Kazakhstan* (section 54 of the Labour Code).

920 *Bolivarian Republic of Venezuela* (section 8 of the LOTTT).

921 *Greece* (section 15 of Law No. 1483/1984).

922 *Chile* (section 197 *bis* of the Labour Code).

923 *Russian Federation* (section 261 of the Labour Code).

924 *Mongolia* (section 135 of the Labour Code of 2021).

925 *Indonesia* (section 153(1)(e) of Manpower Law No. 13 of 2003).

926 *Austria* (section 10(1)(a) of the Maternity Protection Act of 1979).

927 *Bulgaria* (sections 328 and 330 of the Labour Code); *Hungary* (section 66(6) of the Labour Code).

446. In contrast, employment protection in certain countries only covers the period of pregnancy and maternity leave. In *Poland*, for example, it is prohibited to terminate the employment contract of a pregnant woman or a woman on maternity leave.[928] In *Czechia*, the national legislation prohibits dismissal by the employer during the period in which an employee is pregnant or is on maternity or parental leave.[929]

447. There are still some countries in which employment protection is limited to either pregnancy or maternity leave, and any extensions thereof.[930] In, *Chad*, *Eritrea*, *Guyana* and *Trinidad and Tobago*, employment protection is only related to pregnancy.[931] In *Botswana*, *Burkina Faso*, *Guinea*, *Qatar*, *Rwanda*, *Senegal*, *Somalia*, *Togo* and *Uganda*, employers cannot dismiss women who are on maternity leave.[932] In *Mauritania*, employers are prohibited from giving a notice of termination of employment, for any reason, to a woman worker only during maternity leave and the nursing period.[933] These legal gaps prevent mothers and potential mothers from benefiting from full employment protection, in accordance with the ILO maternity standards, which exposes them to a higher risk of discriminatory dismissal.[934]

448. ***The Committee recalls that, under the terms of Article 8(1) of the Convention, employment protection against dismissal, except on grounds unrelated to pregnancy and maternity, includes the whole period of pregnancy and maternity leave, as well as a determined period following the return to work, as prescribed by national laws or regulations.***

Dismissals during the protected period: Grounds considered to be unrelated to pregnancy and maternity

449. While Convention No. 183 has extended the period of protection against dismissal, it has also altered the nature of the protection afforded in order to allow employers to dismiss workers for reasonable causes unrelated to pregnancy or maternity. Indeed, where Convention No. 103 called for an absolute prohibition of maternity-related dismissal, Convention No. 183 allows dismissal during pregnancy and maternity leave for "reasons regarded as legitimate and unconnected to maternity".[935]

450. The Committee observes that, in many countries, dismissal is prohibited without exception or under very restrictive circumstances.[936] However, in most countries, although dismissal is prohibited on the grounds of maternity, it is possible to dismiss a pregnant worker on unrelated grounds.[937] In countries where dismissal is allowed during protected periods, various grounds have been found to be permissible, as they have been considered not to be

928 *Poland* (section 177(1) of the Labour Code).

929 *Czechia* (section 53(1)(d) of the Labour Code).

930 The remaining 24 countries (out of 171 countries), home to 28.9 per cent of potential mothers, offer protection for only one period related to maternity. ILO, *Care at Work*, 84.

931 ILO, *Care at Work*, 84.

932 *Botswana* (section 121(1) of the Labour Act); *Burkina Faso* (section 147 of the Labour Code); *Guinea* (section 153(5) of the Labour Code); *Qatar* (section 98 of the Labour Act); *Rwanda* (section 61 of the Labour Act of 2018); *Somalia* (section 18(8) of the Labour (Amendments and Additions) Law of 2020); *Togo* (section 190 of the Labour Code); *Uganda* (section 48 of the Employment Act (Ch. 219) of 1977). See also CEACR, Convention No.183: *Senegal*, direct request, 2019.

933 *Mauritania* (section 52(11) of the Workers' Rights Act 2019).

934 ILO, *Care at Work*, 84.

935 Law and practice report on Convention No.183, 52.

936 For example, *Albania*, *Bahrain*, *Botswana*, *Brazil*, *Brunei Darussalam*, *Burundi*, *Cambodia*, *Croatia*, *Cyprus*, *Egypt*, *Eritrea*, *France*, *Ghana*, *Greece*, *Indonesia*, *Japan*, *Jordan*, *Kuwait*, *Lesotho*, *Lithuania*, *Malaysia*, *Mauritius*, *Nigeria*, *Oman*, *Peru*, *Qatar*, *Rwanda*, *Saudi Arabia*, *Slovenia*, *Somalia*, *Sri Lanka*, *Sudan*, *Sweden*, *Syrian Arab Republic*, *Uganda* and *Vanuatu*.

937 ILO, *Care at Work*, 83.

related to pregnancy or maternity. The most common grounds include serious fault, gross negligence or the violation of work discipline by the employee.[938]

451. For example, dismissal is possible in cases of serious fault in *Benin*, any serious breach of the obligations imposed by the employment contract in *Costa Rica*, or a gross infringement of work requirements in *Georgia*, *Czechia* and *Latvia*.[939] In *Luxembourg* and *Guinea*, the legislation permits dismissal in cases of serious misconduct.[940] In *Austria*, the termination of employment is possible if the employee has culpably and negligently been in violation of the duties arising from the employment relationship.[941]

452. The Committee takes note of other existing permissible grounds of termination of employment of pregnant or nursing women, including imprisonment *(Bulgaria)*; working for another undertaking while on leave (*Lebanon*); disclosure of a business or trade secret (*Austria*, *Costa Rica* and *Eswatini*); disciplinary reasons or absence from work without just reason (*Cuba* and *Zambia*); providing false information about qualities or knowledge before entry into employment *(Costa Rica)*; intentionally causing damage to the employer's property (*Ethiopia* and *Zimbabwe*); non-obeyance of safety and health requirements at work (*Costa Rica* and *Eswatini*); and lack of skills required to perform work (*Ethiopia*, *Zambia* and *Zimbabwe*).

453. ***While noting these grounds on which termination of employment during pregnancy and maternity has been considered permissible in national*** law***, the Committee emphasizes that measures need to be taken to ensure that any dismissal of a pregnant or nursing woman is strictly unrelated to pregnancy or maternity.***

454. The Committee notes that the employment of pregnant or nursing women may also be terminated at the expiry of their fixed-term contracts. In this regard, it welcomes legislative provisions that extend the period of temporary employment contracts for pregnant or nursing women. It also welcomes other positive practices adopted in some countries intended to ensure equality of treatment of women workers in temporary employment. For example, in *Australia*, women workers whose temporary contracts have been terminated following their return to work from maternity leave have to be given preference over other applicants with the same qualifications if they reapply for the same position.[942] In *Portugal*, employers are required to report to the Commission for Equality in Work and Employment (CITE) their intention not to renew the fixed-term contract of any worker who is pregnant, has recently given birth or is breastfeeding, for an assessment of possible evidence of discrimination.[943]

455. Moreover, while a pregnant or nursing woman's fixed-term contract may be terminated at its expiry in many countries,[944] the Committee welcomes the fact that, in other countries, temporary or fixed-term employment contracts are extended if they expire during pregnancy or maternity leave. For example, in Austria, the expiry of a fixed-term employment relationship has to be suspended for the period from the notification of pregnancy until the end of maternity leave.[945] In Kazakhstan, employers are required to extend fixed-term employment

938 Examples include *Bulgaria*, *Cuba*, *France*, *Guatemala*, *Italy*, *Malaysia*, *Mongolia* and *Bolivarian Republic of Venezuela*.

939 *Benin* (section 171(1) of the Labour Code); *Costa Rica* (section 81 of the Labour Code); *Czechia* (section 55(2) of the Labour Code); *Georgia* (section 47 of the Labour Code); *Latvia* (section 109 of the Labour Act).

940 *Guinea* (section 153(5) of the Labour Code); *Luxembourg* (sections L. 337-1 to L. 337-6 of the Labour Code).

941 *Austria* (section 12 of the Maternity Protection Act of 1979).

942 *Australia* (section 10(2) of the Maternity Leave Act).

943 Committee on the Elimination of Discrimination against Women, Replies of Portugal to the list of issues and questions in relation to its tenth periodic report, 2021 (CEDAW/C/PRT/RQ/10), para. 79.

944 For example, in *Lithuania*, a fixed-term employment contract with an employee who is pregnant and until the baby reaches 4 months of age may be terminated when it expires. Similar provisions are found in the legislation in *Croatia, Italy, Morocco*, *Sudan* and *Tajikistan*. Moreover, in many countries, particularly when there is an absolute prohibition of dismissal of pregnant women or women on maternity leave, the liquidation of the enterprise is considered to be a valid reason for dismissal.

945 *Austria* (section 10(a) of the Maternity Protection Act of 1979).

contracts of workers who are pregnant or on maternity, adoptive or parental leave until the end of the leave. In Poland, employment contracts of pregnant women concluded for a definite period or for the completion of a specific task are extended until the date of birth.[946]

456. However, the Committee has previously noted that, even with the legislative progress described above, the use of temporary contracts has been specifically linked to discriminatory practices against pregnant women.[947] Women in temporary or fixed-term employment are subject to more frequent discriminatory treatment in relation to the non-renewal of their contracts due to maternity.[948] According to the National Federation of Christian Trade Unions (CNV) and the Netherlands Trade Union Confederation (FNV) *(Netherlands)*, of the 43 per cent of pregnant women who reported some form of discrimination, women in temporary employment were particularly vulnerable to this type of discriminatory treatment. In the *United Kingdom of Great Britain and Northern Ireland*, women with less than a year's service are more likely than average to say they felt forced to leave their job.[949] The Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK) *(Finland)* point out that in practice, temporary workers do not get new employment contracts after the announcement of their pregnancy.

Burden of proof

457. Since Convention No. 183, unlike earlier ILO maternity protection standards, allows the dismissal of workers who are pregnant or on maternity leave on grounds unrelated to pregnancy, Article 8(1) sets out the additional safeguard of placing the burden on the employer of proving that the reasons for dismissal are unrelated to pregnancy, childbirth and its consequences or nursing.[950]

458. In practice, it is often difficult for workers to show that their dismissal was caused by maternity-based discrimination. Article 8(1) of Convention No. 183 can therefore be of significant assistance to victims of discrimination in judicial or other dispute settlement mechanisms and offers an essential means of ensuring protection against unjust dismissal. By placing the burden of proof on the employer, who must therefore demonstrate that the dismissal was not related to the worker's pregnancy or childbirth and its consequences or nursing, the protection of the worker is significantly strengthened, and with it the principle of equality of treatment.

459. The legislation in many countries places the burden on the employer of proving that termination of employment was decided on grounds other than maternity.[951] In relation to *Montenegro*, the Committee has taken due note of section 142(4) of the Labour Act, in accordance with which the burden of proving the existence of a just cause for the termination of the employment contract of a pregnant or breastfeeding woman rests with the employer.[952] In *Argentina*, there is a legal presumption that the dismissal of a woman worker within 7.5 months

946 However, in three countries (*Austria, Kazakhstan* and *Poland*), exception to the extension of the temporary or fixed-term contract is made in certain cases, for example in the case where such contracts were established to replace absent workers, or in the case of seasonal work, training contracts or during probation.

947 2012 General Survey, para. 784.

948 For example, CEACR, Convention No. 183: *Netherlands*, observation, 2013.

949 United Kingdom Equality and Human Rights Commission, *Pregnancy and Maternity-Related Discrimination and Disadvantage*, 160.

950 Law and practice report on Convention No.183, 53.

951 ILO research indicates that, of the 179 countries for which information is available, 77 have legal provisions that place the burden of proof relating to dismissal on grounds of maternity on the employer. ILO, *Care at Work*, 86.

952 CEACR, Convention No. 183: *Montenegro*, direct request, 2021.

before or after childbirth is on grounds of pregnancy or maternity.[953] In *Japan*, the dismissal of a woman worker who is pregnant or in the first year after childbirth is void unless the employer proves that the dismissal was not related to pregnancy or childbirth.[954] Similarly, in *Finland*, the termination of an employment contract of a pregnant woman or a woman on family leave is deemed be based on pregnancy or family leave unless the employer proves the existence of other reasons. In *South Sudan*, the employer must prove that the termination was for a valid reason and in accordance with fair procedure, taking into account all the relevant circumstances.[955]

460. However, the Committee notes that, according to ILO research, at the global level, the number of women who are covered by legislative provisions that shift the burden of proof to employers represents only 22.4 per cent of potential mothers, largely due to variations in coverage according to national income and regional groupings[956]. In 2021, the share of potential mothers living in jurisdictions where the burden of proof lies with the employer ranged from 58.4 per cent in high-income countries to 19.7 per cent in low-income countries. In many countries, the burden of proving that the dismissal is not linked to pregnancy, childbirth and its consequences or nursing, does not therefore rest with the employer.[957]

461. ***The Committee recalls the importance of placing the burden of proving that the reasons for dismissal are unrelated to pregnancy or childbirth and its consequences or nursing on the employer, in accordance with Article 8(1) of Convention No. 183. It emphasizes that the reversal of the burden of proof is an essential means of strengthening the protection of vulnerable workers against unlawful dismissal and of correcting a situation that could otherwise result in inequality. The Committee emphasizes that the reversal of the burden of proof should be explicitly set out in law.***[958]

Compensation and other remedies in case of dismissal

462. The Committee observes that, even where national legislation is in line with the Convention and measures are taken to ensure that it is applied in practice, discriminatory dismissals continue to occur on the grounds of pregnancy and maternity. Access to remedies and compensation for victims is therefore an important means of redressing cases of discrimination.

463. The Committee notes that access to remedies and compensation exists in many countries for women workers who have been dismissed on discriminatory grounds relating to maternity. In particular, in some countries, employers that unlawfully dismiss pregnant or nursing women are liable to pay compensation.[959] The amount of the compensation varies, from the equivalent of two months'[960] to one year's wages.[961] In *Belgium*, the amount of compensation is equivalent to six months' remuneration, or three months' remuneration if the employer demonstrates that the employment contract would have been terminated even in the absence of discrimination.[962] In *Latvia*, employees who have been illegally dismissed

953 *Argentina* (section 182 of Act No. 20744 of 1976).

954 *Japan* (section 9(3) of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment).

955 *South Sudan* (section 84(2) of the Labour Act of 2017).

956 ILO, *Care at Work*, 86.

957 For example, *Belize*, *Brunei Darussalam*, *Guyana* and *Namibia*.

958 CEACR, Convention No. 183: *Belize*, direct request, 2014; *Montenegro*, direct request, 2014; *Slovakia*, direct request, 2014.

959 For example, *Albania*, *Argentina*, *Brunei Darussalam*, *Denmark*, *Dominican Republic*, *France* and *Tunisia*.

960 For example, *Honduras* (section 144 of the Labour Code).

961 For example, *Albania* (section 143(3) of the Labour Code).

962 *Belgium* (section 23 of the Equality Act of 2007).

and reinstated in their previous work are, in accordance with a court order, paid the average earnings for the whole period of their enforced absence from work.[963] In some countries, employers who dismiss pregnant or nursing women without reasonable grounds are required to pay fines. In *Chile*, the fine amounts to 14 to 70 monthly tax units.[964] In *Argentina*, special compensation equal to one year's remuneration is payable in addition to compensation in cases of unlawful dismissal on the grounds of pregnancy or maternity within 7.5 months before or after childbirth.[965]

464. In other countries, reinstatement is mandatory in the event of unlawful termination.[966] For example, in *Indonesia*, any termination of employment on the basis of discriminatory treatment is null and void and results in the reinstatement of the dismissed worker.[967] In *Ghana*, in the event of unfair termination, employers may be ordered to re-employ the worker in their previous work or in any other reasonably suitable work under the same terms and conditions.[968]

465. ***The Committee welcomes the provision of remedies, including compensation, for women whose basic right to protection against discriminatory and wrongful dismissal has been violated. It also considers that remedies in cases of violation of the prohibition of dismissal set out in Article 8 may include the annulment of the dismissal, followed in principle by the reinstatement of the worker in her previous position or an equivalent position.***

5.3. Termination of employment based on marital status, family situation and family responsibilities

466. Under the terms of Article 8 of Convention No. 156, family responsibilities shall not, as such, constitute a valid reason for termination of employment. Recommendation No. 165 further refers in similar terms to "marital status" and "family situation". The Committee recalls that, in response to the concerns raised during standard-setting discussions, Article 8 was drafted including the term "as such" to ensure that termination solely on account of family responsibilities is not considered as justified. Thus, Article 8 does not prevent termination of employment for a valid reason, such as unsatisfactory performance, even where that reason is influenced by the double burden of work and family responsibilities.[969] Article 8 does not require a reason to be given in all cases of dismissal. Nor does it necessarily require the adoption of an explicit legislative prohibition, as an element of flexibility exists in the means of implementation and it would be possible to apply the Article by other means without affecting the likelihood of achieving the intended outcome.[970] Therefore

467. The Committee recalls that, in its general observation of 2020 on Convention No. 156, it noted that many Member States have legislation that protects employees against dismissal related to family responsibilities. The Committee notes that such legislation varies greatly. A number of countries prohibit termination of employment based on family responsibilities.[971] In line with Recommendation No. 165, termination is also prohibited in other countries on the

963 *Latvia* (section 126 of the Labour Act).

964 *Chile* (section 208 of the Labour Code).

965 *Argentina* (section 182 of Act No. 20744 of 1976).

966 Examples include *Costa Rica*, *Guatemala*, *Latvia*, *Malawi*, *Netherlands* and *South Sudan*. See also CEACR, Convention No. 183: *Cyprus*, observation, 2013.

967 *Indonesia* (section 153(2) of the Labour Code).

968 *Ghana* (section 64(2)(b) of the Labour Act of 2003).

969 1993 General Survey, para. 121.

970 1993 General Survey, para. 122.

971 For example, *Belize*, *Greece*, *Grenada*, *Guyana*, *Iceland*, *Japan*, *Saint Kitts and Nevis*, *Slovenia* and *Sweden*.

basis of marital status or family situation.[972] In some cases, legislation foresees that family responsibilities, or factors related to them, are not a justified reason for dismissal.[973] The Committee emphasizes that the inclusion of "marital status" or "family situation", as well as maternity and pregnancy, among the prohibited reasons for termination of employment contributes to addressing discrimination on grounds of potential future family responsibilities.[974] For instance, while marriage in itself may not entail more family responsibilities, the gender roles and societal expectations attached to it mean that women probably undertake a higher share of unpaid care work, including household chores, care for older members of the family or a spouse in need of care, and carrying, giving birth and raising children.

468. Where specific provisions on discriminatory employment termination do not exist or are worded more generally, the Committee has requested information on the measures taken to ensure that effect is given to Article 8 in practice. For instance, in relation to *Guinea*, the Committee has noted the absence of any such provision and has requested information on the measures taken to ensure that family responsibilities do not constitute a valid reason for termination of employment.[975] In the *Plurinational State of Bolivia*, the Committee has noted that article 49(III) of the Constitution prohibits unjustified dismissal and has requested information on the effect given in practice to this provision in relation to family responsibilities as a reason for unjustified dismissal. [976] Other legislative measures to protect workers with family responsibilities against dismissal have also been reported. In *Turkmenistan*, article 50 of the Labour Code provides that, in the event of termination of employment due to specific reasons, workers with two or more dependants, or who are their family's sole breadwinner, have preference for retention. In *Bulgaria*, dismissal is to be expressly authorized by labour inspection authorities.[977] In *Finland*, the burden of proof is placed on the employer in the event of dismissal based on pregnancy or the use of family leave.[978] In *Hungary*, pursuant to section 65(3) of the Labour Code, employers may not dismiss an employee during unpaid leave taken to care for a child and, under section 66 of the Labour Code, the indefinite employment of a mother or a father raising alone a child not older than 3 years of age may be terminated only on grounds that give cause for immediate termination. In *Croatia*, article 34 of the Labour Act establishes that the employment contract may not be terminated during "periods of part-time work, periods of short-time work due to intensified childcare, … and periods of leave or short-time work due to the care for a child with serious developmental disabilities", as well as in the fifteen days after the end of such periods. Certain countries also prohibit employers from disciplining or taking measures against employees who have applied for or are benefiting from leave.[979]

---

972 For example, *Albania*, *Argentina, Grenada*, *Guyana*, *Morocco*, *Qatar*, *Russian Federation*, *Saint Kitts and Nevis* and *Serbia* (including marital status and familial commitments).

973 *Belize*, *Cyprus* (leave of force majeure), *Kazakhstan*, *Malta* (contracting marriage), *Montenegro* (absence from work for childcare and absence due to special childcare), *Serbia* (absence from work for childcare or special care for a child), *Slovenia* (gender, family obligations and temporary absence from work due to the inability to work because of an illness or injury, or to care for family members pursuant to the health insurance regulations, or absence from work due to parental leave pursuant to the regulations on parenthood).

974 In relation to maternity and pregnancy, see the section above. 1993 General Survey, para. 124.

975 CEACR, Convention No. 156: *Guinea*, direct request, 2018.

976 CEACR, Convention No. 156: *Plurinational State of Bolivia*, direct request, 2018.

977 *Bulgaria* (art. 333 of the Labour Code).

978 *Finland* (Ch. 7, section 9, of the Employment Contracts Act No. 55/2001).

979 For example, *Belize* and *Kazakhstan*. See also 1993 General Survey, para. 125.

469. There are some cases where the prohibition of termination of employment based on family responsibilities, marital status or family situation is limited to women, such as in *Bahrain.*[980] The Committee recalls that, while the question was discussed of whether Article 8 should refer to termination of employment on the ground of sex, it was adopted in its present wording without being limited to such grounds.[981] ***The Committee emphasizes that the requirement set out in Article 8 of Convention No. 156 concerns all workers with family responsibilities, both men and women.***

470. The Committee notes that, even where legislative provisions exist, workers with family responsibilities still face discrimination in termination of employment. The Committee has therefore frequently requested ratifying countries to provide further information on the implementation in practice of Article 8 of the Convention, and the corresponding national legislation, including information on complaints or decisions relating to dismissals on the ground of family responsibilities, the action taken, penalties imposed and compensation granted.[982] While challenges remain in the collection of data, the Committee welcomes the information provided by some governments on this subject.[983] ***The Committee recalls the importance of effective and dissuasive penalties to ensure the effective application of the Convention, as well as of awareness-raising on the right of workers with family responsibilities to engage in employment without discrimination.***

471. The Committee has also observed on certain occasions that there are gaps in the implementation of the prohibition of dismissal based on family responsibilities which affect workers with fixed-term employment contracts or who work part time. For example, the Committee has noted concerns that fixed-term employment contracts have not been renewed in *Finland* for reasons relating to family leave, and that the length of fixed-term contracts has been limited for reasons of family leave, pregnancy, childbirth and maternity leave. It has therefore requested information on the measures taken to prohibit the non-renewal or limitation of the duration of fixed-term contracts on the sole basis of the worker's family responsibilities.[984] While the Committee acknowledges that the extinction of an employment contract after its fixed term has been attained is in the nature of such a contract, any differences in the renewal of such contracts or the initial determination of their duration that are based solely on the family responsibilities, real or presumed, of the worker, are discriminatory. The Committee has also noted that the legislation prohibiting discriminatory dismissal in some countries only covers permanent employees,[985] and has requested information on the manner in which fixed-term workers are protected. The Committee has also noted that the Court of Cassation in *France* has ruled that a part-time worker cannot be dismissed as part of economic lay-offs on the grounds of being part time in preference to a full-time worker of the same occupational category with less seniority. The Court of Cassation has also recognized the potential impact

980 *Bahrain* (section 33 of Labour Act No. 36 of 2012).

981 1993 General Survey, para. 118. ILO, *Record of Proceedings*, International Labour Conference, 67th Session, 1981, *Provisional Record* No. 28, paras 157–159.

982 CEACR, Convention No. 156: *Albania*, direct request, 2017; *Bulgaria*, direct request, 2018; *Ethiopia*, direct request, 2012; *Greece*, observation, 2012; *Guatemala*, direct request, 2020; *Iceland*, direct request, 2020; *Japan*, direct request, 2020; *Montenegro*, direct request, 2017; *North Macedonia*, direct request, 2017; *Norway*, direct request, 2017.

983 CEACR, Convention No. 156: *Greece*, observation, 2012; *Guatemala*, direct request, 2016; *Slovenia*, direct request, 2019.

984 CEACR, Convention No. 156: *Finland*, observation, 2018. Similarly, the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP) and the Single Confederation of Workers of Peru (CUT-Perú) *(Peru)* indicate that workers in a reproductive age or with family responsibilities are subject to discrimination through the non-renewal of temporary employment contracts.

985 CEACR, Convention No. 156: *Bosnia and Herzegovina*, direct request, 2017; *Montenegro*, direct request, 2017.

of the prohibition of gender-based discrimination for the protection of part-time workers.[986] In *Slovenia*, labour inspectors have identified cases of consecutive fixed-term employment contracts, usually concluded for very short periods (a few months) with younger women workers who are likely to become pregnant. In response, the Government intensified supervision of the implementation of the provisions respecting fixed-term employment contracts in 2006. The Committee has requested the Government to provide statistical information, disaggregated by sex and age, on the number of fixed-term employees, and to indicate how the issue of the concentration of young women in fixed-term work is addressed in the context of reconciling work and family responsibilities.[987]

472. ***In order to prevent discrimination in practice against workers with family responsibilities, the Committee considers it essential to prohibit the non-renewal or limitation of the duration of fixed-term contracts on the sole basis of the family responsibilities of the worker. Awareness-raising measures are also needed to develop broader understanding by employers, workers and the general public of the problems encountered by men and women workers with family responsibilities.***

986 ILO, *Non-Standard Employment around the World: Understanding Challenges, Shaping Prospects*, 2016, 256.

987 CEACR, Convention No. 156: *Slovenia*, direct request, 2016.



6 Maternity Protection

473. Maternity protection is an indispensable component of comprehensive work–family policies and measures intended to provide working parents with access to decent work opportunities free from discrimination. The ILO's instruments on maternity protection offer a comprehensive set of policy measures, including leave policies, social care services, social security benefits, family-friendly working time and work organization arrangements, workforce reintegration policies and gender-responsive awareness-raising and education.

474. The role of maternity protection, in particular, is to enable women to combine their reproductive and productive roles successfully and, ultimately, to prevent unequal treatment at work due to their reproductive role. Good maternity protection is essential to promote equality of opportunity and treatment in employment and occupation, without prejudice to the health and economic security of mothers and children.

475. ***The Committee emphasizes, as it did in its 2012 General Survey, the importance of Convention No. 183 in recognizing that maternity protection is a precondition for gender equality and non-discrimination in employment and occupation. The ratification of this Convention constitutes important progress in achieving the broader objective of gender equality in employment and occupation, as set out in Convention No. 111***.[988]

476. In addition to protective measures for pregnant women, women who have recently given birth and breastfeeding women, Convention No. 183 includes measures for the prevention of exposure to health and safety hazards during and after pregnancy, maternal and child healthcare, and entitlement to paid maternity leave and breastfeeding breaks. Recommendation No. 191 supplements Convention No. 183 by outlining higher levels of protection, such as a longer duration of leave and higher benefits, and specific measures which may be taken with a view to protecting the health of working women and/or their children. The Recommendation also deals in greater depth with certain aspects of maternity protection treated in the Convention, such as health protection, and includes certain additional measures related to types of leave and the financing of benefits.

988 2012 General Survey, para. 784.

1. Maternity health protection in the workplace

Convention No. 183, 2000, Article 3
Recommendation No. 191, 2000, Paragraph 6

477. The effective regulation of dangerous or unhealthy work for women during maternity is an essential component of health protection at the workplace. Indeed, guaranteeing a safe and healthy working environment for all workers is fundamental to decent work, gender equality and health protection. In times of crisis and recovery, such as the aftermath of the COVID-19 pandemic, it is even more of a priority for all workers, including pregnant and breastfeeding women, as well as potential mothers and fathers, to have access without discrimination to effective occupational health protection, both for maternity protection at work and for business continuity.[989] This was reaffirmed by the International Labour Conference in 2022, when it recognized the right to a safe and healthy working environment as one of the fundamental principles and rights at work.[990]

478. In general, working during pregnancy is not in itself a risk, except immediately before and after childbirth. But some aspects of pregnancy can affect a woman at work, and there can be complications during or after the pregnancy, while there may be situations at work that place the woman or the child at risk.[991] Effective access to free, or at the very least affordable, good quality and appropriate prenatal and postnatal healthcare and services for pregnant women and mothers with newborns is therefore an essential component of maternity protection and social health protection alike. It is important to achieve progress towards Sustainable Development Goal (SDG) targets 3.1, 3.2, 3.8 and 5.6 on reducing maternal and child mortality, achieving universal health coverage and gender equality. Access to maternity care is also part of access to healthcare in general, which is highlighted in SDG target 3.8.3.

479. ILO standards on occupational safety and health (OSH) require provisions for the protection of persons working under dangerous or unhealthy conditions to be aimed at protecting the health and safety of both men and women at work, taking into account gender differences in regard to specific health risks.[992] While these standards set out a broad framework to foster a preventive OSH culture, with effective protection for all workers, Convention No. 183 and Recommendation No. 191 recognize, for the first time in the ILO's maternity protection standards, the right to health protection for pregnant and nursing women.[993] Indeed, prevention, mitigation and protection measures to ensure the right to a safe and healthy

989 ILO, *Care at Work*, 176. In an addendum to its 2020 General Report, the Committee stressed that the pandemic has brought renewed recognition of the importance of international labour standards on OSH and that OSH measures are a key pillar for successful public health responses and fundamental to decent work. In addition, the ILO's Global Call to Action for a human-centred recovery from the COVID-19 crisis, puts emphasis on the protection of all workers, the strengthening of occupational safety and health measures and the recognition that safe and healthy working conditions are fundamental to decent work. See ILO, *Addendum to the 2020 Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III/Addendum (Part A), International Labour Conference, 109th Session, 2021, paras 55–61; ILO, Global Call to Action for a human-centred recovery from the COVID19 crisis that is inclusive, sustainable and resilient, International Labour Conference, 109th Session, 2021.

990 ILO, Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and rights at work, International Labour Conference, 110th Session, 2022.

991 Jane Paul, *Healthy Beginnings: Guidance on Safe Maternity at Work* (ILO, 2004), 9.

992 For example, the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), indicates in Para. 4 that: "Members should take measures to protect the safety and health of workers of both genders, including the protection of their reproductive health."

993 Certain aspects of health protection during pregnancy and after childbirth in some sectors or work with dangerous substances are also regulated by ILO OSH instruments, including the Safety and Health in Agriculture Convention, 2001 (No. 184), the Benzene Convention, 1971 (No. 136), the Safety and Health in Agriculture Recommendation, 2001 (No. 192), the Safety and Health in Mines Recommendation, 1995 (No. 183), the Chemicals Recommendation, 1990 (No. 177), the Benzene Recommendation, 1971 (No. 144), the Maximum Weight Recommendation, 1967 (No. 128), and the Radiation Protection Recommendation, 1960 (No. 114).

working environment and decent working time for pregnant and nursing women represent a particularly important component of maternity protection.[994]

480. The adoption of this gender-responsive approach requires proactive measures aimed at achieving equality of opportunity and treatment for men and women, as well as the elimination of discriminatory laws and practices. It is also important to emphasize that this approach involves specific prevention and mitigation interventions for pregnant and breastfeeding women that are strictly concerned with providing maternity protection and are not based on stereotypes concerning women's professional abilities and roles in society.[995] These measures contribute to the promotion of gender equality and maternal health, and they can save lives. They are part of a comprehensive legal framework for a human-centred and gender-responsive approach to OSH that can benefit all women and men workers, as well as employers.[996]

481. ***As it did in its 2012 General Survey, the Committee emphasizes that maternity requires differential treatment to achieve genuine equality and that maternity protection, including health protection, should be provided to enable women to realize their reproductive rights without being marginalized in the labour market. However, it is important to draw a distinction between measures necessary for the protection of the women and the child and those that go beyond. The Committee recalls that there has been a major shift over time from a purely protective approach concerning the employment of women to one based on promoting genuine equality between men and women and eliminating discriminatory laws and practices.***[997]

1.1. Dangerous or unhealthy work

482. Article 3 of Convention No. 183 requires Member States to adopt measures to ensure that pregnant or breastfeeding women are not obliged to perform work that is prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

483. During the preparatory work for Convention No. 183, it was observed that, since the adoption of the 1952 maternity protection instruments, there had been a clear evolution away from the generalized employment prohibitions for women that had marked the first half of the twentieth century, towards more targeted protection for groups at special risk, for example women before and after childbirth:

> [t]he basic challenge inherent in this approach has been to reconcile the principle of equality of treatment between men and women with the responsibility of protecting pregnant women and nursing mothers from the workplace dangers which specifically affect them.[998]

484. Therefore, while earlier maternity protection instruments called for the complete prohibition of the employment of women on work prejudicial to their health or that of their child during pregnancy and after childbirth, Convention No. 183 adopts the more affirmative approach of establishing the right for pregnant or nursing women not to be obliged to perform work that is hazardous, unhealthy or harmful to their health or the health of their unborn or newborn child.

---

994 ILO, *Maternity and Paternity at Work*, 90.

995 ILO, *Care at Work*, 176.

996 ILO, *Care at Work*, 191.

997 2012 General Survey, para. 838.

998 This new approach responded to the general improvements in the safety of industrial working environments, the wider participation by women in all aspects of economic life, and the ongoing redefinition of male and female social roles. See Law and practice report on Convention No. 183, 78–79.

General provisions prohibiting dangerous or unhealthy work for pregnant or breastfeeding women

485. The Committee notes that statutory measures have been adopted in many countries on dangerous or unhealthy work which may affect pregnant or breastfeeding women**.** ILO research indicates that there are statutory measures that, to varying extents, restrict dangerous or unhealthy work for pregnant or nursing women in 133 out of 183 countries for which information is available.[999]

486. In some countries, the principle has been established that pregnant or breastfeeding workers are not obliged to perform dangerous or unhealthy work, in line with the requirements of Convention No. 183**.**[1000] For example, in *Canada*, section 132 of the Federal Labour Code provides that an employee who is pregnant or nursing may cease to perform her job if she believes that, by reason of the pregnancy or nursing, continuing any of her current job functions may pose a risk to her health or to that of the foetus or child.[1001] In *Uruguay*, section 1 of Act No. 17215 of 1999 provides that a pregnant or nursing woman has the right to obtain a temporary change in her work if a medical certificate indicates that it could affect her or her child's health.[1002] In *Cabo Verde*, during pregnancy and after childbirth, women have the right not to perform work that is not advisable for their condition, without any reduction in wages (section 270 of the Labour Code).

487. The Committee underlines that the determination of what constitutes a "dangerous or unhealthy" job for pregnant women should be left to the competent authority, and not to the employer itself, and that women have the right to decide to continue working if their safety and health are secured. For example, in a major case, the Supreme Court of the *United States of America* stressed that the employer could not exclude pregnant women from working in battery manufacturing jobs, particularly as the Occupational Safety and Health Administration concluded, after lengthy consideration, that there was "no basis whatsoever for the claim that women of childbearing age should be excluded from the workplace in order to protect the foetus or the course of pregnancy". The court therefore concluded that such an exclusion constituted sex discrimination.[1003]

488. ***The Committee welcomes these statutory provisions, that allow pregnant workers to request not to perform certain types of unhealthy or dangerous jobs, upon presentation of a medical certificate attesting that they could affect their health or that of their child. It emphasizes that, while this right is fundamental, responsibility for the health of pregnant or nursing women at work does not rest solely with the women concerned. The right to refuse to perform these types of work must also be accompanied by other measures, including the determination of dangerous or unhealthy types of work prohibited for pregnant or***

999 Between 2011 and 2021, 11 countries introduced new legislation that either prohibits dangerous or unhealthy work for pregnant or nursing women (7 countries, including *Brazil*, *Guatemala*, *Denmark* and *Senegal*) or requires that there is no obligation for such women to perform it (for example, *Congo*, *Niger* and *Zambia*). See ILO, *Care at Work*, 183.

1000 In 38 of the 133 countries with statutory measures in place, pregnant or breastfeeding workers cannot be obliged to perform dangerous or unhealthy work. However, only 10.4 per cent of potential mothers across the world live in countries with such protection. See ILO, *Care at Work*,183.

1001 *Canada* (section 132 of the Labour Code). On being informed of the cessation, the employer, with the consent of the employee, shall notify the workplace committee or the health and safety representative.

1002 Similar provisions exist in *Australia, Burundi, Côte d'Ivoire, Cuba, Dominican Republic, Finland, Guinea* (pregnant women, with the prohibition of certain types of work or tasks), *Mauritius, Peru* (pregnant women), *Portugal* (pregnant women, with the prohibition of certain types of hazardous work for pregnant and breastfeeding women) and *Turkmenistan*.

1003 *United Automobile Workers v. Johnson Controls, Inc*., 499 U.S. 187 (1991). In a comment on possible employer's liability, the Supreme Court added that, if the employer complies with the applicable occupational safety and health standards and informs his or her female employees about the risk, consistent with the federal agency conclusions, the possibility of being held liable for any damage caused to the health of the pregnant woman and/or that of her child "seems remote at best".

nursing women by the competent authority and a workplace risk assessment procedure.[1004] ***Moreover, the Committee emphasizes the importance of ensuring that the right of pregnant or nursing women to refuse to perform dangerous or unhealthy work is applied effectively so that they can make such requests freely, without undue negative pressure from their employers or colleagues.***

489. In other countries, the approach adopted is to prohibit dangerous or unhealthy work for pregnant or nursing workers.[1005] For example, the Committee has noted that in the *Republic of Moldova*, section 248 of the Labour Code, as amended in 2017, prohibits the performance of work that poses a risk to the safety and health of pregnant women, women who have recently given birth and nursing women. In *Togo*, Order No. 020/MTESS/DCTLS establishes the nature of the types of work prohibited for pregnant or nursing women, in accordance with section 147 of the Labour Code.

490. ***The Committee welcomes the trend for the protection of the health and safety of pregnant and nursing workers and their children. It emphasizes that such measures, particularly in cases where there is a ban on performing dangerous or unhealthy work for all pregnant or nursing workers, should be accompanied by appropriate safeguards to ensure that these types of work are prohibited because they represent a true danger to the health of these workers, as determined on the basis of factual evidence. Such safeguards should include appropriate consultations with the social partners in the process of determining the types of work to be prohibited and in the regular review of these types of work, as well as the establishment of an assessment procedure to determine potential risks to the health of pregnant and nursing workers.***[1006]

491. In certain countries, while the health protection of pregnant women is regulated, the protection does not include breastfeeding women. For example, the Committee has noted that the national legislation in *Peru* regulating the protection of women engaged in work that endangers their health and/or the normal development of their child applies to pregnant women, but that the breastfeeding period is only covered by individual or collective agreements (under section 3 of Presidential Decree No. 009-2004-TR).[1007] In the *Dominican Republic*, section 234 of the Labour Code, which provides that during pregnancy a worker cannot be required to perform work that entails physical effort incompatible with her state of pregnancy, does not apply to breastfeeding women.[1008] ***The Committee emphasizes that the protection required by Article 3 of the Convention must also be available to breastfeeding women, and requests the Governments concerned to take the necessary legislative and practical measures to ensure that breastfeeding mothers are not obliged to perform work that has been identified as prejudicial to their health or that of their child.***

492. The Committee notes with concern that in some countries, there are also blanket prohibitions against employing all women in certain types of positions classified as dangerous, out of a concern for their reproductive health or more general safety and health concerns.[1009]

1004 See paras 496-513 below.

1005 Of the 133 countries with statutory measures, 59 have such a prohibition. Globally, 54.5 per cent of potential mothers live in these countries. This statutory prohibition is more frequently found in Europe and Central Asia, Africa, and the Americas. See ILO, *Care at Work*, 183.

1006 See paras 514–523 below.

1007 CEACR, Convention No. 183: *Peru*, direct request, 2019.

1008 CEACR, Convention No. 183: *Dominican Republic*, direct request, 2020.

1009 This type of general prohibition covers all women in 31 countries globally, including in Europe and Central Asia (ten countries, including *Israel*, *Poland* and several Commonwealth of Independent States countries), Africa (eight countries, including *Angola*, *Morocco*, *Cameroon* and *Sudan*), the Arab States (six countries, including *Lebanon*, *Qatar* and *Syrian Arab Republic*), and the Americas (six countries, including *Barbados*, *Costa Rica* and *Ecuador*). In Asia and the Pacific, the *Islamic Republic of Iran* is the only country with such a general prohibition. ILO, *Care at Work*, 184.

For instance, in *Azerbaijan,* work by women in workplaces with difficult or harmful working conditions, and in underground work, is generally prohibited.[1010] In *Cameroon*, some types of work are prohibited for all women, including types of work considered to be dangerous or unhealthy. In *Burkina Faso*, in addition to the restrictions applicable to pregnant women, no women may be employed in work that is considered to be prejudicial to their reproductive capacity.[1011]

493. The Committee notes such practices with concern, as they contribute to gender-based employment discrimination, ignore working conditions that may pose dangers to male workers and fail to make them safe for all workers and/or deny women equal opportunities for access to certain types of work. In this respect, the Committee refers to Part I of this Survey.[1012] ***It urges the Governments concerned to take measures to amend the respective provisions in order to remove blanket prohibitions and adopt health protection provisions that are in line with the principle of equality and non-discrimination in employment and occupation and the requirements of Convention No. 183.***

494. In other countries, there is no protection for women performing hazardous work while they are pregnant or breastfeeding. For instance, in *Grenada,* the Government indicates that there is no specific legislation on this subject, but that it is normal practice for pregnant women to be assigned to lighter jobs. The Government of *Zimbabwe* indicates that there is no specific legislation to ensure that pregnant or nursing women are not obliged to perform work deemed to be prejudicial to their health, but that arrangements may be made at the workplace upon request.

495. ***The Committee encourages the Governments concerned to adopt statutory measures to ensure that the health of pregnant or nursing women is protected against dangerous and unhealthy work, in accordance with Article 3 of Convention No. 183. In this respect, Member States should adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.***

Identifying health risks for pregnant and breastfeeding women at work

496. As emphasized in Article 3 of Convention No. 183, an important aspect of maternity protection is to ensure that workers are not exposed to working conditions, work environments or substances at the workplace that might pose particular risks during maternity. However, the challenge is to ensure that the less restrictive approach adopted by the most recent ILO maternity instruments, namely targeted protection for groups at special risk, including pregnant and breastfeeding women, both protect them from workplace dangers that specifically affect them, while reconciling this necessity with the principle of equality of treatment for men and women. In addressing this challenge, an important trend since the adoption of the 1952 maternity protection instruments was outlined during the preparatory work:

1010 *Azerbaijan* (section 241 of the Labour Code). The Government of *Azerbaijan* indicates that it has received technical support from the World Bank, including for the approval of lists of prohibited workplaces and harmful substances and factors for pregnant women and women with children under 1 year of age, in accordance with international standards, and the abolition of the list of around 700 professions and jobs prohibited for women. This will increase employment opportunities for women, promote gender equality and the employment of women in higher-paid jobs.

1011 *Burkina Faso* (section 3 of Decree No. 2010-356/PRES/PM/MTSS/MS of 2010). See also, CEACR, Convention No. 111: *Burkina Faso*, direct request, 2016. Restrictions on all women performing some jobs also exist in *Costa Rica*, *Iraq*, *Qatar* and the *Russian Federation*, as well as *Guinea* (Decree No. 1392/MASE/DNTLS/90 of 1990). See also CEACR, Convention No. 111: *Guinea*, direct request, 2020.

1012 See Ch. I, section 1.2.

> Another trend, closely related to the first, has been the move towards protective measures better adapted to the needs and personal preferences of individual workers at different periods in their working life. Rather than imposing involuntary restrictions on certain types of work for wide categories of workers, such as women of child-bearing capacity, employers are called upon to make assessments of workplace risks and appropriate adjustments in the conditions of work on a case-by-case basis. Greater discretion is left to the individual workers to accept or refuse assignments or to request transfer due to considerations of reproductive health. In order to ensure informed consent, mechanisms for fuller information-sharing between employers and workers and their organizations are of vital importance.[1013]

497. The approach adopted by Convention No. 183 and Recommendation No. 191 reflects this trend. Article 3 of the Convention highlights the key consultative role of workers' and employers' organizations in the adoption of measures to protect pregnant women and nursing mothers from dangerous and hazardous work, including the determination of such types of work and the process established to assess risks in the workplace to the health of mothers and their children.

Determination of dangerous or unhealthy types of work by the competent authority

498. With regard to the determination of the types of work that are dangerous or unhealthy for pregnant and breastfeeding women, Paragraph 6(3) of Recommendation No. 191 indicates that measures should be taken in particular in respect of certain risks, including: (a) arduous work involving manual lifting, carrying, pushing or pulling of loads; (b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard; (c) work requiring special equilibrium; and (d) work involving physical strain due to prolonged periods of sitting or standing, extreme temperatures or vibration.

499. A variety of legislative measures have been adopted in this regard, including the drawing up by the competent authority of lists of types of work that are prejudicial to the health of mothers or children.[1014] The Committee welcomed the adoption in 2020 of the Rulebook on OSH measures in *Montenegro* listing dangerous physical, biological and chemical agents, as well as working conditions, to which pregnant and breastfeeding women shall not be exposed (section 8).[1015] In *Germany*, section 11 of the Maternity Protection Act of 2017 contains an extensive list of prohibited activities for pregnant or nursing women, including work involving specific biomaterials and working conditions that expose women to physical effects to an extent that represents an unjustifiable threat to them or their children.

500. In *Benin*, a recent decree prohibits the exposure of pregnant or breastfeeding women workers to chemical agents, such as: those considered to be toxic for reproductive health; benzene; mercury and lead and their compounds; as well as ionizing radiations.[1016] In the *Lao People's Democratic Republic,* it is prohibited to employ pregnant women or women caring for a child under 1 year of age in several types of work, including: work in a shop at a height of over 2 metres; work lifting and carrying by hand, carrying on the shoulders, or bearing loads heavier than 10 kilograms; or standing longer than two consecutive hours.

1013 Law and practice report on Convention No. 183, 79.

1014 This is the case, for example, in *Albania*, *Austria*, *Azerbaijan*, *Bahrain*, *Bulgaria*, *Burkina Faso*, *Czechia, Ecuador*, *Germany*, *Israel*, *Poland*, *Portugal*, *Senegal*, *Slovakia* and *Togo*.

1015 CEACR, Convention No. 183: *Montenegro*, direct request, 2021.

1016 *Benin* (Interministerial Decree No. 096/MPMEPE/MTFP/MS/DC/SGM/DGT/DSSMST/DPEE/SA/012 SGG2, Ch. II).

501. ***The Committee emphasizes that, where lists of types of work that pregnant or nursing women are not allowed to perform are established by a competent authority, they should be regularly updated.*** This is important in order to ensure that the lists reflect current risks and take into consideration modern technologies that may mitigate them, which is essential to ensure that the prohibition of performing certain types of dangerous work remains an OSH issue and is not based on outdated conceptions and stereotypes of what is considered dangerous for women.[1017]

502. In some countries, the legislation goes further in protecting both women and men against work that exposes them to risks to their reproductive health. During the preparatory work, emphasis was placed on the growing awareness of the impact of the working environment on reproductive health and the negative outcomes to pregnancy associated with both maternal and paternal exposure to hazardous substances, agents and processes:

> This recognition has resulted in a reorientation of safety and health legislation in some countries from protection aimed solely towards pregnant women, nursing mothers or women in their child-bearing years to the protection of both men and women workers from reproductive hazards in the workplace. … Rather than simply removing the protection afforded to women due to their child-bearing capacity, the aim is to reduce or eliminate the risks as far as possible, raise the level of protection for both sexes and provide transfer options for both men and women exposed to reproductive health hazards, when necessary.[1018]

503. Studies have also demonstrated the adverse reproductive effects for men of exposure to a number of chemicals, including endocrine disrupting chemicals (EDCs).[1019] In this regard, the Committee recalls that the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), in Paragraph 4, emphasizes the importance of taking measures to protect the safety and health of workers of both genders, including the protection of their reproductive health.

504. ***The Committee welcomes policies and measures that protect both men and women from work that may adversely affect their reproductive health. The Committee emphasizes that lists of types of work prohibited because they are likely to harm the reproductive capacity of women should be determined on the basis of the results of epidemiological studies proving the presence of specific risks to the reproductive health of women and, as appropriate, men. In this respect, the Committee encourages Governments, in collaboration with international organizations, to produce and share gender disaggregated data with a view to identifying and preventing particular risks to reproductive health and taking appropriate evidence-based policy measures at both the national and workplace levels.***

505. ***The Committee further emphasizes the crucial role of the social partners and health experts in the process of determining these types of work with a view to ensuring that the prohibition of their performance by pregnant and breastfeeding women is based on scientific evidence and not on gender-based stereotypes. The Committee recalls in this respect the importance of establishing systems and specific criteria for the classification of all chemicals according to the type and degree of their intrinsic health and physical hazards, in accordance with the Chemicals Convention, 1990 (No. 170). It further recalls that, as set out in the Chemicals Recommendation, 1990 (No. 177), one of the key characteristics of chemicals to be examined in a system of classification is their effects on the reproductive system.***

1017 CEACR, Convention No. 183: *Bulgaria*, direct request, 2003; *Republic of Moldova*, direct request, 2009.

1018 Law and practice report on Convention No. 183, 79–80.

1019 ILO, *Exposure to Hazardous Chemicals at Work and Resulting Health Impacts: A Global Review*, 2021.

Workplace risk assessments

506. Paragraph 6(1) of Recommendation No. 191 adds that measures should be taken to ensure the assessment of any workplace risks related to the safety and health of pregnant or nursing women and their children, and that the results of this assessment should be made available to the women concerned. In this regard, Recommendation No. 191 is moving towards a position adapted to the needs of individuals by calling for an assessment of workplace risks for the safety and health of pregnant or nursing women and their children. If a significant workplace risk is found to exist, protective measures need to be taken.

507. The Committee recalls that risk assessments are key components of a number of international OSH standards. Convention No. 187 provides that the assessment of occupational risks or hazards is a basic principle to be promoted through the national OSH policy, and Recommendation No. 197 recalls that the national OSH programme should be based on the principles of the assessment and management of hazards and risks, in particular at the workplace level.[1020]

508. The COVID-19 pandemic has brought to light the importance of workplace risk assessments as OSH management tools at the enterprise level to help employers assess and mitigate not only the risk of infection, but also associated chemical, ergonomic and psychosocial risks, such as violence and harassment, increased workloads, longer working hours and reduced rest periods. Policy and regulatory frameworks should promote the implementation of a preventive OSH culture and the adoption of a sound OSH management system in the workplace, based on regular risk assessments and effective prevention, mitigation and protection measures.[1021]

509. Even where lists of types of work that are dangerous or hazardous to pregnant and nursing women already exist, risk assessments are still necessary**.** The Committee has requested governments to provide information on such procedures, even in countries where lists have been drawn up of dangerous jobs prohibited for pregnant and breastfeeding workers.[1022] ***The Committee considers that risk assessments are critical measures that complement the adoption of lists of dangerous jobs considered prejudicial to the health of mothers and/or children, as they contribute to the protection of pregnant and breastfeeding workers by addressing potential health risks on a case-by-case basis.***

510. In this regard, the Committee has emphasized that the protection afforded to pregnant women and nursing mothers from work that is prejudicial to their health or that of their child must be determined on the basis of the results of risk assessments showing that there are specific risks for women's health and/or safety. The Committee emphasizes in this regard that provisions respecting the protection of persons working under hazardous or difficult conditions should be aimed at protecting the health and safety of both men and women at work, while taking into account gender differences with regard to specific health risks.[1023] ***The Committee emphasizes that any such restrictions must be justified and based on scientific evidence and, once adopted, should be periodically reviewed in the light of technological developments and scientific progress to determine whether they are still necessary for***

1020 ILO, *Working Together to Promote a Safe And Healthy Working Environment: General Survey on the Occupational Safety and Health Instruments concerning the Promotional Framework, Construction, Mines and Agriculture*, Report III (Part 1B), International Labour Conference, 106th Session, 2017 (hereinafter "2017 General Survey"), para. 353.

1021 ILO, *Care at Work*, 183.

1022 CEACR, Convention No. 183: *Belarus*, direct request, 2008; *Mauritius*, direct request, 2021; *Republic of Moldova*, direct request, 2009.

1023 2012 General Survey, para. 840.

protective purposes.[1024] ***The Committee also emphasizes that the social partners play an essential role in the development, effective implementation and evaluation of workplace risk assessments, which represent an important entry point for further maternity protection at the workplace.***[1025]

511. In many countries, the national legislation establishes an assessment procedure for the evaluation of work-related risks for pregnant and breastfeeding women workers.[1026] In many cases, the risk assessment is carried out by the employer at the workplace and takes into account the list of types of dangerous work or agents established by the competent authority, where the latter exists. For example, in the *Netherlands*, if a pregnant or breastfeeding employee is usually employed in a business or establishment, special attention should be paid in the risk assessment and evaluation to the non-exhaustive list of agents, processes and working conditions contained in Annex I of Council Directive 92/85/EEC of 1992.[1027] In *Belgium*, a risk analysis must be carried out by employers in collaboration with an occupational physician, in which the specific risks must be assessed on the basis of an open-ended list of agents, procedures and working conditions.[1028]

512. The body in charge of performing the risk assessment varies from country to country and may also vary by sector. In *Switzerland*, the Maternity Protection Order defines the specialists, such as occupational medical practitioners or hygienists, to whom the risk assessment is entrusted.[1029] In *South Africa*, elected worker health and safety representatives are entitled to participate in the risk assessment.[1030] In other countries, the option exists for women to request the labour inspectorate to carry out an assessment**.** For instance, the Government of *Portugal* indicates that pregnant and nursing women have the right to request the labour inspectorate to carry out an urgent inspection if they think that the employer is not complying with OSH obligations.

513. Moreover, the Committee recalls that the ILO's OSH standards generally promote the importance of information and awareness-raising at the workplace to prevent and address hazardous and unhealthy work and any other OSH risks. Ensuring that the results of assessments of health risks are made available to the workers concerned, in conformity with Paragraph 6(1) of Recommendation No. 191, helps to raise awareness and allows them to make informed choices regarding the work they are willing to perform and the risks they are taking. For example, in *North Macedonia*, *Norway* and *Portugal*, the national legislation establishes the requirement to inform pregnant workers about work-related risks to their health. The Government of *Estonia* indicates that, when employers become aware that an employee is pregnant or breastfeeding, they must conduct a risk assessment and inform the woman worker of its results and the measures to be taken.

1024 CEACR, Convention No. 111: *Guinea*, direct request, 2020.

1025 ILO, *Maternity and Paternity at Work*, 95.

1026 For example, *Armenia*, *Austria*, *Belgium*, *Denmark*, *Iceland*, *Ireland*, *Lithuania*, *Malta*, *Montenegro*, *Netherlands*, *North Macedonia*, *Norway*, *Portugal*, *Senegal*, *Slovenia*, *Spain, South Africa*, *Switzerland* and *Türkiye*.

1027 *Netherlands* (section 1.41 of the Health and Safety Regulations, referring to Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to promote improvements in the health and safety at work of pregnant workers and workers who have recently given birth or are breastfeeding). However, the Christian National Trade Union Federation (CNV) and the Netherlands Trade Union Confederation (FNV) (*Netherlands)* indicate that pregnant women sometimes work in unsafe conditions in which they are exposed to chemicals, irregular or long working hours, stress and noise, leading to an increased risk of miscarriage and early births.

1028 *Belgium* (section 42 of the Labour Act and Book X, Title V, sections X.5-1 to X.5-10 and Annex X.5-1 of the Welfare at Work Code).

1029 *Switzerland* (section 1 of the Maternity Protection Order of 2001).

1030 *South Africa* (Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child, No. R. 1441).

Alternative measures in cases of work determined to be dangerous or unhealthy

514. Recommendation No. 191 suggests that protective measures should be taken when work involves health risks for pregnant and nursing workers, and that alternatives to the work should be provided to the worker concerned. Paragraph 6(2*)* outlines four alternative measures: the elimination of the risk; an adaptation of the worker's conditions of work; a temporary transfer to a safer position, without loss of pay; or, in the absence of other possibilities, placing the worker on temporary paid leave. Such measures, which are strictly related to the circumstance of maternity, are not considered to be discriminatory under Article 5(1) of Convention No. 111.

515. ILO research indicates that, of the 184 countries for which information is available, in 114 countries pregnant and nursing workers have to be provided with between one and four alternatives to dangerous work, while in 70 countries there is no such requirement.[1031] For example, in *Australia*, under the Work Health and Safety Framework, employers must do all that is reasonably possible to eliminate risks and, if an employee is pregnant, must take into account what is reasonably practicable to ensure her health and safety. In *Japan*, the national legislation provides, among other restrictions on dangerous work, for the possibility of the transfer of pregnant women to light work.[1032] In *Nepal,* section 81 of the Labour Act, 2017, provides that if a woman indicates that she is pregnant, the employer generally has to engage her in work that does not cause any adverse effects on her health.

516. Moreover, in many countries, the legislation provides that pregnant or nursing mothers must be offered one or more alternatives to work that they cannot perform due to its dangerous or unhealthy nature.[1033] For example, in the *Republic of Moldova*, Government Decision No. 1408 of 2016 provides that, where workplace risks are identified, employers are required to adapt the working conditions of pregnant or breastfeeding women or transfer them to another post.[1034] In *Australia*, *Azerbaijan*, *Côte d'Ivoire*, *Cuba*, *Czechia*, the *Russian Federation*, *Turkmenistan* and *Uruguay*, pregnant workers have to be transferred to another job with full wages. In *Armenia*, where it is impossible to eliminate a dangerous factor at the workplace, employers are obliged to transfer the woman, with her consent, to another job.[1035] The National Confederation of Industry (CNI) *(Brazil)* indicates that, during pregnancy, without prejudice to wages and other rights, women may be transferred to another position when health conditions so require, with a guaranteed right to return to their previous position (section 392(4) of the Consolidation of Labour Laws, CLT). Moreover, the CLT provides for pregnant and breastfeeding women to be removed from unhealthy activities, without prejudice to their wages.

517. In several countries, in line with Recommendation No. 191, the alternative of temporary paid leave is envisaged if there are no other possibilities. In *Lithuania*, in the absence of an appropriate job, women workers are entitled to childcare leave and benefits until the child reaches the age of 1.[1036] In *Switzerland*, women workers are entitled to 80 per cent of their

1031 ILO, *Care at Work*, 187. Globally, six in ten potential mothers live in countries where there is no statutory right to protective measures against/alternatives to dangerous or unhealthy work, leaving them exposed to health risks.

1032 *Japan* (section 65 of the Labour Standards Act No. 49 of 1947).

1033 Of the 114 countries where there are protective measures, only 50 offer one alternative, which is predominantly a "transfer" (44 countries) and, in five cases, either "adaptation" (*Afghanistan, Senegal* and *Türkiye*) or "extra leave" (*Mexico* and *Niger*). Another 54 countries offer pregnant and nursing workers two (29 countries) or three (25 countries) alternative measures to dangerous work. See ILO, *Care at Work*, 187.

1034 *Republic of Moldova* (section 1 of the Government Decision No. 1408 of 2016).

1035 *Armenia* (section 258(3) of the Labour Code).

1036 *Lithuania* (section 3(6) of the Law on Safety and Health at Work).

wages when no equivalent work can be offered to them.[1037] In *Armenia*, if it is not possible to eliminate the hazardous factor from the work to avoid exposing women to the dangerous substance or performing dangerous work, or transfer them to another job, employers are required to release them from work and maintain their average hourly wage.[1038]

518. The Committee notes the concern expressed by the International Organisation of Employers (IOE), in its observations, that the provisions of Convention No. 183 and Recommendation No. 191 are unclear regarding the regulation of alternative measures such as transfers or temporary paid leave, including as regards the financing of these alternative measures. In this regard, the Committee welcomes that paid leave is financed through public funds or social insurance schemes in some countries. For example, in *Uruguay*, when a pregnant worker's job has been determined to be harmful to her health or that of her child and the employer declares to the Uruguayan Social Security Bank (BPS) that her transfer to other tasks is not possible, the BPS or another social insurance institution provides her with half of her salary on a monthly basis.[1039] In *Luxembourg*, if it is not possible to transfer a pregnant or breastfeeding woman to another post, she has to be released from work, in accordance with the decision of the occupational physician. In such cases, women are entitled to benefits provided by the National Health Fund.[1040] In the *Seychelles*, where a transfer to another post is not possible, pregnant or breastfeeding women are entitled to sickness benefits provided by the social security system.[1041]

519. In the European Union, many countries give effect to Directive 92/85/EEC, which establishes guidelines for employers to decide on the measures to be taken following an assessment of health and safety risks, and to subsequently inform workers and/or their representatives of the results of the assessment and the measures necessary for their protection. If a workplace risk is identified, employers are required, in the first place, to temporarily adjust the working conditions and/or hours of work of the employees concerned to avoid exposure. If such adjustment is not feasible or cannot be reasonably required on duly substantiated grounds, employers have to transfer the employees concerned to another job. If such a transfer is not possible, the workers have to be granted leave for the whole of the period necessary to protect their safety and health.[1042] In *Finland,* where agents that pose a risk to reproductive health at work are listed in a decree, employers have to ensure that those agents are replaced with agents that pose less of a risk, where this is technically possible and reasonably feasible, and that pregnant workers are not exposed to and do not use them.[1043] Similar measures exist in *Luxembourg*, *Portugal* and *Spain*.

520. However, in certain countries, while measures are taken to provide possible alternatives for pregnant workers faced with hazardous or dangerous conditions of work, their income is not secured. For example, in the *Dominican Republic*, pregnant workers can take leave without pay if they produce a medical certificate indicating that the work performed is prejudicial to their health or that of their child.[1044] In *Canada*, the Labour Code provides that, where a job modification or transfer is not reasonably practicable, an employee may take unpaid leave for the duration of the risk indicated in the medical certificate.[1045]

1037 *Switzerland* (section 35(3) of the Federal Labour Act).

1038 *Armenia* (section 258(3) of the Labour Code).

1039 *Uruguay* (section 3 of Act No. 17215).

1040 ILO, *Maternity and Paternity at Work*, 98.

1041 *Seychelles* (section 7 of the Social Security Act of 2010).

1042 Art. 5 of Council Directive 92/85/EEC.

1043 *Finland* (sections 1 and 3 of the Government Decree on Agents Posing a Risk to Reproductive Health and Measures to Prevent the Risk No. 603/2015).

1044 CEACR, Convention No. 183: *Cuba*, direct request, 2007; *Dominican Republic,* direct request, 2020; *Netherlands*, observation, 2013.

1045 *Canada* (section 205(4) and (6) of the Labour Code).

521. ***The Committee emphasizes that the objective of alternative measures in cases where the jobs of the pregnant or nursing workers are determined to be dangerous or unhealthy (that is, the elimination of the risk, the adaptation of the conditions of work, a temporary transfer to a safer position without loss of pay or, in the absence of other possibilities, placing workers on temporary paid leave) is to protect the health of pregnant or nursing workers and of their children, while ensuring at the same that they suffer no loss of income. The Committee recalls that measures taken to ensure the health protection of pregnant or nursing workers should not result in financial distress for these workers, and that where workers are exempt from performing work that is prejudicial to their health or that of their children, and other alternatives cannot be found, leave should be paid or entitlements granted to income replacement benefits in order to ensure their financial security. In cases where no alternative work is available, income support measures should exist for pregnant women whose work entails a risk to their health, so that they can freely exercise their right to leave without fear of the financial difficulties that this may involve. In this regard, the Committee encourages governments to take measures to ensure that paid leave or income replacement benefits are financed through joint contributions from employers and workers or public funds, to prevent employers having to bear the associated costs.***

522. In some countries, there is a complete lack of protective legislation in this regard.[1046] For instance, in *Mauritius*, the national legislation sets out the types of work that pregnant women may not be required to perform but does not specify the alternatives to be offered to them.[1047] In *Egypt*, except in the case of night work, the national legislation does not explicitly provide that an alternative is to be offered to pregnant and nursing women.[1048] In *Botswana*, the law does not require employers to offer alternative jobs or work to pregnant or nursing women.

523. The Committee emphasizes that the provision of such alternatives to pregnant or nursing workers is essential to protect their health, as the workers concerned may otherwise either feel compelled to perform dangerous or unhealthy work, or risk losing their income if no other alternatives are available. ***The Committee therefore encourages the governments concerned to take the necessary measures to ensure that, where a pregnant or nursing worker refuses to perform dangerous or unhealthy work (on the basis of a medical certificate, where appropriate), or where a workplace risk assessment identifies a risk to the health of a pregnant or nursing worker or her child, the worker concerned is offered an alternative work.***[1049]

1.2. Working time arrangements

524. Working time is an important issue for the health of all workers. Long and non-standard working hours, such as night work and regular overtime, are often neither preferred nor healthy for workers and give rise to risks for workplace safety. They also negatively affect workers' families by compromising work–life balance, businesses by reducing productivity, and society at large.[1050] This is even more important for women workers during maternity and following childbirth.

525. Paragraph 6(4) of Recommendation No. 191 indicates that a pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.

1046 In 48 countries, including all the Arab States, 22 countries in Africa, 19 countries in Asia and the Pacific and 17 countries in the Americas. ILO, *Care at Work*, 187.

1047 *Mauritius* (section 52 of the Workers' Rights Act, 2019).

1048 *Egypt* (Decrees Nos. 43 and 44 of 2021).

1049 The Committee recalls the fundamental protection contained in Art. 13 of the Occupational Safety and Health Convention, 1981 (No. 155), that workers who have removed themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger to their life or health shall be protected from undue consequences in accordance with national conditions and practice.

1050 ILO, *Care at Work*, 177.

Night work

526. As indicted in Part I of this Survey, laws mandating blanket prohibitions or restrictions on night work for all women are discriminatory and should be repealed, as they are based on stereotypes regarding women's and men's professional abilities and roles in society.

527. Pregnant and nursing workers may need special protection in relation to night work. In its 2001 General Survey concerning night work of women in industry, the Committee noted the specific regulatory regimes on night work that continued to apply for only two categories of workers with special needs, namely expectant or breastfeeding mothers and young persons, based on the concern and awareness that women workers, because of their unique reproductive function, are more exposed to the hazards of night work during pregnancy and immediately following confinement.[1051] The Committee further recalled that pregnant and nursing women may be particularly vulnerable to night work and emphasized the fundamental importance of ensuring they are provided with an alternative working arrangement to night work.[1052]

528. Further, in its 2018 General Survey on the working time instruments, the Committee emphasized that, while gender-specific prohibitions of industrial work during the night should progressively become irrelevant, and be replaced by laws and practices that offer adequate protection to all workers, as provided in the Night Work Convention, 1990 (No. 171), it has to be understood that national, regional and sectoral conditions and progress in achieving the elimination of discrimination vary considerably. Some women workers therefore still need protection while genuine conditions of equality and non-discrimination are being pursued.[1053]

529. The ILO maternity protection instruments embody this rationale. Both the earlier Maternity Protection Recommendation, 1952 (No. 95) and the more recent Recommendation No. 191 recognize the need to protect pregnant women and nursing mothers from the heightened health risks of night work. However, while Recommendation No. 95 indicated that night work for pregnant and nursing women should be prohibited, Paragraph 6(4) of Recommendation No. 191 adopts a more flexible approach that seeks to balance protection with the requirement of equality and non-discrimination by providing that pregnant or nursing women should not be required to perform night work if a medical certificate declares such work to be incompatible with their condition.

530. Convention No. 171 further complements the normative background on night work for pregnant and nursing women by focusing on the measures that should be taken to ensure that an alternative to night work is available to women night workers before and after childbirth,[1054] rather than by simply prohibiting night work for this category of workers.[1055] Night work for pregnant and nursing women is therefore no longer perceived as something to be entirely prohibited, and instead it is necessary to take into account the needs of each individual. ***The Committee once again recalls that pregnant and nursing women engaged in night work may be particularly vulnerable and emphasizes the importance of women night workers who are in this situation being provided with alternative work. At the same time, the Committee***

1051 ILO, *Night Work of Women in Industry: General Survey of the Reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948*, Report III (Part 1B), International Labour Conference, 89th Session, 2001 (hereinafter "2001 General Survey"), para. 98.

1052 ILO, *Ensuring Decent Working Time for the Future: General Survey Concerning Working-Time Instruments*, Report III (Part B), International Labour Conference, 107th Session, 2018 (hereinafter "2018 General Survey"), para. 481.

1053 2018 General Survey, para. 406.

1054 For a period of at least 16 weeks before and after childbirth, and for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child, in accordance with Art. 7(1) of Convention No. 171.

1055 Similarly, Convention No. 171, in contrast with its predecessors, no longer prohibits night work for women, but provides "measures of protection for all night workers including many of those aspects of special concern for women", such as "special measures of maternity protection and safety". 2001 General Survey, para. 32.

emphasizes that protective measures applicable to women's employment at night which go beyond maternity protection in the strict sense and are based on stereotyped perceptions regarding women's professional abilities and role in society, and are in violation of the principle of equality of opportunity and treatment between men and women.[1056]

531. ILO research indicates that, of the 182 countries for which data is available, there are statutory provisions regulating night work in general in 116 countries, while legislation has been adopted in 78 countries to regulate night work by pregnant or nursing workers, with different levels of restrictions. In some countries, night work is regulated by providing that pregnant or nursing women cannot be obliged to do night work, in line with the approach outlined in Recommendation No. 191.[1057] In *Mauritius*, employers must not require pregnant women workers to perform night shifts for at least eight weeks before childbirth, or to work between 6 p.m. and 6 a.m. for 12 months following confinement, except with their consent.[1058] In *Cabo Verde*, women workers are entitled to an exemption from night work during pregnancy and following childbirth, and to be transferred to day work.[1059] In *Indonesia*, the national legislation prohibits work between 11 p.m. and 7 a.m. by pregnant women who, according to a doctor's certificate, are subject to safety and health risks due to their pregnancy and health.[1060] In *Suriname*, the Maternity Protection Act prohibits employers from requesting employed women to perform night work during pregnancy and for at least four weeks immediately following maternity leave, if the women employees submit a medical certificate to that effect.[1061]

532. In some countries, broader protection is provided by requiring alternative measures where pregnant or nursing women cannot perform night work. In *Ireland,* if an employee during pregnancy and for 14 weeks after childbirth is regularly engaged in night work between 11 p.m. and 6 a.m. and provides a medical certificate indicating that this may damage her health or that of her child, she must be found alternative day work. In *South Africa*, employers are required, where practicable, to offer suitable alternative employment to employees during pregnancy and for a period of six months following the birth of their child, if they are engaged in work between 6 p.m. and 6 a.m.[1062] Many European Union Member States are also in compliance with the provisions of Recommendation No. 191 because they give effect to Directive 92/85/EEC, which provides that pregnant women and women who have recently given birth or who are breastfeeding should not be obliged to perform night work, upon the production of a medical certificate stating that it is necessary for the safety or health of the worker concerned, and that it should instead be possible for them to transfer to daytime work or, where such a transfer is not feasible, to take leave from work or an extension of maternity leave.[1063] For instance, in *France*, pregnant women or new mothers can request reassignment to daytime work. In *Lithuania*, pregnant and nursing mothers may work at night only if they consent to do so. In *Finland*, all employees performing night work must be provided with an opportunity to change duties or switch to day work if this is possible and necessary.[1064] ***The Committee welcomes alternative work arrangements for pregnant or nursing women engaged in night work, and recalls that, in order to offer the women concerned a viable alternative, any change in working hours must not affect their income levels.***[1065]

1056 2018 General Survey, para. 545.

1057 The region with more countries providing that pregnant or nursing women cannot be obliged to do night work is Europe and Central Asia. See ILO, *Care at Work*, 177.

1058 *Mauritius* (sections 23(3) and 52(10) of the Workers' Rights Act of 2019).

1059 *Cabo Verde* (section 162(2) of the Labour Code).

1060 *Indonesia* (art. 76(2) of the Manpower Law No. 13 of 2003).

1061 *Suriname* (section 8(2) of the Maternity Protection Act).

1062 *South Africa* (section 26(2) of the Basic Conditions of Employment Act No. 75 of 1997).

1063 Directive 92/85/EEC, art. 7.

1064 *Finland* (section 30 of the Occupational Safety and Health Act No. 738/2002).

1065 2018 General Survey, para. 545.

533. In other countries with statutory provisions on night work, pregnant or breastfeeding workers are simply prohibited from performing night work.[1066] In *Germany,* employers cannot employ pregnant or lactating women workers between 8 p.m. and 6 a.m.[1067] In the *Lao People's Democratic Republic*, it is prohibited to require a woman to perform night work during pregnancy or when she is caring for a child under 1 year of age.[1068] In *Mexico*, during pregnancy and nursing, working mothers may not perform work later than 10 p.m. in industrial, commercial or service establishments.[1069]

534. In some countries, night work is prohibited during a certain part of pregnancy and for a period following childbirth, with the possibility of extending the prohibition to other periods of the pregnancy on the basis of a medical certificate. In *Turkmenistan*, pregnant women may not be employed in night work, and after childbirth and until newborns reach the age of 3, they may only work at night with their written consent. ***While the Committee welcomes measures aimed at protecting women's health and well-being, it emphasizes the need for caution in order to ensure that such protective measures do not in practice become obstacles to the equal access of women to employment. For example, where women with children up to a certain age are prohibited from performing night work, the effect may be to discourage employers from employing women of childbearing age. Appropriate safeguards are therefore needed to ensure that such provisions respect the right to both health protection and gender equality: such safeguards may, for example, take the form of consultations with the social partners and technical specialists when drawing up the respective provisions.***

535. In other countries, the legislation prohibits or limits night work for all women, irrespective of their pregnancy or nursing status. In *Bangladesh*, *Malaysia*, *Morocco* and *Oman*, no women may be obliged to perform night work. There is a general prohibition of night work for all women in a number of countries, especially in Africa (including *Mali*, *Mauritania* and *Nigeria*), the Arab States (including *Saudi Arabia* and *Yemen)* and Asia and the Pacific (including *Pakistan*). Such general prohibitions of night work for all women are also found in the Americas, including in *Belize* and the *Plurinational State of Bolivia.* ***In this respect, the Committee refers to Part I of this Survey and recalls that protective measures for women should not be based on stereotyped perceptions of the capacities and role of women in society.***

536. On the other hand, the legislation in many countries does not restrict night work for pregnant or nursing women**.** According to ILO research, there are no legal provisions protecting pregnant and nursing women in relation to night work in 66 countries.[1070] This is the case in 24 countries in the Americas (including *Argentina*, *Brazil*, *Colombia*, *Costa Rica* and *Haiti*), 17 countries in Africa (including *Botswana*, *Kenya*, *Liberia* and *Uganda*) and 13 countries in Asia and the Pacific (including *Australia*, *Cambodia*, *India* and the *Islamic Republic of Iran*).

537. ***The Committee emphasizes that, while blanket prohibitions on night work for women are discriminatory, health protection for pregnant and nursing women requires them to be given the possibility of not performing night work, if necessary, in light of their condition. It therefore urges the governments concerned to adopt legislative measures to ensure that pregnant and nursing women have the possibility of refusing to perform night work on the basis of a medical certificate or other official documentation attesting that it would represent a risk to their health or that of their child.***

1066 This statutory prohibition is more frequent in Europe and Central Asia, Africa, and Asia and the Pacific. See ILO, *Care at Work*, 177.

1067 *Germany* (section 5 of the Maternity Protection Act of 2017).

1068 *Lao People's Democratic Republic* (section 6, Ch. 1, art. 97 of Labour Law No. 43/NA of 2013).

1069 Other measures prohibiting or limiting night work for a certain period for pregnant and breastfeeding mothers have been adopted in *Albania*, *Austria*, *Azerbaijan, Bosnia and Herzegovina* (Republika Srpska), *China*, *Chile, Egypt*, *Honduras*, *Russian Federation*, *Saudi Arabia*, *Thailand, Türkiye* and *Turkmenistan*.

1070 ILO, *Care at Work*, 177, table 5.1.

Time off for medical examinations

538. Paragraph 6(6) of Recommendation No. 191 indicates that a woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy. This provision combines both working time and healthcare arrangements with a view to ensuring the prevention and detection of the multiple health problems that can occur during pregnancy.

539. Regular prenatal health monitoring is an effective means of preventing abnormalities or complications during pregnancy, at birth and postpartum. The WHO advises that, by implementing timely and appropriate evidence-based practices, antenatal care can save lives by addressing preventable maternal mortality and morbidity. New WHO guidelines have increased to eight the recommended number of antenatal contacts between an expectant mother and healthcare providers in order to facilitate the assessment of the mother's well-being and the provision of interventions to improve health outcomes if complications are identified.[1071]

540. It is important for employers to recognize the significance of antenatal care for maternal and child health, as well as for the economic stability of families,[1072] particularly by providing paid time off for prenatal maternal healthcare during working hours.[1073] In certain countries, women have the right to time off work for prenatal care.[1074] For example, in *Brazil*, women workers may be absent from work for at least six medical consultations and other tests.[1075] In *Israel*, pregnant women are entitled to 40 hours of time off for medical examinations. In *Croatia*, pregnant women are entitled to 1 day of leave a month for prenatal medical examinations. In the *Republic of Korea*, pregnant women are entitled to leave to undergo medical examinations once every 4 weeks up to 28 weeks of pregnancy, once every 2 weeks from 29 to 36 weeks, and once every week from 37 weeks.[1076]

541. In some countries, women are also entitled to time off for medical examinations following childbirth.[1077] For example, in *Azerbaijan*, women with children under 3 years of age retain their average salary for days of check-ups and outpatient medical examinations. In the *Bolivarian Republic of Venezuela*, women workers have the right to 1 day of leave a month to attend paediatric centres.[1078] In *Ireland*, employees have the right to paid time off work to attend medical appointments for up to 14 weeks following childbirth.

542. According to the ILO Research, among the 53 countries in which women are entitled to time off for prenatal medical examinations, in 46 countries the time off is paid.[1079] The Committee welcomes the fact that the number of countries with this entitlement appears to have increased since 2014, when an ILO report indicated that time off for medical examinations was paid in 30 countries.[1080] For example, in *Viet Nam*, pregnant women are entitled to 5 days of paid leave for 5 prenatal visits, and those who live far from medical institutions are

1071 WHO, *WHO Recommendations on Antenatal Care for a Positive Pregnancy Experience*, 2016.

1072 ILO, *Maternity and Paternity at Work*, 92.

1073 ILO, *Care at Work*, 180.

1074 For example, *Austria*, *Azerbaijan*, *Belgium*, *Bulgaria*, *Cabo Verde*, *Cameroon*, *Canada*, *China*, *Cuba, Cyprus, Estonia*, *Finland*, *France*, *Georgia*, *Germany*, *Grenada*, *Honduras*, *Ireland*, *Italy*, *Japan*, *Latvia*, *Luxembourg*, *Malta*, *Myanmar*, *Netherlands*, *New Zealand*, *Nicaragua*, *Poland*, *Portugal*, *Seychelles*, *Slovakia*, *Spain*, *Sweden*, *Trinidad and Tobago*, *Türkiye* and *Bolivarian Republic of Venezuela*.

1075 *Brazil* (sections 392(4)(II) and 473(X) of the Consolidation of Labour Laws).

1076 *Republic of Korea* (section 74-2 of the Labor Standards Act).

1077 This entitlement exists, for example, in *Azerbaijan*, *Cuba, France, Japan, Ireland*, and the *Bolivarian Republic of Venezuela*.

1078 *Bolivarian Republic of Venezuela* (section 40(1) of Legislative Decree No. 56 of 2021).

1079 Paid time off for antenatal care is mainly provided for in law in Europe and Central Asia, and to a lesser extent in the Americas. See ILO, *Care at Work*,180.

1080 ILO, *Maternity and Paternity at Work*, 93.

entitled to take 2 days of leave for each prenatal check-up.[1081] In *Cuba*, during pregnancy and for up to 34 weeks before childbirth, women workers are entitled to 6 days or 12 half days of paid leave to receive medical and dental treatment. During the child's first year, women workers are entitled to 1 day of paid leave every month to attend paediatric clinics. In *Greece*, pregnant women are released from work, without any reduction in their wages, to undergo prenatal screening that has to be undertaken during working hours.[1082] Paid leave for medical examinations is also available to pregnant women in *Armenia*, *Denmark*, *Germany*, *Ireland*, *Malta* and the *Netherlands*, among other countries.

543. Another approach is adopted in some European countries, where time off is granted if the prenatal examinations cannot take place outside working hours.[1083] This is in line with Directive 92/85/EEC which, in Article 9, requires Member States to take the necessary measures to ensure that pregnant workers are entitled to time off, without loss of pay, in order to attend antenatal examinations, if such examinations have to take place during working hours.

544. However, the Committee notes that the laws in six countries (*Albania*, *Cabo Verde*, *Denmark*, *Japan*, *Sao Tome and Principe* and *South Africa*) which establish the entitlement of pregnant workers to time off for prenatal medical examinations do not specify whether the time off is paid or unpaid. Moreover, the legislation in many countries still does not establish the right to time off for medical examinations.[1084] Paid time off for prenatal examinations is particularly uncommon in Africa and in Asia and the Pacific, and non-existent in the Arab States. And yet, some of these countries are among those in which maternal mortality and morbidity are most prevalent. ***Recalling that health protection measures for pregnant women should not impact income security, and that women should not have to make the choice between their health and income, the Committee requests the governments concerned to take the necessary measures to ensure that time off for prenatal medical examinations is paid.***

545. In a separate and welcome development, the Committee takes note of a trend for paid time off for to fathers to attend antenatal healthcare appointments. For example, in *France* and *Portugal*, the employed spouses of pregnant women can attend three medical examinations with them.[1085] In *Sweden*, both parents are entitled to prenatal care visits and to participate in antenatal classes up to 60 days before the estimated date of birth. In *Brazil*, employees are permitted to be absent from work for up to two days to attend medical consultations and supplementary tests when their spouse or partner is pregnant.[1086]

546. ***The Committee considers that measures that encourage the involvement of men throughout maternity, including the prenatal and childbirth periods, are key to the well-being of the family, as well as to the achievement of gender equality at work and at home. It therefore encourages governments to continue adopting measures, including health policies, labour laws and enterprise-level measures, to support both mothers and fathers and their shared responsibilities and interest in the health and well-being of their children, including before their birth.***

1081 *Viet Nam* (art. 141 of the Labour Code and art. 32 of the Law on Social Insurance of 2014).

1082 *Greece* (section 40 of Law No. 4808/2021 and section 9 of Presidential Decree No. 176/1997).

1083 For example, *Austria, Belgium, Bulgaria, Finland, Norway, Slovakia, Slovenia* and *Spain*.

1084 Despite the importance of this right, of the 185 countries for which information is available, time off for prenatal medical examinations is still not provided in 132 countries, thereby compromising the access of 80.9 per cent of potential mothers to antenatal care throughout the world. See ILO, *Care at Work*, 180.

1085 *France* (section L. 1225-16 of the Labour Code) and *Portugal* (section 46(5) of the Labour Code).

1086 *Brazil* (sections 392(4)(II) and 473(X) of the Consolidation of Labour Laws).

2. Maternity-related leave and benefits

547. One of the fundamental components of maternity protection is paid maternity leave. This entitlement was first established by Convention No. 3, and was further elaborated in the Income Security Recommendation, 1944 (No. 67), as well as Conventions Nos 102 and 103. Convention No. 183 and Recommendation No. 191 reaffirm the entitlement to cash benefits during maternity leave. Indeed, paid maternity leave plays a crucial role in ensuring the health and economic protection of pregnant and nursing mothers and their children during the perinatal period. The absence of paid maternity leave forces women workers to interrupt or reduce their labour market participation, and is often linked to discriminatory practices, such as dismissal and loss of pay. It may also have a detrimental impact on the health of women and their children, as they may continue to engage in economic activity too far into pregnancy or not take adequate rest following childbirth.[1087] Moreover, paid maternity leave offers a number of positive outcomes, including the enhancement of women's economic opportunities and ensuring their income security.[1088]

2.1. Maternity leave

Convention No. 183, Articles 4 and 5
Recommendation No. 191, Paragraphs 1 and 10

548. The concept of "maternity leave" is strictly connected to a birth-related event for women and is intended to guarantee the health, medical assistance and welfare of pregnant and nursing women immediately before and after childbirth.[1089] In comparison with other types of leave related to the birth of a child, such as paternity or parental leave,[1090] maternity leave is mainly intended to ensure the rehabilitation of the mother's health by providing her with the necessary time to rest and recover from childbirth.[1091] The cash and medical benefits provided during maternity leave ensure the income security and health protection of women and their children during this period.[1092]

549. In a large number of countries, pregnant and nursing women are entitled to maternity leave, which is usually followed by parental leave of longer duration. However, in some countries, the primary entitlement is to parental leave, which therefore includes maternity leave.[1093] In such cases, the need for women to recover following childbirth may become less evident or implicit, as parental leave has traditionally focused on care for the child and the reconciliation of family and work responsibilities, rather than addressing women's physical and psychological health during the perinatal period. In this respect, during the preparatory work for Convention No. 183, it was noted that countries with parental leave schemes may nevertheless be in compliance with the provisions of the Convention if the protection afforded to employed women is at least equal to the entitlement set out in the Convention.[1094] The

1087 ILO, *Maternity and Paternity at Work*, 8.

1088 ILO, *Care at Work*, 53.

1089 Alison Koslowski et al., eds, *17th International Review of Leave Policies and Related Research 2021*, International Network on Leave Policies and Research, 2021, 7.

1090 See also Ch. VII below.

1091 Law and practice report on Convention No. 183, 100.

1092 ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report V(2), International Labour Conference, 87th Session, 1999 (hereinafter "Report V(2) on Convention No. 183"), 67. See also section 2.2 below.

1093 Law and practice report on Convention No. 183, 31–32. Examples include *Iceland, New Zealand, Norway, Portugal* and *Sweden.*

1094 ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(1), International Labour Conference, 88th Session, 2000 (hereinafter "Report IV(1) on Convention No. 183"), 9.

Committee recalls that Convention No. 183 and Recommendation No. 191 establish a set of parameters for maternity leave, including its duration, the minimum compulsory postnatal period, entitlement requirements and reasons for its extension. These parameters have to be taken into account at the national level, including in countries with parental leave schemes. ***Recalling that Convention No. 183 is intended to protect the health of women workers in relation to pregnancy and childbirth, the Committee emphasizes that the leave granted to pregnant and nursing women must allow them to rest and recover physically and psychologically from childbirth, in accordance with the requirements and objectives of the Convention.***

Entitlement to maternity leave

550. Article 4, Convention No 183 sets out only one requirement for entitlement to maternity leave, namely the production of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth.[1095] During the discussions leading to the adoption of this provision, a flexible solution was proposed, allowing the production not only of a medical certificate, but also of other appropriate certification confirming the state of pregnancy. It was highlighted that some women workers might not be readily able to obtain a medical certificate.[1096]

551. The Committee observes that, in accordance with the national law in many Member States, a medical certificate must be provided by a pregnant worker in order to be entitled to maternity leave.[1097] In some countries, other forms of certification are also allowed. For example, in the *Bahamas*, where a woman worker, by reason of geographical or other circumstances beyond her control, is unable to produce a certificate issued by a medical practitioner or a midwife, employers have to accept other evidence as reasonable proof of her entitlement to maternity leave.[1098]

552. The Committee recalls that Convention No. 183 does not allow any other conditions, such as the completion of a qualifying period of employment or insurance, for entitlement to maternity leave. In this respect, the Committee welcomes the fact that, in a significant number of Member States, entitlement to maternity leave is not subject to a qualifying period. However, in certain countries, particularly those with employer's liability schemes, there is a requirement to fulfil a qualifying period of employment. For example, in *Barbados*, *Jamaica* and *Qatar*, in order to benefit from maternity leave, women workers must have been employed by their employers for at least 12 months.[1099] In other countries, women workers may only avail themselves of their right to maternity leave on a limited number of occasions. For example, in *Oman*, 50 days of maternity leave is available on no more than three occasions from the same employer.[1100] In some countries, women workers are obliged to give employers notice of their intention of taking maternity leave.[1101]

1095 ILO, *Maternity Protection: General Conclusions on the Reports concerning the Maternity Protection Convention, 1919 (No. 3), the Maternity Protection (Agriculture) Recommendation, 1921 (No. 12), the Maternity Protection Convention (Revised), 1952 (No. 103), and the Maternity Protection Recommendation, 1952 (No. 95)*, Report III (Part III), International Labour Conference, 49th Session, 1965, Geneva (hereinafter "1965 General Survey"), paras 94–95.

1096 ILO, *Record of Proceedings*, Report of the Committee on Maternity Protection, International Labour Conference, 87th Session, 1999, *Provisional Record* No. 20, paras 119–129.

1097 For example, *Argentina, Bahrain, Belgium, Botswana, Brazil, Burkina Faso, Cameroon, Ecuador, El Salvador, Estonia, Ghana, Guyana, Honduras, Iraq, Luxembourg, Mauritius, Namibia, Qatar, Saudi Arabia, Senegal, Tajikistan* and *Trinidad and Tobago*.

1098 *Bahamas* (section 17 of the Employment Act of 2001).

1099 *Barbados* (section 3.1(3) of the Employment of Women (Maternity Leave) Act of 1976); *Jamaica* (section 3(1) of the Maternity Leave Act); *Qatar* (section 96 of the Labour Act of 2004).

1100 *Oman* (section 83 of the Labour Code).

1101 For example, *Saint Kitts and Nevis* (section 40 of the Protection of Employment Act of 1986).

553. ***The Committee recalls that the right to maternity leave is not subject to the completion of a qualifying period of employment or insurance and may not be restricted by requirements other than the production of a medical certificate or other appropriate certification stating the presumed date of childbirth. The Committee further emphasizes that maternity leave must be provided on the occasion of each pregnancy without limitation of the number of pregnancies.***

554. The Committee observes that the legislation in some countries regulates entitlement to maternity leave in the event of surrogacy arrangements. For example, in *Viet Nam*, both surrogate and biological mothers are entitled to six months' maternity leave.[1102] Similarly, in *Australia*, paid parental leave of 18 weeks is provided to surrogate mothers for the purposes of recovery, as well as to the parents of a child born through a surrogacy arrangement.[1103] In the *United Kingdom of Great Britain and Northern Ireland*, statutory maternity pay is provided to surrogate mothers for up to 52 weeks.[1104] In *Armenia*, women who have their children through a surrogacy process are entitled to the postnatal part of maternity leave.[1105] In *Brazil*, the regulations extend maternity leave to the biological parents of a child born of a surrogate mother.[1106] In *Chile*, this extension is through an interpretation of existing legislation by the Social Security Supervisory Authority.[1107] ***The Committee emphasizes the importance of surrogate mothers being able to recover from the effects of childbirth and welcomes national legislation explicitly guaranteeing surrogate mothers paid maternity leave in accordance with the requirements of the Convention. The Committee encourages Member States to extend maternity leave or other types of leave, such as adoption leave, to parents whose child is born through a surrogacy arrangement.***

Duration of maternity leave

555. The duration of maternity leave is an important factor in assessing maternity protection legislation and its impact on women's health, as well as their general labour market situation. While excessively long periods of maternity leave may have a negative impact on the advancement of women in paid work and lead to wage penalties, short maternity leave may involve a high risk of women dropping out of the labour market or damaging their health and that of their children due to an early return to work.[1108]

556. Article 4(1) of Convention No. 183 establishes the minimum duration of maternity leave at not less than 14 weeks, which is 2 weeks longer than the minimum duration set out in Conventions Nos 3 and 103, as well as Convention No. 102, which provide for a 12-week period of maternity leave. Recommendation No. 191 goes further and calls for countries to endeavour to provide at least 18 weeks of leave.

557. In over 65 per cent of countries (120 out of 184 countries) throughout the world, the situation is in accordance with Article 4(1) of Convention No. 183, with 14 weeks of paid maternity leave, while in 52 countries the duration of maternity leave is 18 weeks or more, as called for in Recommendation No. 191.[1109] In 44 countries, paid maternity leave is provided in line with

1102 *Viet Nam* (section 139(5) of the Labour Code).

1103 *Australia* (sections 2.2, 2.6 and 2.30 of the Paid Parental Leave Rules of 2010).

1104 *United Kingdom of Great Britain and Northern Ireland*, Surrogacy: Legal rights of parents and surrogates – Pay and leave.

1105 *Armenia* (section 172(2.1) of the Labour Code).

1106 *Brazil* (provision No. 52 of 14 March 2016 of the National Council of Justice).

1107 *Chile* (Social Security Supervisory Authority Resolution No. 8519-2022, based on section 4 of Decree No. 44 of 1978 of the Ministry of Labour, the Labour Code, Decree No. 3 of 1984 of the Ministry of Health and section 27 of Act No. 16.395).

1108 ILO, *Maternity and Paternity at Work*, 7.

1109 ILO, *Care at Work,* 54.

the requirements set out in the earlier instruments (12–13 weeks).[1110] However, in 20 countries, the duration of paid maternity leave is less than 12 weeks.[1111]

558. The duration of paid maternity leave differs significantly in the various regions.[1112] The minimum threshold of 14 weeks of paid maternity leave is met or exceeded in nearly all countries in Europe and Central Asia.[1113] However, only 57 per cent of countries in Africa have provisions guaranteeing at least 14 weeks of paid maternity leave,[1114] and 50 per cent of countries meet this requirement in Asia and the Pacific.[1115] In Latin America and the Caribbean, 48 per cent of countries have introduced paid maternity leave of at least 14 weeks.[1116] In the Arab States, only in *Iraq* is there maternity leave of 14 weeks.[1117]

559. The Committee welcomes the progress made in some countries in the extension of the minimum period of maternity leave in recent years. According to ILO research, 23 out of 177 countries have increased the duration of maternity leave since 2011 and now meet or exceed the requirements of Convention No. 183.[1118] In particular, in *Suriname*, where no maternity leave had been provided for previously, 16 weeks of maternity leave was introduced in 2019.[1119] In *Zambia,* the duration of maternity leave was extended from 12 (84 days) to 14 (98 days) weeks in 2020,[1120] while in *Ethiopia* maternity leave was increased from 13 weeks (90 days) to 17 weeks (120 days) in 2021.[1121] In *Colombia*, as a result of the legislative amendments adopted in 2021, maternity leave has been extended from three months to 18 weeks.[1122] In the *Maldives*, the Government has introduced six months of maternity leave in all government agencies and 77.4 per cent of all State-owned enterprises.

560. ***While welcoming the positive developments in the extension of the duration of maternity leave in some countries, the Committee observes that paid maternity leave of at least 14 weeks, as required by Article 4(1) of Convention No. 183, is still not available in a high number of countries. The Committee therefore firmly encourages Member States to take the necessary measures to ensure that all women workers enjoy statutory paid maternity leave of not less than 14 weeks.***

1110 Art. 52 of Convention No. 102, Art. 3(a) and (b) of Convention No. 3 and Art. 3(2) of Convention No. 103.

1111 ILO, *Care at Work,* 55.

1112 ILO, *Care at Work*, 300–313.

1113 For example, 14 weeks are provided for in *Germany, Sweden* and *Switzerland*; 15 weeks in *Belgium*; 16 weeks in *France, Latvia, Netherlands, Spain, Türkiye* and *Turkmenistan*; 18 weeks in *Azerbaijan, Denmark, Finland, Kazakhstan, Lithuania, Malta* and *Republic of Moldova*; 20 weeks in *Armenia, Estonia, Luxembourg, Poland, Russian Federation, Serbia* and *Tajikistan*; 22 weeks in *Italy*; 24 weeks in *Hungary*; 28 weeks in *Czechia*; 30 weeks in *Croatia*; 34 weeks in *Slovakia*; 42 weeks in *Ireland*; and 58 weeks in *Bulgaria.*

1114 For example,14 weeks are provided for in *Algeria*, *Benin*, *Burkina Faso*, *Cameroon*, *Central African Republic*, *Chad*, *Comoros*, *Côte d'Ivoire*, *Democratic Republic of the Congo*, *Djibouti*, *Gabon*, *Guinea*, *Liberia*, *Libya*, *Madagascar*, *Mali*, *Mauritania*, *Mauritius*, *Morocco*, *Niger*, *São Tomé and Príncipe*, *Senegal*, *Somalia*, *Togo*, *Zambia,* and *Zimbabwe*; 15 weeks in *Congo;* 17 weeks in *Ethiopia* and *South Africa;* and 26 weeks in *Gambia.*

1115 For example, 14 weeks are provided for in *China, Fiji, Japan* and *Myanmar*; 15 weeks in *Lao People's Democratic Republic* and *Philippines*; 16 weeks in *Bangladesh* and *Singapore*; 17 weeks in *Mongolia*; 18 weeks in *Australia*; 26 weeks in *India, New Zealand* and *Viet Nam*; and 39 weeks in the *Islamic Republic of Iran.*

1116 For example, 14 weeks are provided for in *Belize, Dominican Republic, Panama, Peru, Trinidad and Tobago* and *Uruguay*; 16 weeks in *El Salvador* and *Suriname*; 17 weeks in *Brazil* and *Costa Rica*; 18 weeks in *Chile, Colombia, Cuba* and *Paraguay*; and 26 weeks in the *Bolivarian Republic of Venezuela*.

1117 *Iraq* (section 87 of the Labour Code).

1118 ILO, *Care at Work*, 57.

1119 World Bank, *Women, Business and the Law 2021*, 2021, 17.

1120 World Bank, *Women, Business and the Law 2020*, 2020, 43.

1121 World Bank, *Women, Business and the Law 2021*, 16–17.

1122 *Colombia* (section 2 of Act No. 2141 of 2021, amending section 236 of the Substantive Labour Code).

Mandatory postnatal leave

561. Article 4(4) of Convention No. 183 recognizes the importance of the first six weeks after childbirth for the health of the mother and child by making this period of leave presumably compulsory for both employers and workers. The purpose of this requirement is to prevent women workers from coming under pressure to return to work too soon.[1123] According to medical evidence, the first six weeks following childbirth are in general characterized by a high rate of maternal and neonatal mortality and morbidity and are therefore considered a critical time for the recuperation of mothers.[1124]

562. In comparison with Conventions Nos 3 and 103, which set the unconditional requirement of six weeks of compulsory postnatal leave, Convention No. 183 introduces limited flexibility for Member States to determine the duration of the compulsory period of postnatal leave. In particular, governments and the representative organizations of employers and workers may agree on another duration of the compulsory postnatal period at the national level, which may be shorter than the period of six weeks set out in the Convention. This flexibility was introduced to ensure women's freedom to work and to take shorter leave at their own convenience.[1125]

563. The Committee observes that in many countries there is a compulsory period of six weeks of postnatal leave, in accordance with Convention No. 183.[1126] In some countries, the compulsory period of postnatal leave is longer. For example, compulsory postnatal leave of 8 weeks is provided in *Austria*, *Cyprus*, *Switzerland* and *Uruguay*; 9 weeks in the *Philippines* (60 days); 10 weeks in *El Salvador*; 12 weeks in the *Seychelles*; and 13 weeks (90 days) in *South Sudan;* and 14 weeks in *Poland*.

564. Under the national legislation in some countries, not only the postnatal part of maternity leave, but also the prenatal period is compulsory. In *Bulgaria*, 45 out of 135 days must be taken before childbirth, while in *Croatia* the compulsory period of maternity leave includes 28 days before and 70 days after childbirth.[1127] In *Argentina*, women workers must not take fewer than 30 of the 45 days of the prenatal part of maternity leave.[1128] In *Nepal* and *Saint Kitts and Nevis*, the compulsory period of maternity leave covers two weeks before and six weeks after childbirth.[1129] However, in certain countries, although the total duration of the compulsory period of maternity leave may be equal to or longer than six weeks, the postnatal part may be less than the six weeks required by Convention No. 183. For example, in *Ireland*, women workers must take at least two weeks of maternity leave before the due date and at least four weeks after childbirth.[1130] Similarly, in *Mali*, women workers are prohibited from working for a consecutive period of seven weeks, including three weeks before the presumed date of delivery.[1131]

565. In many countries, the compulsory period of postnatal leave is either less than six weeks or is not specified. For example, in *Denmark* and *Iceland*, postnatal maternity leave is mandatory for the first two weeks following childbirth, while in *Slovenia*, *Sweden* and *Hungary*, two

1123 ILO, *Maternity and Paternity at Work*, 12.

1124 WHO, *Recommendations on Maternal and Newborn Care for a Positive Postnatal Experience*, 2022, 1.

1125 ILO, *Record of Proceedings*, Report of the Committee on Maternity Protection, International Labour Conference, 88th Session, 2000, *Provisional Record* No. 20, para. 9.

1126 For example, *Argentina, Bosnia and Herzegovina, Burundi, Czechia, Guinea, Iraq, Lao People's Democratic Republic, Malta, Republic of Korea* and *Saudi Arabia*.

1127 *Bulgaria* (section 163(1) of the Labour Code); *Croatia* (section 12(2) of the Act on Maternity and Paternity Benefits of 2008).

1128 *Argentina* (section 177 of the Labour Act).

1129 *Nepal* (section 45 of the Labour Rules of 1993); *Saint Kitts and Nevis* (section 35 of the Protection of Employment Act of 1986).

1130 *Ireland* (section 10 of the Maternity Protection (Amendment) Act of 2004).

1131 *Mali* (section 180 of the Labour Code).

weeks of maternity leave are compulsory during the prenatal and postnatal periods.[1132] In *Latvia, Lithuania,* and *Norway,* a compulsory period of postnatal leave of less than six weeks has been established after consultation and in agreement with workers' and employers' representatives, in accordance with Article 4(4) of Convention No. 183.[1133]

566. ***Recalling the importance for women of rest and physical and psychological recovery following childbirth, the Committee firmly encourages Member States to take the necessary measures to ensure that a period of compulsory leave of at least six weeks is explicitly established in national legislation. The Committee recalls that compulsory postnatal leave of less than six weeks is allowed only in the case of agreement at the national level between the Government and the representative organizations of employers and workers, in accordance with Article 4(4) of Convention No. 183.***

Distribution of the maternity leave period before and after childbirth

567. Convention No. 183 does not establish how the period of maternity leave is to be divided before and after childbirth, apart from the compulsory postnatal part of maternity leave. However, Paragraph 1(3) of Recommendation No. 191 offers some flexibility to women workers, who should be entitled to choose freely the time at which they take any non-compulsory portion of their maternity leave, before or after childbirth.

568. The Committee observes that the distribution of the periods of maternity leave varies significantly at the national level. The national legislation in many Member States explicitly prescribes the distribution of leave before and after childbirth, with leave in some cases being equally divided between the antenatal and postnatal periods,[1134] or the antenatal period may be shorter than the postnatal period.[1135]

569. In contrast, in other countries, the distribution of maternity leave is discretionary. In *Georgia*, women workers have the right to distribute their maternity leave of 126 days at their discretion over the antenatal and postnatal periods, starting in the 26th week of pregnancy.[1136] Similarly, in *Malta*, a non-compulsory 12-week part of maternity leave may be taken before or after childbirth at the discretion of the woman.[1137] In *Suriname*, the total 16-week duration of maternity leave can be distributed as four, five or six weeks of prenatal leave and 12, 11 or 10 weeks of postnatal leave, respectively.[1138]

570. ***The Committee encourages Member States to leave women workers with the discretion to choose freely the time when they take any non-compulsory portion of their maternity leave, in accordance with the guidance in Paragraph 1(3) of Recommendation No. 191.***

1132 *Denmark* (section 7 of the Maternity Act No. 106 of 2020); *Hungary* (section 127 of the Labour Code); *Iceland* (section 8 of the Act on Maternity/Paternity Leave and Parental Leave of 2000); *Slovenia* (section 19 of the Act on Parental Care and Family Benefits of 2018); and *Sweden* (section 4 of the Parental Leave Act of 1995).

1133 CEACR, Convention No.183: *Latvia*, observation, 2021; *Lithuania*, direct request, 2022; *Norway*, direct request, 2022.

1134 For example, in *Armenia*, the *Russian Federation* and *Tajikistan*, maternity leave consists of two parts of 70 days each, which have to be taken by women workers before and after childbirth. In *Austria*, the prenatal and postnatal periods of maternity leave are eight weeks.

1135 In *Benin, Guinea, Myanmar* and *Panama*, of the 14 weeks leave, 6 weeks have to be taken before and 8 weeks after childbirth, while in *Chile,* maternity leave is divided between 6 weeks of the prenatal part and 12 weeks of the postnatal part.

1136 *Georgia* (section 37(1) and (2) of the Labour Code).

1137 *Malta* (section 6(2)(c) of the Protection of Maternity (Employment) Regulations of 2004).

1138 *Suriname* (section 3(1)(2) and (3) of the Family Employment Protection Act (Maternity Protection Act) of 2019).

Extension of maternity leave

Late childbirth

571. In accordance with Article 4(5) of Convention No. 183, the prenatal portion of maternity leave has to be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without any reduction in any compulsory portion of postnatal leave. The Committee observes in this respect that in some countries the postnatal period of leave is extended if the birth occurs later than the expected date.[1139] In some counties, although the postnatal period may be reduced as a result of late childbirth, its duration is nevertheless sufficiently long to comply with the period of a six weeks' compulsory postnatal leave established by the Convention.[1140] However, in certain countries, the national legislation does not provide for the extension of the postnatal part of maternity leave. For example, in *Qatar*, if the remaining part of the 50 days of maternity leave following delivery is less than 30 days, the woman worker may be granted supplementary leave from her annual leave or leave without pay.[1141] ***The Committee recalls the importance of extending the postnatal part of maternity leave in the event of late childbirth so that women workers are guaranteed at least six weeks of postnatal leave immediately after childbirth and, to the extent possible, to guarantee the same duration of postnatal leave as for women without post-term delivery.***

Illness, complications or risk of complications

572. Article 5 of Convention No. 183 establishes the right to leave before or after maternity leave in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. This is a clear strengthening of protection compared with Convention No. 103, which only makes provision for illness arising out of pregnancy or childbirth and leaves the contingency of complications and risk of complications to its accompanying Recommendation. Convention No. 183 does not establish a requirement concerning the specific length of the extension of maternity leave in the event of illness, complications or risk of complications. It also leaves it to the discretion of Member States to establish how such leave is to be provided. In such cases, the period of maternity leave can be extended, or leave may be covered by provisions relating to sick leave or other types of leave provided in the context of maternity.[1142]

573. The Committee observes that in many countries the national legislation provides for the extension of maternity leave in the case of illness, complications or risk of complications arising out of pregnancy or childbirth. The length of any extension usually varies from a few weeks[1143] to several months.[1144] In other countries, additional unpaid leave can also be taken.[1145] In some countries, women workers are entitled to regular sick leave in the event of complications related to pregnancy or childbirth.[1146]

1139 For example, *Belgium, Burundi, Cyprus, Panama, Peru* and *Togo*.

1140 CEACR, Convention No. 183: *Ecuador*, direct request, 2008.

1141 *Qatar* (section 96 of the Labour Act).

1142 ILO, *Record of Proceedings,* 1999, *Provisional Record* No. 20, para. 148.

1143 In case of complications related to pregnancy or birth, maternity leave is extended by up to six weeks in *Lithuania* and *Eswatini*; four weeks in *Namibia*; three weeks in *Burkina Faso*, *Côte Ď Ivoire*, *Mauritania*, *Togo* and *Senegal*; and two weeks in *Armenia* (15 days), *Azerbaijan*, *Botswana*, *Ghana*, *Latvia*, *Russian Federation* (16 days), and *Turkmenistan* (16 days).

1144 For example, leave of two months is provided in *Iceland*, three months in *Jamaica* (14 weeks), *Saint Kitts and Nevis* and *Zimbabwe* (90 days), and nine months in *Iraq*. In *Italy*, the leave is provided until the child reaches the age of 7 months.

1145 In *Ecuador*, in case of incapacity arising out of pregnancy or childbirth, women are entitled to paid leave for 12 weeks, and after the expiry of this period they may be provided with unpaid leave for up to one year. In *Bahrain*, a woman is entitled to sick leave, including 15 days on full pay, 20 days on half pay and 20 unpaid days throughout the period of pregnancy.

1146 *Australia, Belgium, Cambodia, China, Croatia, Cyprus, Dominican Republic, El Salvador, Eswatini, Finland, Grenada, Indonesia, Qatar, Seychelles* and *Sweden*.

574. ***Recalling the serious impact that illness, complications or the risk of complications arising out of pregnancy and childbirth can have on the health of women and their children, the Committee emphasizes that pregnant and nursing women need to be granted sufficient time to rest and recover through the extension of maternity leave or the provision of leave in addition to maternity leave.***

Multiple births

575. Paragraph 1(2) of Recommendation No. 191 calls for an extension of maternity leave in the event of multiple births. During the discussion of this provision of the Recommendation, it was noted that in such cases more time may be required for the recuperation of the mother and child, and that additional effort may be needed to care for the children.[1147] ***In this respect, the Committee welcomes the fact that maternity leave is extended in the event of multiple births in a significant number of countries.***[1148] Moreover, in some countries, maternity leave is extended in accordance with the number of children born during one confinement. For example, in *Poland*, maternity leave is extended by 11 weeks in case of the delivery of two children and by two additional weeks for each further child.[1149]

Leave in the event of miscarriage or stillbirth

576. The Committee also welcomes the fact that in many countries, legislation has been adopted providing for special leave in the event of miscarriage or stillbirth. For example, in *China*, 15 days of leave are granted to women workers in the event of miscarriage during the first four months of pregnancy and 42 days of leave after four months of pregnancy.[1150] Similarly, in *Slovenia* and *South Sudan*, in the event of stillbirth, mothers are entitled to 42 days of maternity leave.[1151] In *Viet Nam*, in cases of miscarriage or stillbirth, women workers are entitled to 10 days of maternity leave for pregnancies of under five weeks and 50 days for pregnancies of 25 or more weeks.[1152] In *Italy*, 30 days of leave is provided in the event of miscarriage occurring after the third month of pregnancy, while miscarriage after six months (180 days) is considered to be childbirth and regular maternity leave is provided.[1153] In some countries, including *Denmark*, *New Zealand* and the *United Kingdom of Great Britain and Northern Ireland*, leave is also granted to women's partners, both males and females, in the event of stillbirth.

577. The Committee has previously emphasized the importance of a compulsory period of postnatal leave of six weeks as a health-related measure that should be granted to women in the event of a stillborn child.[1154] The Committee also observes that, during the preparatory work for Convention No. 183, it was noted that a woman who gives birth to a stillborn child is covered by the Convention, under either Article 4 or 5, granting maternity leave or leave in the event of complications arising out of pregnancy.[1155] ***The Committee emphasizes the importance of providing women with sufficient time to recover in the event of miscarriage***

1147 Report V(2) on Convention No. 183, 131.

1148 For example, *Albania, Azerbaijan, China, Costa Rica, Cuba, Czechia, Ecuador, Estonia, Georgia, Germany, Ghana, Greece, Iraq, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Myanmar, Nicaragua, Peru, Portugal, Republic of Korea, Russian Federation, Serbia, Slovakia, Suriname, Tajikistan, Togo, Türkiye, Turkmenistan, Uruguay* and *Viet Nam*.

1149 *Poland* (section 180(1)(2) and (3) of the Labour Code).

1150 *China* (section 7 of the Special Rules on the Labour Protection of Female Employees of 2012).

1151 *Slovenia* (section 18 of the Act on parental care and family benefits of 2001) and *South Sudan* (section 64(5) of the Labour Act of 2017).

1152 *Viet Nam* (section 33 of the Act on Social Insurance of 2014).

1153 *Italy* (section 12.2 of Circular No. 71/1988).

1154 CEACR, Convention No. 183: *Republic of Moldova*, direct request, 2009; CEACR, Convention No.003: *Latvia*, direct request, 2008.

1155 ILO, *Record of Proceedings,* 2000, *Provisional Record* No. 20, para. 204.

and stillbirth and encourages Member States to grant at least six weeks of leave in case of stillbirth, which corresponds to the compulsory postnatal period of maternity leave set out in Article 4(4) of the Convention.

Transfer of maternity leave to the father

578. Recommendation No. 191 envisages the possibility of the transfer in certain cases of a postnatal part of maternity leave to the father of the child, particularly in the case of the death of the mother, or sickness or hospitalization resulting in the mother not being able to look after the child.[1156] During the discussion of this provision of the Recommendation, it was noted that such transfers are particularly important to ensure the care and well-being of the child.[1157] At the same time, it was highlighted that, as maternity leave has as its original purpose the recovery of the woman after childbirth, its transfer to the father would only be acceptable when the woman who has given birth has access to sickness benefits and her income security is ensured.[1158]

579. The Committee observes that, in some countries, in the case of the death or sickness of the mother, the remaining part of the maternity leave can be transferred to the father of the child.[1159] In certain countries, the non-used part of maternity leave can be transferred to the family member who cares for the child in such circumstances.[1160] In the *Netherlands* and *Sweden*, the national legislation also allows the transfer of maternity leave to a female partner.

580. In some countries, maternity leave can be partially transferred to the father of the child even without the existence of special grounds.[1161] For example, in *Bulgaria*, the maternity leave of 410 days can be used by the father after the child reaches the age of 6 months.[1162] In *Croatia*, the father can take over maternity leave following the completion of the compulsory part of maternity leave with the agreement of the mother.[1163] In the *Philippines*, one to seven days of paid maternity leave may be allocated by the mother of the child to the father or another carer.[1164]

581. ***While welcoming provisions which provide for the transfer of part of postnatal maternity leave to the father of the child or to another person who cares for the child, the Committee emphasizes that, where such transfer is not conditional on reasons related to the death or hospitalization of the mother, as envisaged in Paragraph 10(1) and (2) of Recommendation No. 191, women workers must be entitled to a compulsory period of maternity leave of at least six weeks following childbirth, as required by Article 4(4) of Convention No. 183.***

1156 Recommendation No. 191, Para. 10(1) and (2).

1157 Report V(2) on Convention No. 183, 227.

1158 ILO, *Maternity Protection at Work: Revision of the Maternity Protection Convention (Revised), 1952 (No. 103), and Recommendation, 1952 (No. 95)*, Report IV(2A), International Labour Conference, 88th Session, 2000 (hereinafter "Report IV(2A) on Convention No. 183"), 150.

1159 For example, *Belgium, Brazil, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Finland, Ireland, Nepal, Netherlands, Peru, Poland, Portugal, Slovakia, Suriname, Sweden, Türkiye* and *Bolivarian Republic of Venezuela*.

1160 For example, *Bosnia and Herzegovina* (Republika Srpska), *Cuba, Latvia, Poland, Slovenia, Suriname* and *Sweden*.

1161 For example, *Bulgaria, Chile, Croatia, Israel, Poland* and *United Kingdom of Great Britain and Northern Ireland*.

1162 *Bulgaria* (section 163(10) of the Labour Code).

1163 *Croatia* (section 12(5) of the Maternity and Parental Benefits Act of 2008).

1164 *Philippines* (section 6 of the 105-Day Expanded Maternity Leave Law (Act No. 11210 of 2019)).

2.2. Maternity benefits

Convention No. 183, Articles 6 and 7
Recommendation No. 191, Paragraphs 2, 3 and 4

582. Maternity cash and in-kind benefits can play an essential role in ensuring the income security and health protection of women workers during the perinatal period. Based on the approach adopted by earlier maternity protection and social security standards, Convention No. 183, supported by Recommendation No. 191, establishes minimum parameters for entitlement to and the provision of maternity benefits, such as the duration and level of maternity cash benefits, the types of medical care to be provided to pregnant and nursing women, and requirements for the financing of maternity benefits.

Maternity cash benefits

Adequacy of maternity cash benefits

583. Convention No. 183 and Recommendation No. 191 set benchmarks for the minimum duration and level of maternity cash benefits, which are important in assessing their adequacy.[1165] In particular, in accordance with Article 6(3) of Convention No. 183, maternity cash benefits which are based on previous earnings have to be paid in the amount of not less than two thirds of the woman's previous earnings for a minimum of 14 weeks of maternity leave. Recommendation No. 191 goes further by calling for the level of maternity cash benefits to be the full amount of the woman's previous earnings, where practicable and after consultation with the representative organizations of employers and workers. The Recommendation also calls for the extension of the period of maternity leave to 18 weeks.

584. According to ILO estimates, statutory paid maternity leave with benefits at the rate of at least two thirds of the women's previous earnings for a minimum period of 14 weeks is provided in 66 out of 174 countries.[1166] In 23 countries, paid maternity leave with benefits at the full amount of the woman's previous earnings is provided for at least 18 weeks, which corresponds to the provisions of Recommendation No. 191.[1167] However, in a number of countries, either the duration or the level of benefits, or both, do not meet the benchmarks established by Convention No. 183. As a result, 72 million potential mothers are not entitled to benefits in the event of maternity at the level of at least two thirds of their previous earnings.[1168]

585. There are regional differences in the adequacy of maternity cash benefits. For example, in the Arab States, although women in almost all countries are entitled to paid maternity leave with benefits at the rate of 100 per cent of previous earnings, the duration of the benefits is often less than 14 weeks. The exception is *Iraq*, where cash benefits at 100 per cent of previous earnings are paid for 14 weeks.[1169] In Europe and Central Asia, in most countries, cash benefits are above the two-thirds threshold.[1170] Furthermore, in many countries in the region, the rate of cash benefits is 100 per cent of previous earnings.[1171] In some countries,

1165 ILO, *World Social Protection Report 2020–22*, 116.

1166 The data includes countries where paid maternity leave is provided by social security systems and/or employers, or both.

1167 ILO, *World Social Protection Report 2020–22*, 116.

1168 ILO, *Care at Work*, 66.

1169 *Iraq* (section 87 of the Labour Act of 2015).

1170 ILO, *Care at Work*, 61.

1171 For example, in *Azerbaijan, Croatia, Estonia, Germany, San Marino, Serbia* and *Slovenia*.

the level of cash benefits may vary depending on the duration of the leave. For example, in *Belgium*, cash benefits are set at 82 per cent of previous earnings for the first 30 days of maternity leave and 75 per cent from the 31st day.[1172] In *Portugal*, the insured person can choose whether to receive cash benefits at 100 per cent of previous earnings for 120 days or 80 per cent for 150 days.[1173]

586. In Africa, in 46 out of 54 countries, maternity cash benefits are in compliance with the principle of two thirds of previous earnings.[1174] However, the requirement of a minimum duration of 14 weeks, as set out in Convention No. 183, is not met in some countries.[1175] In contrast, in such countries as *Congo, Ethiopia,* and *Seychelles*, paid maternity leave is provided for more than 14 weeks.[1176] In the Americas, in 15 out of 33 countries, the cash benefits provided are in line with Convention No. 183.[1177] For example, in *Brazil*, maternity cash benefits are paid at the rate of 100 per cent for 17 weeks (120 days).[1178] In *Suriname*, women workers are entitled to maternity cash benefits at the rate of 100 per cent of previous earnings for 16 weeks.[1179] In Asia and the Pacific, in 13 out of 32 countries, the two-thirds threshold is met for at least 14 weeks.[1180] For example, in the *Lao People's Democratic Republic*, cash benefits are provided for 15 weeks (105 days) at 80 per cent of previous earnings.[1181]

587. The Committee welcomes the positive developments in some countries, where the level of maternity cash benefits has been increased and now corresponds to the benchmarks set out in Convention No. 183 or Recommendation No. 191. For example, in *El Salvador*, the amount of maternity cash benefits has been increased from 75 to 100 per cent of previous earnings, while in *Cambodia* cash benefits amount to 70 per cent, instead of the previous rate of 50 per cent.[1182] Although many countries are still far from achieving the benchmarks set out in Convention No. 183, the Committee welcomes the fact that in 2021 the average duration of paid maternity leave with benefits amounting to at least two thirds of previous earnings of the countries surveyed was 18 weeks, which represents an increase of 3.5 weeks since 2011 and clear progress in complying with the ILO maternity standards.[1183]

588. With respect to the determination of the level of cash benefits, it is common in a number of countries to cap cash benefits at a certain earnings threshold, which may result in the amount of benefits being less than two thirds of previous earnings for some workers, usually those with high salaries.[1184] Globally, in nearly 20 per cent of countries in which maternity leave is paid at the rate of two thirds of previous earnings, benefits have been capped at a ceiling with the aim of ensuring the sustainability of funding.[1185] In this respect, the Committee recalls that the ILO maternity protection and social security Conventions do not prohibit the establishment of a ceiling for benefit rates or insurable earnings. The possibility of setting

1172 *Belgium* (section 128 of the Compulsory Health Care and Benefits Insurance Act of 1994 and sections 114–115, 216–219 of the Royal Decree on the implementation of the Compulsory Health Care and Benefits Insurance Act of 1994).

1173 *Portugal* (sections 39–43 of the Labour Code).

1174 ILO, *Care at Work*, 300–302, table A.1.

1175 For example, *Lesotho, Malawi* and *Rwanda*.

1176 ILO, *Care at Work*, 300–302, table A.1.

1177 For example, *Chile, Colombia, Costa Rica, Cuba, El Salvador* and *Uruguay*.

1178 *Brazil* (art. 7(XVIII) of the Federal Constitution, section 392 of the Consolidation of Labour Laws and section 343 of INSS Normative Instruction No. 77/2015).

1179 *Suriname* (sections 9, 10, and 14(2) of the Maternity Protection Act of 2019).

1180 ILO, *Care at Work*, 300–302, table A.1. For example, *China*, *India* and *Mongolia*.

1181 *Lao People's Democratic Republic* (section 98 of the Labour Act of 2013).

1182 ILO, *Care at Work*, 62 and table 2.4.

1183 ILO, *Care at Work*, 62.

1184 For example, *Belgium, Belize, France, Israel, Morocco, Russian Federation* and *Switzerland*.

1185 ILO, *Care at Work*, 61.

an upper limit for benefits or earnings is implicit in the second part of Article 6(3) of the Convention, which provides that "or of such of those earnings as are taken into account for the purpose of computing benefits." The two-thirds replacement rate therefore has to be met for the portion of earnings taken into account.[1186] ***In this respect, the Committee recalls that Article 6(5) of the Convention requires that the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom the Convention applies. The Committee therefore observes that a ceiling for cash benefits needs to be set at a sufficiently high level to ensure that a large number of women workers receive benefits without any reduction.***[1187]

589. In some countries, the level of cash benefits is not strictly related to previous earnings. In such cases, cash benefits may be provided at a flat rate,[1188] or they may be paid at different rates during the period of maternity leave. For example, in *Ireland*, maternity cash benefits are paid at a weekly flat rate of €250 for 26 weeks.[1189] In *Thailand*, maternity cash benefits are paid at 100 per cent of previous earnings for the first 45 days of maternity leave and 50 per cent for the last 45 days.[1190] It should be noted that Article 6(4) of the Convention allows such options for the determination of benefit levels, on condition that the amount of cash benefits is comparable on average to two thirds of previous earnings. The intention of this provision is to ensure equivalent protection in terms of income security, despite differences in payment systems.[1191]

590. The Committee however observes that, even in the countries where maternity cash benefits are set at two thirds of previous earnings, the final amount of such benefits may be insufficient to ensure the income security of women workers and their children. This is particularly the case for women workers with low earnings, two thirds of which may even be lower than the nationally established poverty line. For example, in the *Republic of Moldova*, the Committee has indicated that, although maternity cash benefits amount to 100 per cent of previous earnings, the minimum salary in the public sector is less than the subsistence minimum. As a result, the final amount of cash benefits may be not sufficient to meet the basic needs of women and their children.[1192] ***The Committee therefore emphasizes that, irrespective of the method of calculation used for the determination of cash benefits at the national level, Article 6(2) of Convention No. 183 sets out the general principle that such benefits shall ensure "that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living".*** This principle also covers "all payment systems and all methods of calculation",[1193] including those calculated in accordance with paragraphs 3 and 4 of Article 6. During the discussion of the term "suitable standard of living", it was noted that such a standard would clearly vary from country to country, depending on its social and economic circumstances, and that the minimum wage could be used as a point of reference for such a standard.[1194] In this regard, the Committee welcomes the fact that, in some countries, the national legislation sets a minimum amount for maternity cash benefits, which is usually determined at the level of the minimum wage or other benchmarks established at

1186 Report IV(2A) on Convention No.183, 74.

1187 For example, in accordance with Art. 65(3) of Convention No. 102, a maximum limit may be prescribed for the rate of the benefit or for the earnings taken into account for the calculation of the benefit, provided that the maximum limit is fixed in such a way that a standard beneficiary would be entitled to a benefit without any reduction.

1188 For example, in *Australia*, *Ireland* and *United Republic of Tanzania*.

1189 *Ireland* (section 13 of the Maternity Protection Act of 1994).

1190 ILO, *Care at Work*, 308 and table A.1.

1191 Report IV(2A) on Convention No. 183, 76.

1192 CEACR, Convention No. 183: *Republic of Moldova*, direct request, 2021.

1193 ILO, *Report of the Committee on Maternity Protection: Second Discussion in Plenary*, International Labour Conference, 88th Session, 2000, 4.

1194 Report V(2) on Convention No. 183, 87.

the national level.[1195] ***The Committee firmly encourages Member States to take measures to ensure that the rate of maternity cash benefits is not less than two thirds of the woman's previous earnings or the comparable equivalent, and in any case at a level that ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, in conformity with Article 6(2) and (3) of Convention No. 183.***

591. Unlike the earlier maternity protection Conventions, Convention No. 183 allows a certain flexibility regarding the level of maternity cash benefits.[1196] Under Article 7 of the Convention, as an exception, countries where the economy and social security system are insufficiently developed may pay maternity benefits at a rate no lower than sickness or temporary disability benefits, in accordance with national laws and regulations.[1197] However, it should be recalled that this provision may be applied not only in countries where the economy is insufficiently developed, but also where the social security system is not sufficiently developed to meet the requirements of the Convention in respect of the level of benefits. The Convention sets out the requirement for Member States which avail themselves of this flexibility to explain the reasons for doing so and in subsequent reports to describe the measures taken with a view to progressively raising the rate of benefits.[1198] It is important to recall that Article 7 of the Convention provides flexibility only with respect to the methods of calculation referred to in paragraphs 3 and 4 of Article 6. This does not affect the basic principle set out in paragraph 2 of Article 6, according to which cash benefits "shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living".[1199]

Qualifying conditions

592. Convention No. 183 allows the establishment of a qualifying period of employment or insurance for entitlement to maternity cash benefits. However, Article 6(5) of the Convention limits the duration of the qualifying period by requiring Members to ensure that "the conditions to qualify for cash benefits can be satisfied by a large majority of the women to whom this Convention applies". During the discussion of this provision, it was noted that its objective is to ensure that "qualifying conditions for cash benefits would not be so onerous as to exclude substantial numbers of women from receiving those benefits",[1200] while the term a "large majority" is to be viewed in light of the objective of the instrument, which is its application to all employed women.[1201]

593. It should be noted that Convention No. 102, in establishing the duration of the qualifying period for entitlement to short-term benefits, including maternity benefits, provides that such duration shall be determined as "may be considered necessary to preclude abuse". The Committee has previously noted in this regard that the protection afforded by short-term benefits, including maternity benefits, is based on the principle of unobstructed access to guaranteed minimum benefits of a minimum duration for all persons protected.[1202] The

1195 For example, in *Bulgaria, Cuba, Lithuania, Montenegro* and *Serbia*.

1196 Although this flexible provision is not included in Convention No. 3, many ILO social security Conventions contain similar provisions which take into account the situation of developing countries that are not able to immediately meet all the requirements of the Conventions.

1197 ILO, *Report of the Committee on Maternity Protection: Second Discussion in Plenary*, 2000, 4. It should be noted that no Member State which has ratified Convention No. 183 has not had a recourse to the flexibility provided in Art. 7.

1198 Report V(2) on Convention No. 183, 89.

1199 Report IV(2A) on Convention No. 183, 82.

1200 Report IV(1) on Convention No. 183, 6.

1201 Report IV(2A) on Convention No. 183, 77.

1202 CEACR, Convention No. 102: *Ireland*, direct request, 2011.

Committee has further noted that a qualifying period for entitlement to short-term benefits of no longer than one year is usually considered sufficient to preclude abuse.[1203]

594. The Committee observes that, although the qualifying period for entitlement to maternity cash benefits varies between countries, it is generally set at up to one year of insurance or employment.[1204] For example, in *Azerbaijan*, *Benin, Mexico* and *Portugal*, women must have paid 6 months of social insurance contributions to be entitled to maternity cash benefits.[1205] In the *Dominican Republic*, women workers must have at least 8 months of contributions during the 12 months prior to childbirth.[1206] In *Switzerland*, in addition to the requirement to have paid contributions for 9 months before childbirth, women workers must have been previously employed for at least 5 out of 9 months.[1207] In *Morocco*, a woman worker must have at least 54 days of contributions in the 10 calendar months before stopping work.[1208] In *Italy*, *San Marino* and *Slovenia*, there is no minimum qualifying period for entitlement to maternity cash benefits.

595. The Committee welcomes the fact that, in some countries, qualifying conditions are adjusted for certain categories of workers with a view to facilitating their access to maternity cash benefits. For example, in *Peru*, dockworkers and agricultural workers must have paid contributions for at least 3 consecutive or 4 non-consecutive months over the past 12 months prior to the contingency, while the qualifying period for other women workers is 3 consecutive or 4 non-consecutive months over the past 6 months.[1209] ***The Committee emphasizes that the duration and method of determination of the qualifying period for entitlement to maternity cash benefits should be adjusted to the specific situation of some categories of women workers, such as seasonal workers, part-time workers and temporary workers, to ensure that they have effective access to cash benefits.***

596. Furthermore, the Committee notes that in some countries, the entitlement to maternity pay or benefits is limited to a certain number of pregnancies, or restricted in terms of the frequency of claims for benefits. For example, in *Trinidad and Tobago*, the worker's right to pay for maternity leave is limited to one payment during each period of 24 months.[1210] In *Malaysia*, a woman worker is not entitled to a maternity allowance if at the time of her confinement she had five or more surviving children.[1211] At the same time, the Committee welcomes that the Republic Act No. 11210 of the *Philippines* ("105-Day Expanded Maternity Leave Law") of 2019 has removed the limitation of four pregnancies to have access to maternity cash benefits. ***The Committee emphasizes that the entitlement to maternity cash benefits must not be limited by the number of children or the frequency of claims for benefits. The Committee further highlights the importance of ensuring that a large majority of women workers are able to meet the qualifying conditions for entitlement to maternity cash benefits at the level and for the minimum duration established by Articles 4 and 6 of Convention No. 183.***

1203 CEACR, Convention No. 102: *Bosnia and Herzegovina*, direct request, 2019.

1204 For example, in *Albania* and *Bulgaria*.

1205 *Azerbaijan* (section 6 of the Act on Social Insurance of 1997); *Benin* (section 6 of the Social Security Code); *Mexico* (section 102 of the Social Security Act); *Portugal* (section 25(3) of the Legislative Decree of 2009).

1206 *Dominican Republic* (section 132 of the Act on Social Security of 2001, and section 3 of the Regulation on the Maternity Allowance and Breastfeeding Allowance of 2008).

1207 *Switzerland* (section 16(b) of the Federal Act on Allowances for Loss of Earnings of 1952).

1208 *Morocco* (section 37 of the Act on the Social Security Regime of 1972).

1209 *Peru* (Chs I and II of the Act on the Modernization of Social Security for Health Care of 1997 and Supreme Decree No. 013-2019-PCM).

1210 *Trinidad and Tobago* (section 18(2) of the Maternity Protection Act of 1998).

1211 *Malaysia* (section 37(1)(c) of the Employment Act of 1955).

Social assistance benefits

597. In accordance with Article 6(6) of Convention No. 183, women in dependent work who do not meet the conditions to qualify for cash benefits shall be entitled to adequate benefits out of social assistance funds, subject to the means test required for such assistance. The Committee recalls in this respect that the amount of the social assistance benefits provided must be at a level which ensures that a woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, in accordance with Article 6(2) of Convention No. 183. The Committee further recalls that various nationally established benchmarks, such as national poverty lines or minimum subsistence levels, can be used to assess the sufficiency of social assistance benefits, as indicated by Recommendation No. 202 in Paragraph 8(b).

598. The Committee observes that in some Member States social assistance benefits are provided to women workers who do not qualify for maternity social insurance benefits.[1212] In *Portugal*, women who do not qualify for maternity cash benefits due to their low contributory capacity can apply for a "social parental benefit" if their family income is below 80 per cent of the Social Support Index. In *Sweden*, parents can receive flat-rate cash benefits for 480 days. In *Burundi*, a social assistance scheme provides cash benefits for self-employed workers and workers in the informal economy, as well as apprentices. In some countries,[1213] pregnant women and women with children are covered by non-contributory cash transfer programmes.[1214]

599. However, the Committee has observed that, in certain countries, the level of maternity benefits paid to women workers who do not qualify for maternity insurance benefits may be lower than nationally determined minimum subsistence levels.[1215] ***Recalling the importance of cash benefits paid out of social assistance for maintaining the income security of women workers who do not qualify for social insurance benefits, who are often among the most vulnerable categories of workers, the Committee encourages Member States to take the necessary measures to ensure that such women workers have effective access to social assistance benefits provided at a level sufficient to maintain themselves and their children in proper conditions of health and with a suitable standard of living, in accordance with Article 6(2) of Convention No. 183.***

Categories of workers excluded from coverage by cash benefits

600. In accordance with Article 2(1) of Convention No. 183, all employed women, including those in atypical forms of dependent work, enjoy the protection provided by the Convention. However, paid maternity leave is still not a reality for many categories of workers, including those in the informal economy, casual workers, agricultural workers and contributing family workers. These categories of workers may be excluded by law or may not have access to maternity benefits in practice, for example due to their low contributory capacity, informality or insufficient working hours. Globally, 60.4 per cent of domestic workers, the vast majority of whom are women, are not legally covered by maternity cash benefits under national social insurance laws.[1216] Women workers in the agricultural sector often have limited access to social security benefits as a result of high levels of informal employment, low incomes and

1212 For example, *Azerbaijan, Bulgaria, Burundi, Canada, Cuba, Czechia, Finland, Germany, Iceland, Italy, Latvia, Luxembourg, Mauritius, Mongolia, Montenegro, Netherlands, New Zealand, Portugal, Russian Federation, Serbia, Spain* and *Sweden*.

1213 For example, *Argentina, Mongolia* and *South Africa*.

1214 See also Ch. VII, section 4 of this General Survey: "Other social security measures".

1215 CEACR, Convention No. 103: *Mongolia*, direct request, 2021. Art. 4(5) of Convention No. 103 contains a similar requirement for the provision of adequate benefits out of social assistance funds for women who fail to qualify for maternity benefits.

1216 ILO, *Making the Right to Social Security a Reality for Domestic Workers: A Global Review of Policy Trends, Statistics and Extension Strategies*, 2022, 23.

limited access to productive resources.[1217] According to a recent ILO study, in the countries surveyed, a majority of respondents engaged in the app-based taxi and delivery sectors are not covered by social protection, including maternity benefits.[1218]

601. One of the reasons for the exclusion of many categories of workers from social security coverage, including maternity benefits, is the inadequate adaptation of social security schemes to the nature of their work.[1219] In particular, workers who are not in a continuous and full-time "standard employment relationship" may face various obstacles in declaring their earnings or paying social security contributions as, in many cases, they have low and/or irregular incomes. This may be the case, for example, of workers in temporary employment, including seasonal workers, agricultural workers and casual workers. In addition, administrative procedures, such as enrolment and benefit claims, may be complex and time-consuming. The Committee has previously observed that various measures have been adopted in some countries to extend existing social insurance schemes to persons who are excluded from them in practice, including: the relaxation of qualifying conditions, such as the reduction of the qualifying period of employment or contributions for entitlement to benefits or the reduction of the amount of contributions to be paid into the scheme; the possibility of buying back missing contribution periods; as well as the "reduction of the number of employees required for a company to fall within the scope of the social security scheme".[1220]

602. The Committee further recalls that the extension of coverage by social security benefits, including maternity benefits, should be ensured by combining both contributory and non-contributory mechanisms.[1221] In particular, social insurance mechanisms can contribute significantly to extending maternity protection to categories of workers who have some contributory capacity, but do not meet the qualifying conditions. In this respect, one of the main challenges is to determine contribution levels for such workers which take into account their contributory capacity, while maintaining the financial sustainability of social security schemes.[1222] To ensure coverage, contributions for such workers may be fully or partially subsidized.[1223] For example, in the case of agricultural workers, between 30 and 80 per cent of the total amount of social security benefits could be covered by government subsidies.[1224] In *Colombia*, the *Philippines* and *Thailand*, due to large-scale government subsidies, almost universal healthcare coverage has been achieved.[1225] Non-contributory schemes can, in turn, supplement social insurance mechanisms to ensure income security for those who are not entitled to social insurance benefits.

603. It is also important to observe that, in some cases, workers may not have access to maternity benefits as a result of the misclassification of their employment. In particular, employment relationships may be hidden by self-employment arrangements with a view to avoiding social security costs and taxes.[1226] It is therefore crucial to prevent the misclassification of

1217 ILO, *Rural Women at Work: Bridging the Gaps*, 2018, 1; ILO and Food and Agriculture Organization of the United Nations (FAO), *Extending Social Protection to Rural Populations: Perspectives for a Common FAO and ILO Approach*, 2021, 8.

1218 ILO, *World Employment and Social Outlook 2021: The Role of Digital Labour Platforms in Transforming the World of Work*, 2021, 176.

1219 ILO, *Extending Social Security to Workers in the Informal Economy: Lessons from International Experience*, 2021, 4.

1220 ILO, *Social Security and the Rule of Law: General Survey concerning Social Security Instruments in Light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), International Labour Conference, 100th Session, 2011 (hereinafter "2011 General Survey"), para. 310.

1221 ILO, *Extending Social Security to Workers in the Informal Economy*, 41.

1222 ILO, *Extending Social Security to Workers in the Informal Economy*, 153.

1223 ILO, *Maternity Cash Benefits for Workers in the Informal Economy*, Social Protection for All Issue Brief, 2016, 5.

1224 ILO, *Extending Social Security to Workers in the Informal Economy*, 153.

1225 ILO, *Extending Social Security to Workers in the Informal Economy*, 153.

1226 2020 General Survey, para. 192.

employment to ensure that economic risks are not unduly transferred to workers and that they benefit from the labour and social protection associated with formal employment.[1227]

604. The Committee also recalls the importance of national social security extension strategies, which include effective protection measures for workers in the informal economy and facilitate their transition to the formal economy, in line with Recommendation No. 204.[1228] This requires a set of measures adapted to national circumstances, including the identification of current social security gaps with a view to ensuring the participation of representatives of the informal economy in the elaboration of these strategies, raising awareness about social security, and particularly maternity benefits, and adapting the legal framework.[1229]

605. The Single Confederation of Workers of Colombia (CUT) indicates that, according to studies by the National University of Colombia, many women enter the labour market in less stable jobs, working fewer hours, earning less than the prescribed minimum wage and with shorter periods in the labour market, and often do not enjoy maternity benefits. In this respect, the Government of *Colombia* indicates the establishment of a tripartite round table on the social protection floor to address the issues regarding the access of these women to maternity benefits. In *Poland*, the social partners observe that maternity cash benefits and maternity leave are not provided to women engaged under fixed-term contracts who are replacing regular workers. In addition, the International Transport Workers' Federation (ITF) adds that the COVID-19 pandemic has worsened the condition of women engaged in informal and atypical forms of employment.

606. ***The Committee emphasizes that the extension of maternity cash benefits to all women in employment, including those in atypical forms of dependent work, is a crucial precondition for gender equality and decent work for all. The Committee firmly encourages Member States to take measures to ensure that all women workers enjoy paid maternity leave, in accordance with the requirements of Convention No. 183. In so doing, the Committee encourages Member States to take the necessary measures to ensure that workers engaged in atypical forms of dependent work are effectively covered by social security schemes by addressing the legal, financial, administrative and other barriers which may prevent them from meeting eligibility criteria or qualifying conditions. The Committee further emphasizes the importance in this respect of tackling disguised employment relationships and facilitating the transition from informal to formal employment.***

Medical care benefits

607. The provision of available, accessible and acceptable medical care, and in particular, maternity medical care, is crucial for the health and well-being of women and their children and has a direct impact on labour productivity and gender equality. It also has a positive impact on economic growth. [1230] Article 6(7) of Convention No. 183 requires the provision of medical care benefits, including prenatal, childbirth and postnatal care, as well as hospitalization, when necessary, to women during maternity and to their children, in accordance with national laws and regulations or in any other manner consistent with national practice. Paragraph 3 of Recommendation No. 191 establishes a list of maternal medical care benefits, namely: care given by a general practitioner or a specialist; maternity care given by a qualified midwife or by another maternity service; maintenance in a hospital or other medical

1227 ILO, *Extending Social Security to Workers in the Informal Economy*, 88.

1228 ILO, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202)*, Report III (Part B), International Labour Conference, 108th Session, 2019 (hereinafter "2019 General Survey"), para. 591.

1229 ILO, *Extending Social Security to Workers in the Informal Economy*, 180–181.

1230 2019 General Survey, para. 273

establishment; any necessary pharmaceutical and medical supplies, examinations and tests; and dental and surgical care. It is also important to ensure that all protected women have access to maternity medical care benefits without financial hardship. In this respect, the earlier ILO maternity protection and social security standards, and particularly Convention No. 102, require the provision of maternity medical care free of charge. Paragraph 8(a) of Recommendation No. 202 calls for universal coverage for at least essential healthcare, including maternity care, and specifies that free prenatal and postnatal medical care should be free for the most vulnerable.

608. The Committee observes from the information provided that maternity medical care, as required by Convention No. 183, is guaranteed in a significant number of countries. In many Member States, there are universal healthcare systems which provide maternal medical care to all citizens.[1231] This approach reflects Paragraph 8 of Recommendation No. 69, which indicates that the "medical care service should cover all members of the community, whether or not they are gainfully occupied." In this respect, the Committee welcomes the positive developments in countries such as *Colombia*,[1232] *Mongolia*,[1233] *Philippines*,[1234] *Thailand*[1235] and *Viet Nam*,[1236] where medical care, including maternity medical care, has been extended to the whole population.[1237]

609. However, the Committee observes that the effective coverage of social health schemes varies significantly, between almost 97 per cent of the population in high-income countries, 34.3 per cent in lower-middle-income countries and only 16.7 per cent in low-income countries.[1238] The absence of quality and timely maternity medical care results in higher maternal mortality and morbidity rates. According to WHO data, although the overall maternal mortality rate has fallen by 38 per cent since 2000, over 800 women die every day from complications during pregnancy or childbirth.[1239]

610. The Committee welcomes the provision of maternal medical care free of charge in some countries.[1240] For example, in most European countries, free healthcare, including prenatal and postnatal care, delivery, hospitalization and medicines, is provided to pregnant and nursing women.[1241] In the *Lao People's Democratic Republic*, *Malaysia*, the *Republic of Korea* and *Viet Nam*, maternal or child healthcare services are exempt from co-payments.[1242] In *China*, the public health service programme provides free pregnancy and postpartum examinations for all women. In addition, maternity medical expenses within the prescribed range are covered by the maternity insurance fund.[1243]

1231 For example, in *Bahrain, Botswana, Brazil, Cambodia, Canada, Cyprus, Denmark, Egypt, Greece, Guinea, Ireland, Mali, Mauritius* and *Nepal*.

1232 *Colombia* (section 2.1.5.1 of Decree No 780/2016).

1233 *Mongolia* (Health Act of 2011).

1234 *Philippines* (section 39b of the National Health Insurance Act of 2013).

1235 *Thailand* (section 3 of the National Health Security Act B.E. 2545 (A.D. 2002)).

1236 *Viet Nam* (Decision No. 139 of 2002 of the Health Care Fund for the Poor).

1237 ILO, *World Social Protection Report 2020–22*, 189.

1238 ILO, *World Social Protection Report 2020–22*, 192.

1239 WHO, UNICEF, UNFPA, World Bank, and UNPD, *Trends in Maternal Mortality: 2000 to 2017*, 2019, 41.

1240 For example, *Bahrain, Botswana, Brazil, Cambodia, Canada, Cyprus, Denmark, Guinea* and *Mauritius*.

1241 ILO, *International Review of Financial Protection in Maternal Health Care*, Technical Note 2, 2020, 1.

1242 ILO, *Extending Social Health Protection: Accelerating Progress towards Universal Health Coverage in Asia and the Pacific*, 2021, 63.

1243 ILO, *International Review of Financial Protection in Maternal Health Care*, 23 and 25.

611. However, in certain countries, patients have to pay for antenatal and postnatal care in full or in part.[1244] In the *Dominican Republic*, the Committee has observed that the cost of deliveries by caesarean section have to be partially covered by women, at the rate of 15 per cent, unless performed in cases of emergency.[1245] In *Latvia*, the Committee has noted with satisfaction that, pursuant to the Health Care Financing Law of 2017, women who receive healthcare services related to pregnancy and postnatal observation are exempt from co-payments.[1246] The Committee has previously noted that fees for pre- and postnatal services are mainly charged in countries with high maternal mortality rates. It has further observed that such fees, even if they are low, usually affect the poorest population groups, which cannot afford the costs involved.[1247] The Committee further notes that according to the indications by the Confederation of Workers Rerum Novarum (CTRN) and the Costa Rican Workers' Movement Central (CMTC) *(Costa Rica)*, some pregnant women do not have an effective access to maternity medical care as a result of the lack of health insurance coverage. To address this issue, the Costa Rican Social Security Fund (CCSS) issued a circular recalling that maternal medical care shall be guaranteed to all pregnant women regardless of their insurance status.

612. ***The Committee recalls that user fees, co-payments and other out-of-pocket payments, including for maternity medical care, constitute an important cause of impoverishment in many countries and are a pervasive barrier to access to medical care which may be detrimental to the health of women during maternity and to the health of their children.***[1248] ***The Committee firmly encourages Member States to take measures to ensure that quality maternal medical care benefits, as listed in Article 6(7) of the Convention, are effectively provided, and accessible in practice to all women protected by the Convention.***

613. The Committee also emphasizes the need to ensure that pregnant and nursing women have access in practice to quality medical care, provided in a timely manner. Shortages of healthcare workers, underfunding and low levels of financial protection may significantly affect the quality of maternity medical care. Moreover, growing inequality in the availability and quality of maternity medical care is being observed between rural and urban areas, as reflected in statistical data on maternal mortality rates: while the global maternal mortality ratio is 11 deaths per 10,000 live births in urban areas, this rises to 29 in rural areas.[1249] In addition, significant inequities in access to maternal and child medical care services can be observed across wealth quintiles. For example, in many countries, the number of live births attended by skilled health staff is considerably lower in the poorest quintiles.[1250]

614. ***The Committee encourages Member States to take measures to ensure that all women protected by the Convention, in particular those living in rural areas, have equal and effective access to quality maternity medical care, to ensure the health and well-being of women during maternity and their children, and prevent avoidable deaths and illnesses. In this respect, the Committee draws the attention of Member States to the important guidance contained in the WHO guidelines on antenatal, intrapartum and postnatal maternal medical care.***[1251]

1244 For example, *Guinea, Jordan, Pakistan, Togo, Tunisia, United States of America* and *Zimbabwe*. See 2019 General Survey, para. 286.

1245 CEACR, Convention No. 183: *Dominican Republic*, direct request, 2020.

1246 CEACR, Convention No. 183: *Latvia*, observation, 2021.

1247 2019 General Survey, para. 286.

1248 2019 General Survey, paras 287, 303–308 and 311.

1249 2019 General Survey, paras 292 and 310.

1250 ILO, *World Social Protection Report 2020–22*, 196–197.

1251 For example, the 2022 WHO recommendations on maternal and newborn care for a positive postnatal experience; the 2018 WHO recommendations on intrapartum care for a positive childbirth experience; the 2016 WHO recommendations on antenatal care for positive pregnancy experience.

Financing maternity benefits

615. In accordance with Article 6(8) of Convention No. 183, maternity benefits shall be provided through compulsory social insurance or public funds, and an employer shall not be individually liable for the direct cost of any such monetary benefit to a woman employed by them. Convention No. 183 limits employer's liability mechanisms to two cases: (a) where provided for in national law or practice in a Member State prior to the date of adoption of the Convention; or (b) where it is subsequently agreed at the national level by the government and the representative organizations of employers and workers. This flexibility provision was introduced with a view to facilitating the ratification of the Convention by taking into account the situation in some countries, subject to the agreement of employers concerning their direct liability for the costs of maternity cash benefits.[1252] Of the 43 Member States that have ratified Convention No. 183, in *Djibouti* and *Niger*, maternity benefits are provided by both employers and social insurance schemes, whereas in *Mauritius*, maternity benefits are provided solely by employers. In the remaining 40 Member States, maternity cash benefits are financed through social security mechanisms.

616. In line with Paragraph 4 of Recommendation No. 191, contributions due under compulsory social insurance providing maternity benefits should be paid in respect of the total number of men and women employed, without distinction on the basis of sex. The objective of this provision is to ensure that the burden of contribution is borne without distinction based on sex, irrespective of whether the contribution is due under compulsory social insurance or is paid as a payroll tax, or whether it is paid by employers and workers, or by the employer.[1253] The main concern raised during the discussion of this provision was that a contribution or tax paid only in respect of women workers could discourage the hiring of women.

617. The Committee observes that maternity cash benefits are funded solely through social protection systems anchored in national social security legislation in 117 countries, covering 76.1 per cent of all potential mothers worldwide. However, in 45 countries, employers are still directly liable for the cost of maternity cash benefits, and in 20 countries, such benefits are provided by both social protection systems and employers.[1254]

618. During the discussion of the financing provisions of Convention No. 183, it was noted that employer's liability mechanisms may place an undue burden on employers, especially small firms,[1255] which may result in non-compliance in many cases and render the provisions largely ineffective.[1256] Moreover, they may result in discriminatory practices against women, as employers may be unwilling to hire, retain or promote potential mothers due to the cost of maternity cash benefits.[1257] In addition, employer's liability mechanisms do not provide a feasible avenue for protecting workers in the informal economy, or other vulnerable categories of workers. In this respect, the COVID-19 crisis has shown that the absence of collectively financed social security schemes exposes many workers to a significant risk of poverty and vulnerability.[1258] Relying solely on employer's liability provisions may therefore have a negative impact, not only on the income security of pregnant and nursing women, but also on their health and that of their children.

1252 ILO, *Report of the Committee on Maternity Protection: Second Discussion in Plenary*, 2000, 3.

1253 Report V(2) on Convention No. 183, 167.

1254 ILO, *Care at Work*, 66.

1255 Report IV(2A) on Convention No. 183, 78.

1256 ILO, *Maternity and Paternity at Work*, 115–116.

1257 Law and practice report on Convention No. 183, 73. The *IOE* also observes that the responsibility for providing maternity benefits should not be shifted from governments to employers, as this would detrimentally affect women's participation in the labour market and deter employers from hiring women of childbearing age.

1258 ILO, *World Social Protection Report 2020–22*.

619. The Committee welcomes the legislative changes that have transferred the source of financing of maternity benefits from employer's liability schemes to social insurance or social assistance mechanisms in several countries, including *Antigua and Barbuda*, *Bahamas*, *Dominican Republic*, *Democratic Republic of the Congo*, *Egypt*, *Guatemala*, *Haiti*, *Republic of Korea*, *Nepal*, *Pakistan*, *Thailand* and the *United Kingdom of Great Britain and Northern Ireland*.[1259]

620. ***Taking into account the high number of countries in which employers are directly liable for the cost of maternity benefits, which may result in discriminatory treatment based on gender or a lack of effective protection, the Committee considers it necessary to progressively move from employer's liability mechanisms to the establishment of social security schemes through which maternity benefits are financed and provided to women workers. The Committee recalls the important role of social security systems based on the principles of collective financing and solidarity, as well as risk sharing, in ensuring better protection of workers and achieving equality of treatment, as provided in particular in Conventions Nos 102 and 183, and Recommendation No. 191.***

3. Measures to facilitate nursing and other working arrangements

Convention No. 183, Article 10
Recommendation No. 191, Paragraphs 7, 8 and 9

621. International labour standards recognize that support for breastfeeding is integral to maternity protection measures and set out rights and guidance to assist mothers to continue breastfeeding upon their return to work.

622. Breastfeeding is important for the health of both mothers and children. It is particularly important in cases where unsafe water can pose a risk to the baby. It is also the only method for some families to feed their infants, in view of the high cost of milk alternatives. This is compounded by the fact that many women face the risk of poverty after childbirth as a result of losing their jobs and income. Many cannot afford to take time away from work to continue nursing and caring for their infants and young children. Yet, without workplace support, breastfeeding and working may be incompatible, not only for simple logistical reasons, but because breast milk production operates on a supply and demand basis. If a woman does not have breaks to either breastfeed or express milk, her supply will diminish and she may no longer be able to produce enough milk for her baby.[1260]

623. For these reasons, ILO maternity protection standards, including Convention No. 183, establish the right of mothers who have returned from maternity leave to take nursing breaks, and the obligation of employers to provide adequate facilities for them to be able to breastfeed on location.

1259 ILO, *Care at Work*, 69, table 2.6.

1260 ILO, *Maternity and Paternity at Work*, 101–102.

3.1. Nursing breaks

624. Since the earliest maternity protection Convention, nursing breaks for breastfeeding mothers during working hours have formed part of international maternity protection standards. However, while Convention No. 3 called for a nursing mother to be allowed two 30-minute breaks a day during working hours for this purpose, both Conventions Nos 103 and 183 leave it to national laws and regulations to decide the number and duration of nursing breaks, on condition that at least one break is provided. Convention No. 183 also introduces the possibility of converting daily breaks into a daily reduction of hours of work.

625. The Committee welcomes the fact that daily breaks or a daily reduction of hours of work for nursing women are granted in most countries. This trend is observed consistently in all regions, which confirms the importance accorded to this aspect of maternity protection.[1261]

626. However, the legislation in certain countries still does not provide for breastfeeding breaks. For instance, in *Grenada*, *Seychelles* and *Suriname*, there is no national legislation providing for breastfeeding breaks. In *Algeria*, while women working in the public sector have the right to nursing breaks for one year following maternity leave, private sector employees are not covered by these provisions. In *Oman*, there are no provisions granting nursing breaks. The Government of *Trinidad and Tobago* indicates that the national legislation does not currently provide for nursing breaks, but that they may be available through collective agreements and individual employer policies.

627. In some countries, the legislation does not provide for breastfeeding breaks because of the length of maternity leave. For example, the Government of *Finland* indicates that, while the right to breastfeeding breaks for a mother who has recently given birth is not regulated, the long and flexible parental leave provides the opportunity to breastfeed, as recommended, and recent reforms are aimed at increasing fathers' responsibilities. In this regard, the Federation of Finnish Enterprises (SY) indicates that one drawback of such long absences is that significant changes can occur at the workplace, meaning that the employee's former duties may no longer be available. With reference to *Serbia*, the Committee observed in 2013 that there were no provisions in the national legislation on nursing breaks or the reduction of working hours for breastfeeding, as employees were entitled to leave of up to two years. The Committee expressed the hope that amendments would be adopted to ensure that the legislation provided for breastfeeding breaks to ensure the full application of Article 10 of Convention No. 183 so as to enable women who wish to return to work before the end of the two years leave to benefit from daily breaks to breastfeed their children.[1262]

628. ***The Committee therefore encourages all countries concerned to take the necessary measures to ensure that the national legislation duly provides for breastfeeding breaks or a daily reduction of working hours, in accordance with Article 10 of Convention No. 183, irrespective of the length of the maternity leave to which workers are entitled.***

Duration of entitlement to nursing breaks

629. Article 10(2) of Convention No. 183 leaves it to the discretion of Member States to determine the period during which nursing breaks or the reduction of daily hours of work are allowed. Indeed, national legislation differs in determining the period during which women may take nursing breaks, the duration of which is often linked to the age of their child.

1261 See paras 639–643 below.

1262 CEACR, Convention No. 183: *Serbia*, direct request, 2013.

630. The duration of entitlement to nursing breaks ranges from at least 6 months from the birth of the child to when the child reaches the age of 2 years. In *El Salvador*, nursing breaks are granted until the child reaches the age of 6 months.[1263] In *Bulgaria*, nursing breaks are provided until the child is 8 months old, while in *Guinea*, following maternity leave, women may either take unpaid leave for nine months, or return to work, in which case they have the right to nursing breaks until the child is 9 months old.[1264] In *Japan*, breastfeeding breaks may be granted until the child reaches 1 year of age.[1265] In *Togo*, women with children under 15 months are entitled to breastfeeding breaks.[1266] In *Kazakhstan*,[1267] such breaks are provided for women with children under one-and-a-half years of age, whereas in *Egypt*, they are provided to women for 24 months following the date of childbirth.[1268]

631. In other countries, the duration of entitlement to nursing breaks starts after maternity leave ends and is not therefore directly linked to the age of the child. For instance, in *Botswana*, nursing breaks are granted for six months after women return to work following childbirth.[1269] In *Ecuador*, the breastfeeding period is generally 12 months following the end of maternity leave.[1270] In *Benin*, women workers have the right to time off for breastfeeding for a period of 15 months following their return to work.[1271]

Number and duration of nursing breaks or the reduction of working hours

632. Convention No. 183 allows Member States to choose whether breastfeeding women should be provided with the right to daily breaks or to a daily reduction of hours of work, and provides that national law and practice shall determine their duration and the procedures for the reduction of daily hours of work.

633. The number of daily nursing breaks and the amount of time allowed for breastfeeding or pumping at the workplace differ between countries, ranging from 30-minute to two-hour breaks, and from one to two or more breaks a day. National legislation often specifies a certain amount of time for breaks, while leaving the determination of when they should be taken to the women and employers concerned, although it may also be more specific. Examples include:

- One hour a day (in one break or in two 30-minute breaks): *Benin*, *Botswana*, *Brazil*, *Burundi*, *Cambodia*, *Cameroon*, *Colombia*, *Côte d'Ivoire*, *Cuba*, *Dominican Republic*, *Egypt*, *Honduras*, *Maldives*, *Mali*, *Mauritania*, *Morocco*, *Niger*, *Norway*, *Peru*, *Republic of Korea*, *Senegal*, *Slovenia*, *South Africa*, *South Sudan*, *Spain*, *Togo* and *Tunisia*. In the *Bolivarian Republic of Venezuela*, two 30-minute breaks are provided by law; however, if no educational centre with a breastfeeding room is provided by the employer, the break is one and a half hours.[1272] In *Latvia*, the duration of nursing breaks is at least 30 minutes, and employers are required to

1263 *El Salvador* (section 312 of the Labour Code). Similar measures exist in *Brazil* and *Cabo Verde*.

1264 *Bulgaria* (section 166 of the Labour Code); *Guinea* (section 153.4 of the Labour Code). Other countries providing nursing breaks until the child reaches the age of 9 months are the *Netherlands, Spain* and *Cyprus*.

1265 *Japan* (section 67(1) of the Labour Standards Act). This is also provided in *Italy, Panama, Peru, Serbia, Tunisia* and *Türkiye*.

1266 *Togo* (section 191 of the Labour Code). Similar provisions are provided in *Benin, Cameroon, Mali* and *Senegal*.

1267 *Kazakhstan* (section 82 of the Labour Code). Similar measures exist in *Azerbaijan, Estonia,* and *Slovenia*.

1268 *Egypt* (section 94 of the Labour Law and art. 12 of the Child Law). Nursing breaks are provided for a period of two years after childbirth also in *Chile*.

1269 *Botswana* (section 123(1) of the Employment Act).

1270 *Ecuador* (section 155 of the Labour Code).

1271 *Benin* (section 173 of the Labour Code). Similarly, in *Burundi*, breastfeeding breaks are granted after the end of maternity leave/return to work and provided for six months.

1272 *Bolivarian Republic of Venezuela* (section 345 of the LOTTT).

determine the length of breaks after consultation with the representatives of employees.[1273] In *Zimbabwe*, breaks may be organized either as two 30-minute breaks or one break of one hour a day.[1274]

- One and a half hours a day: *Burkina Faso*, *North Macedonia*, *Serbia* and *Switzerland*. In *Türkiye*, women workers are entitled to a total of one and a half hours of nursing breaks a day and the workers determine the timing and number of breaks.[1275]
- Two hours a day: *Albania*, *Bulgaria*, *Italy*, *Montenegro*, *Portugal* and *San Marino*. In *Bahrain*, in the private sector, two hours of nursing breaks are provided to mothers until the child reaches 6 months of age, and then one hour of time off on full pay to provide care until the child reaches the age of 1 year.[1276]
- Breaks every two or three hours: *Azerbaijan*, *Nicaragua* and *Panama*. In *Armenia*, a breastfeeding woman is entitled to a break of at least 30 minutes once every three hours until the child is 18 months old.[1277] In *Costa Rica*, women can, among other options, choose to take a 15-minute break every three hours.[1278] Similar provisions exist in *Kazakhstan*, *Latvia* and *Lithuania*, where employed women are entitled to breaks of at least 30 minutes no less than every three hours.
- Undetermined amount of time: in the *Netherlands*, the national legislation provides that women may interrupt work to breastfeed without loss of wages.[1279]

634. In some countries, the number of nursing breaks varies according to the number of daily working hours. This is the case in *Austria* where, on days when the employee works more than four and a half hours, 45 minutes of free time is allowed.[1280] When the woman works eight hours or more, two breaks are granted upon request, or one break of 90 minutes when it is not possible to nurse in the vicinity of the workplace. In *Poland*, employees working fewer than four hours a day are not entitled to nursing breaks but may take one break if they work no more than six hours a day.[1281]

635. In other countries, the number of breaks or their length depend on the age of the child. For example, in *Hungary*, nursing mothers are entitled to two hours of break during the first six months following childbirth, then one hour until the ninth month.[1282] Similarly, in *Gabon* and *Mongolia*, nursing mothers are entitled to two hours of breaks for the first six months (in *Gabon*, beginning following the return to work; in *Mongolia*, from birth), then one hour until the twelfth month.[1283] In *Czechia*, full-time employees are entitled to two half-hour breaks for each child up to 1 year of age, and one half-hour break per shift for the next three months.[1284]

1273 *Latvia* (section 146 of the Labour Law).

1274 *Zimbabwe* (section 18(8) of the Labour Act).

1275 *Türkiye* (section 74 of the Labour Act).

1276 *Bahrain* (section 62 of the Labour Law).

1277 *Armenia* (art. 258 of the Labour Code).

1278 *Costa Rica* (section 97 of the Labour Code). The other options are: two 30-minute breaks per day, one hour at the beginning of the day, one hour at the end of the day, and coming in to work one hour later or leaving one hour early.

1279 *Netherlands* (art. 4:8 of the Working Hours Act).

1280 *Austria* (sections 4(1) and 9 of the Maternity Protection Act).

1281 *Poland* (art. 187(2) of the Labour Code). In *Belgium*, where a woman who works a minimum of four hours a day has the right to one break of 30 minutes. If she works at least seven and a half hours a day, she can take two nursing breaks of 30 minutes each. In *Italy*, nursing mothers who work less than six hours per day are entitled to a one-hour nursing break; nursing women who work more than six hours per day are entitled to two one-hour breaks per day. In *Slovakia*, women working at least half of the statutory weekly working time are also entitled to one half-hour break for nursing until the child reaches the age of 6 months.

1282 *Hungary* (section 55(e) of the Labour Code).

1283 *Gabon* (section 211 of the Labour Code) and *Mongolia* (art. 136 of the Labour Code).

1284 *Czechia* (section 242 of the Labour Code).

636. Moreover, in accordance with Paragraph 7 of Recommendation No. 191, there are examples of countries where longer and/or more frequent breaks are granted in the case of particular needs, especially where there is more than one child. For example, in *Estonia*, the duration of the break granted for feeding two or more children up to 18 months of age is at least one hour, instead of the normal duration of 30 minutes every three hours.[1285] Similar provisions exist in the *Russian Federation* where, in the event of multiple births, the duration of nursing breaks is at least one hour, instead of 30 minutes, for children under the age of 18 months.[1286] In *China*, employers have to arrange one hour of break for nursing women during working hours, which is extended, in the event of multiple births, by one hour for each additional child.[1287]

637. Other arrangements can also be made, in accordance with Paragraph 8 of Recommendation No. 191, under which the worker concerned may use the time allotted for nursing breaks as time off at the beginning or end of the working day, or even as leave. In a number of countries (*Azerbaijan*, *Kazakhstan*, *Lithuania* and *Serbia*), breastfeeding breaks can be added to breaks for resting and eating or moved to the end of the working day at the request of the worker. In *Zimbabwe*, the legislation provides that nursing mothers may combine nursing breaks with other breaks to constitute longer periods, as necessary.[1288] In *Spain*, nursing breaks may be accumulated to make up an entire working day of leave, where so provided in collective agreements.[1289] In *Greece*, leave is granted as reduced working hours for a period of 30 months from the end of maternity leave.[1290]

638. ***The Committee welcomes the widespread practice adopted in most Member States of granting women workers time off for daily nursing breaks upon their return to work from maternity leave and considers that this reflects the importance of such measures for the well-being of both the child and the mother, as well as facilitating the re-integration of mothers into work, thereby contributing to a gender equal working environment.***

Nursing breaks as paid working time

639. Conventions Nos 103 and 183 both require interruptions of work for the purpose of nursing to be counted as working time and remunerated accordingly. This is the case in several countries. Indeed, between 1994 and 2013, a global increase can be observed in the provision of nursing breaks, with a shift from unpaid to paid breaks. The proportion of countries in which this entitlement is not set out in the national legislation fell from 32 per cent in 1994 to 24 per cent in 2013. Of the 136 countries surveyed, nursing breaks were paid in 37 per cent in 1994, but by 2013 this right had been set out in the national legislation in 71 per cent of the countries.[1291]

640. This trend appears to be continuing. In *Azerbaijan*, *Benin*, *Burkina Faso*, *Cameroon*, *Colombia*, *Costa Rica*, *Croatia*, *Cyprus*, *Czechia*, *Egypt*, *Guatemala*, *Honduras*, *Israel*, *Italy*, *Luxembourg*, *Mali*, *Mauritius*, *Nicaragua*, *Peru*, *Poland*, *Qatar* and *South Sudan*, nursing breaks are included in working time or counted as working time and remunerated accordingly. In other countries, paid nursing breaks are provided for a certain period, followed by a period of unremunerated breaks. For example, in *San Marino*, paid nursing breaks are granted to

1285 *Estonia* (section 18.1-3 of the Working and Rest Time Act).

1286 *Russian Federation* (section 258 of the Labour Code).

1287 *China* (art. 9 of the Special Rules on the Labour Protection of Female Employees).

1288 *Zimbabwe* (section 18(8) of the Labour Act).

1289 *Spain* (section 37(4) of the Worker's Charter Act).

1290 *Greece* (section 28 of Law No. 4808/2021).

1291 ILO, *Maternity and Paternity at Work*, 104.

women for the first two months following their return to work after maternity leave, followed by unpaid breaks until the child is 1 year old.[1292]

641. On this topic, the Committee takes note of the observations of the International Organisation of Employers (IOE) recalling that, during the preparatory work, the remuneration of nursing breaks by employers was identified as a barrier for the ratification of Convention No. 103, which was not solved in Convention No. 183. In this respect, the Committee further welcomes that in certain countries nursing breaks are financed through public funds or social insurance. For example, in *Estonia*, breaks for feeding children are included as working time and paid through the budget of the Ministry of Social Affairs (unless the mother is receiving parental benefit to raise the child).[1293] In *Belgium*, compensation for breastfeeding breaks is provided by the Health Insurance Fund.[1294]

642. However, nursing breaks are still not paid in certain countries. For example, in *Canada*, while the Canadian Labour Code provides that every employee at the federal level who is nursing shall be granted the breaks necessary to nurse their child, these breaks are unpaid.[1295] In *New Zealand* and the *United States of America*, employers are required to provide breastfeeding breaks, but they are unpaid.[1296] The Government of *France* indicates that the law, which makes provision for a one hour breastfeeding daily break, does not guarantee paid breastfeeding breaks, but collective agreements may provide for their payment.[1297]

643. ***The Committee emphasizes that, while the practice of providing nursing breaks is positive, it is important to ensure that these breaks are paid. If nursing breaks are not paid, this can create pressure and financial constraints for the women concerned, increasing the risk of them not availing themselves of the right to take such breaks, which may have many negative effects, including on the health of their children. The Committee therefore encourages the Governments concerned to take the necessary measures to adopt legislation providing that nursing breaks are duly paid, to the extent possible, through compulsory social insurance or public funds.***

Extension of the right to nursing breaks to fathers

644. Convention No. 183 and earlier ILO maternity protection standards define nursing breaks as a right of breastfeeding women, intended to provide time for women to feed their children or express milk for subsequent bottle feeding. However, in some countries, the scope of eligibility for nursing breaks has become broader, in recognition of the fact that nursing breaks, including bottle feeding, are related to the well-being of children and that extending nursing breaks to both mothers and fathers is an important measure to promote the sharing of care responsibilities and create a workplace environment that enables both breastfeeding and work–family balance, without precluding the right of women workers to nursing breaks.

645. In *Uzbekistan*, whoever cares for the child can take the permitted breaks. In *Portugal*, the breaks can be split between mothers and fathers. In *Spain*, working fathers enjoy the same rights as mothers to nursing breaks for the first nine months of their baby's life in order to provide support to their partners.[1298] In *Cuba*, section 40(1) of Legislative Decree No. 56 of 2021 establishes the right of employed mothers or fathers to one remunerated hour for nursing until their child reaches the age of 1 year.

1292 *San Marino* (section 4 of Law No. 40/1981 on the Equality between Men and Women at Work).

1293 See vacation pay and average salary compensation to employers raising children (*Government installation profile*).

1294 *Belgium* (section 116 *bis* of the Act on Compulsory Healthcare and Compensation Insurance of 1994).

1295 *Canada* (section 181.2 of the Federal Labour Code).

1296 *New Zealand* (section 69Y(1) of the Employment Relations Act); *United States of America* (section 7(2) of the Fair Labour Standards Act).

1297 *France* (section L.1225-30 of the Labour Code).

1298 ILO, *Maternity and Paternity at Work*, 107.

646. ***The Committee welcomes the positive development, where the right to nursing breaks has been extended to fathers in some countries. The Committee considers that this has the direct effect of equalizing the gender imbalance with regard to time off required to feed children and contributes to gender equality in employment and occupation by promoting understanding that both men and women may take time off for nursing, thereby helping to allay discriminatory attitudes to the employment or retention in employment of woman of childbearing age.***

3.2. Nursing and childcare facilities

647. Paragraph 9 of Recommendation No. 191 indicates that, where practicable, provision should be made for the establishment of facilities for nursing under "adequate hygienic conditions at or near the workplace". The Recommendation leaves open the question of whether such facilities should be established through public or private means.

648. Provisions on nursing facilities are contained in the legislation in certain countries,[1299] although they vary in the level of detail and guidance provided. In *Slovenia*, for example, employers are required to provide suitable rooms with beds for pregnant women and nursing mothers.[1300] In *Canada*, accommodation can take many forms, including the provision of a suitable quiet and clean area to nurse, express and store breastmilk.[1301] Similar provisions exist in *Belgium*, *Latvia*, the *Netherlands*, *Nicaragua* and *Niger*. A strategy was adopted in *Colombia* in 2017 to promote and implement the creation of nursing rooms in public and private establishments and set out minimum hygiene and other requirements.[1302] The Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS) *(Dominican Republic)* indicate that nursing rooms have mainly been set up as a result of the campaigns of the National Commission on Maternal Nursing (CNLM), created by Act No. 8/95 of 1995.

649. With a view to saving workers from having to travel long distances to nurse their children, particularly when they cannot be brought to the workplace, a recent trend has been to provide workplace facilities for expressing and storing milk, which can later be fed to the baby. For example, in *Brazil*, there is a "sanitary rule" for the implementation of nursing facilities at the workplace to enable working women to express and store milk under hygienic conditions.[1303] In *Cyprus*, under section 5 of the Maternity Law, if a woman chooses to stop work one hour a day to breastfeed, pump and store breast milk, the employer must provide the facilities so that she can do so. Section 11 of Republic Act No. 10028 of 2009 in the *Philippines* provides for the establishment of nursing stations provided with the necessary equipment, such as refrigeration for storing expressed breastmilk and plugs for breast pumps.

650. Moreover, the legislation in some countries calls for the provision of childcare services in addition to or as an alternative to nursing facilities, including: a room for nursing or a suitable place for the care of the child *(Colombia)*[1304]; a nursery where employees' children may be left *(Ecuador)*[1305]; rooms, cots and areas for the children of workers *(El Salvador)*[1306]; an area in which mothers can feed children under 3 years of age safely, and where they can leave

1299 ILO research reveals that among the 184 countries with available information, only 42 include provisions requiring workplace nursing facilities in their legislation. This means 39 per cent of potential mothers worldwide live in countries with such entitlements. ILO, *Care at Work*, 206–208 and table 2.7.

1300 *Slovenia* (section 75 of the Rules on Requirements regarding the Ensuring of Safety and Health of Workers).

1301 *Canada* (Ch. 6 of the National Guidelines on Family-Centred Maternity and Newborn Care).

1302 *Colombia* (Law No. 1823 of 2017 on the Baby Friendly Rooms in the Workplace).

1303 *Brazil* (Technical Note No. 2/2010 of the National Sanitary Surveillance Agency – ANVISA and the Ministry of Health).

1304 *Colombia* (Law No. 1823 of 2017 on the Baby Friendly Rooms in the Workplace).

1305 *Ecuador* (section 155 of the Labour Code and its implementing regulations (Executive Decree No. 718 of 6 May 1985)).

1306 *El Salvador* (Decree No. 20/2018 on the Special Law for the Regulation and Installation of Nurseries for Workers' Children).

them under the supervision of an appropriate person paid for that purpose *(Guatemala)*[1307]; and a suitable place with an adequate number of babysitters to look after children under the age of 6 *(Saudi Arabia)*.[1308]

651. However, challenges remain. In many countries with statutory provisions covering nursing or childcare facilities, they only apply if the enterprise employs a minimum number of women. For example, in *Morocco*, nursing rooms must be provided where more than 50 women are employed.[1309] In *Costa Rica*, employers with over 30 women working in their premises are required to provide a room so that mothers can nurse their children without risk.[1310] The Confederation of Workers Rerum Novarum (CTRN) and the Costa Rican Workers' Movement Central (CMTC) *(Costa Rica)* point out that according to the monitoring activity of the Ombudsman of Costa Rica, even in premises which are obliged to provide nursing rooms by law, this requirement is not always met in practice. In *Poland*, workplaces employing over 20 women in one building for one shift must provide a room with places to rest in a supine position for pregnant and breastfeeding women.[1311] ***The Committee observes that such arrangements may give rise to problems, as they may discourage employers from hiring women, and they place the responsibility for childcare solely on women.***[1312] ***The Committee encourages Governments to apply legal provisions covering nursing or childcare facilities to all employed workers, including in small and medium-sized enterprises (SMEs).***

652. The provision of nursing facilities may raise issues in practice, even where appropriate legislation has been adopted. For example, the Confederation of Workers Rerum Novarum (CTRN) and the Costa Rican Workers' Movement Central (CMTC) *(Costa Rica)* point out that, notwithstanding the existing legislation, the obligation to provide nursing rooms is not given effect in some cases. Similarly, the Confederation of Christian Trade Unions (CSC), the General Confederation of Liberal Trade Unions of Belgium (CGSLB) and the General Labour Federation of Belgium (FGTB) (*Belgium)* state that suitable places for nursing children are not always provided. The National Federation of Christian Trade Unions (CNV) and the Netherlands Trade Union Confederation (FNV) *(Netherlands)* indicate that nursing facilities are often denied and that rooms for nursing are not always available at the workplace, which obliges women to nurse children in areas lacking privacy.

653. In this regard, the Committee is aware that employers may feel reticent about shouldering the full cost of childcare facilities, which may create disincentives to hire workers with children. The Committee notes that nursing facilities can often be provided free or at low cost, including in SMEs, as basic nursing facilities need only consist of a small, clean space with a chair and a screen, door or curtain for privacy, and access to clean water and storage for expressed milk. The Committee further notes that State subsidies can play a key role in ensuring the provision of adequately hygienic conditions, where necessary.[1313] For example, in *Argentina*, Act 26.873 was adopted in 2013 to promote breastfeeding, which provides for the establishment of nursing facilities at the workplace for the protection of nursing workers. The Act provides that all the costs arising from its implementation are to be met from public funds through the Ministry of Health.[1314] ***The Committee emphasizes the importance of public funding to help SMEs and other enterprises, as necessary, to ensure that all workers who need them benefit from adequate and sanitary nursing facilities.***

1307 *Guatemala* (section 155 of the Labour Code).

1308 *Saudi Arabia* (section 159 of the Labour Law).

1309 *Morocco* (section 162 of the Labour Code).

1310 *Costa Rica* (section 100 of the Labour Code).

1311 *Poland* (section 179 of the Labour Code and Regulation of 2 September 1997 of the Council of Ministers on Occupational Safety and Health at Work).

1312 See Ch. VII.

1313 ILO, *Maternity and Paternity at Work*, 109–110.

1314 *Argentina* (section 5 of Act 26.873 of 2013).



7 Reconciling work and family responsibilities



Convention No. 156, Article 4
Recommendation No. 165, Paragraph 17

654. The Committee recalls that one of the objectives of Convention No. 156 and Recommendation No. 165 is to promote effective equality of opportunity and treatment for workers with family responsibilities through the provision of targeted measures that enable them to reconcile their work and family obligations. Such measures may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, taking into account national conditions (Article 9 of Convention No. 156 and Paragraph 3 of Recommendation No. 165). The Committee also recalls that, while the Convention is silent on the measures that may be taken to support workers with family responsibilities, the Recommendation provides very detailed guidance in this respect. In particular, Paragraphs 17 to 23 on terms and conditions of employment and Paragraphs 24 to 26 on childcare and family services and facilities provide concrete examples of measures to facilitate the work–life balance of workers with family responsibilities. ***The Committee considers that working and leave arrangements and childcare and family services and facilities are all key components of an enabling work environment that is supportive of the family and employment over the life cycle.***

655. This chapter analyses the measures taken in law and practice by governments and the social partners to ensure that workers with family responsibilities benefit from adequate leave arrangements, working-time arrangements and other facilities, including childcare and family services, so that they are not subject to discrimination in employment and occupation because of their family responsibilities.

1. Types of leave to meet family responsibilities

656. Recommendations Nos 165 and 191 contain provisions on various types of leave to meet family responsibilities, other than maternity leave. A distinction can be drawn between two major types of leave: care leave for children up to a certain age, and particularly maternity[1315] and parental leave; and short- and long-term care leave for family members in the event of the illness of dependents, including children.[1316] The Committee notes that since the 1993 General Survey on workers with family responsibilities, various other types of leave have been gaining prominence in many countries worldwide to help meet family responsibilities, including paternity leave and adoption leave.

657. The types of leave provided for in Recommendations Nos 165 and 191 are intended to help balance the work and family responsibilities of mothers and fathers over the course of their working lives in order to help them combine work and family responsibilities. If these leave policies are well designed, and distributed equally between men and women workers, they can contribute to transforming traditional gender care roles, thereby reducing gender discrimination in the workplace, in conformity with Convention No. 111. The Committee considers that leave policies contribute to addressing indirect discrimination and enhance gender equality.

1.1. Parental leave

Recommendation No. 165, Paragraph 22(1) and (2)
Recommendation No. 191, Paragraph 10(3) and (4)

658. Recommendations Nos 165 and 191 call for parental leave to be available to either parent following maternity leave, without loss of employment and with their employment rights protected. While maternity leave is intended to protect working women during pregnancy and recovery from childbirth, parental leave consists of relatively long-term leave available to either or both parents, allowing them to care for an infant or young child for a specified period of time. Both Recommendations Nos 165 and 191 offer flexibility, as they envisage that the terms and conditions of parental leave are to be determined at the national level.

659. The Committee notes that the legislation in a growing number of countries provides for parental leave.[1317] However, systems of parental leave differ significantly from one country to another. In particular, there is considerable variation in the terms of eligibility, duration, the level of or absence of cash benefits, sources of funding and flexibility in the transferability of leave between parents.

660. In Europe and Central Asia, nearly all potential parents (98.3 per cent) have a statutory right to parental leave, with the exception of only four countries, where there is no statutory right to parental leave (*Bosnia and Herzegovina, Georgia, Monaco* and *Switzerland*). In the Americas, there is a statutory right to parental leave in only 5 out of 34 countries (*Chile, Cuba, Ecuador, Canada* and the *United States of America*). In the Arab States, this statutory right is only set out in the legislation in *Bahrain*, *Jordan*, *Syrian Arab Republic* and the *United Arab Emirates*. In Africa, parental leave only exists in *Angola, Burkina Faso, Chad*, *Egypt* and *Morocco*. Similarly, in Asia and the Pacific, the right to parental leave rarely exists in national legislation,

1315 Maternity leave and adoption leave have been analysed in extenso under sections 2.1 of Ch. VI and 1.4 of Ch. VII.

1316 Recommendation No.165, Para. 23(1) and (2) provides for the possibility to obtain leave of absence in the case of illness of a dependent child or the illness of another member of the worker's immediate family who needs the worker's care or support.

1317 For example, *Armenia, Austria, Azerbaijan, Bahrain, Belarus, Chad, Chile, Cuba, Cyprus, Ecuador, Egypt, France, Greece, Hungary, Japan, Jordan, Israel, Italy, Kazakhstan, Kyrgyzstan, Mongolia, Morocco, Norway, Russian Federation, San Marino, Spain, Tajikistan, Türkiye, Turkmenistan, Ukraine* and *Uzbekistan*. See ILO, *Care at Work*, 132.

and there is a statutory right to parental leave in only *Australia, Japan,* the *Maldives, Mongolia, New Zealand* and the *Republic of Korea*.[1318]

661. In some countries, the concept of parental leave is broader and includes both maternity and paternity leave.[1319] In those countries, parental leave usually includes compulsory postnatal periods of leave specifically for women. In this respect, it is important to recall the difference between periods of parental leave and maternity leave, with the latter protecting a mother due to the biological event of pregnancy and childbirth.[1320] This distinction may imply differences in the provision of paid benefits, sources of funding, eligibility requirements and healthcare coverage during leave.

Coverage

662. Recommendations Nos 165 and 191 cover all categories of workers in all branches of economic activity. However, certain categories of workers may still be excluded from statutory parental leave, or may not meet the eligibility requirements, such as workers outside the "standard employment relationship" and the self-employed. Furthermore, the widespread informality of workers in many developing and emerging countries make it challenging for parents to secure parental leave in practice. Similarly, workers in non-traditional family arrangements may be excluded from the scope of statutory parental leave.[1321] In this respect, the Committee notes that a few governments have provided information on the scope of parental leave for workers in these situations.

663. The Committee has also noted some positive developments relating to the extension of parental leave. For example, in *Japan*, the Committee has noted that, as a result of the 2017 amendments to the Childcare and Family Care Leave Act, a set of new leave entitlements have been introduced for both regular and non-regular workers. The latter are now entitled to request an extension of the period of childcare leave until the child reaches 2 years of age, in cases where the child cannot attend childcare facilities or a kindergarten.[1322]

664. In some countries, the self-employed are also entitled to parental leave. For example, in *Croatia*, the Maternity and Parental Benefits Act provides in section II for the possibility of parental leave for the self-employed. In *Denmark* and *Norway*, parental leave is also available to the self-employed if they meet the eligibility requirements, and unemployed parents can apply for the cash benefits related to parental leave if they have been insured.[1323]

665. In addition to biological parents, parental leave is available in certain countries to other persons who care for children. For example, in *Armenia*, leave is granted for care for a child under the age of 3 at the request of the mother (or stepmother), father (or stepfather) or guardian who is caring for the child.[1324] In *New Zealand*, primary carers who are mothers or other persons who take permanent primary responsibility for the care and maintenance of children are entitled to parental leave.[1325] In *Chile* and *Czechia*, parental leave is also available to legally appointed guardians.[1326]

1318 ILO, *Care at Work*, 132.

1319 Examples include *Canada* (extended parental leave), *France*, *Iceland*, *Luxembourg*, *Portugal* and *Sweden*.

1320 See also Ch. VI, section 2.1 "Maternity leave" of this General Survey.

1321 For example, families with single or same-sex parents, families with adopted or fostered children, families with parents living in different households, families with step-parents, and families with other relatives living together. See more in Natalie Picken and Barbara Janta, *Leave Policies and Practice for Non-traditional Families*, European Platform for Investing in Children (EPIC), June 2019, 3.

1322 CEACR, Convention No. 156: *Japan*, observation and direct request, 2020.

1323 *Denmark* (Maternity Act as amended by Act No. 343 of 2022); *Norway* (section 14 of the National Insurance Act).

1324 *Armenia* (art. 173 of the Labour Code).

1325 *New Zealand* (sections 7 and 8 of the Parental Leave and Employment Protection Act).

1326 *Chile* (art. 197 *bis* of the Labour Code) and *Czechia* (section 197 of the Labour Code).

666. However, the Committee notes that, although Recommendations Nos 165 and 191 indicate that either parent should have a right to parental leave, in some countries entitlement to parental leave is limited to women (also called leave without pay to provide care to children). For example, in *Bahrain, Oman* and *Egypt*, only women workers are entitled to special leave without pay for a maximum of two years to care for children.[1327] In *Tajikistan*, parental leave is available to women until their children reach the age of 3 years.[1328] In *Angola*, four weeks of unpaid supplementary leave is only available to women.[1329]

667. In many countries, parental leave is not available to same-sex parents, and access to such leave often depends on whether same-sex couples are afforded other legal rights, such as being the joint legal parents of a child. Globally, same-sex parents have the right to request parental leave in only 25 out of the 68 countries where the right to parental leave exists.[1330] In *Australia*, under the Paid Parental Leave Act 2010, parental leave is available to eligible working fathers and partners, including adoptive fathers and parents in same-sex couples. In a number of other countries, including *Belgium*, *France*, *Iceland*, *Netherlands*, *Norway*, *Portugal* and *Sweden,* parental leave is available irrespective of the gender composition of the parents or their marital status. In *Denmark*, new regulations that will come into force in January 2024 will establish more flexible arrangements for families with same-sex parents, as they will be able to share parental leave with up to four parents.[1331] ***The Committee encourages Member States to take measures to extend the coverage of paid parental leave to all working parents, irrespective of gender or family composition, in particular taking into account specific categories of workers, such as low-paid workers, part-time workers, workers in the informal economy and self-employed workers, who are often less protected and may be excluded from legal entitlement to paid parental leave or may not be able to meet the qualifying conditions for entitlement to the respective cash benefits.***

Entitlement

668. The Committee notes that, in some countries, entitlement to parental leave is subject to a qualifying period of employment or other requirements. For example, in *Albania*, *Australia*, *Bulgaria* and *France*, workers must have worked for at least a year at the time of the birth of the child to be entitled to parental leave. In *Iceland* and *New Zealand*, workers are entitled to parental leave if they have been employed by the same employer for at least six consecutive months.[1332] In *Norway*, in addition to being employed for at least six months, parents must have earned at least 50 per cent of the basic national insurance benefit over the previous year.[1333] In *Portugal*, a minimum of six months of contributions to the social security system is required.[1334]

669. In other countries, parental leave may only be taken on a limited number of occasions. For example, in *Bahrain*, parental leave can be taken up to three times during the period of service, while in *Egypt* the right to parental leave can be used not more than twice during the period of service.[1335]

1327 *Bahrain* (section 94 of the Labour Act No. 12 of 2003), *Oman* (section 72(2) of the Child Act No. 12 of 1996) and *Egypt* (section 53(3) of the Civil Service Act).

1328 *Tajikistan* (art. 165(v) of the Labour Code).

1329 *Angola* (art. 248 of the General Labor Law).

1330 ILO, *Care at Work*, 149.

1331 *Denmark* (Maternity Act as amended by Acts Nos 343 of 22/03/2022 and 879 of 21/06/2022).

1332 *Iceland* (section 24 of the Maternity, Paternity and Parental Leave Act); *New Zealand* (the Parental Leave and Employment Protection Act of 1987).

1333 *Norway* (section 14 of the National Insurance Act).

1334 *Portugal* (Law No. 4/2007 as amended by Law No. 83-A/2013).

1335 *Egypt* (section 94 of the Labour Act No. 12 of 2003 and section 72(2) of the Child Act No. 12 of 1996); *Bahrain* (section 34 of the Labour Act No. 36 of 2012).

670. ***The Committee encourages Member States to establish eligibility conditions for entitlement to parental leave that ensure the broad coverage of workers with children. It emphasizes that entitlement to parental leave should not be limited to a certain number of occasions and should be available equitably to all parents.***

Duration

671. No specific duration of parental leave is set out in Recommendations Nos 165 and 191, and its duration is to be determined at the national level by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods.

672. According to ILO research, the average duration of parental leave is 103.5 weeks (almost 2 years) in the 68 countries in which there is a statutory right to parental leave.[1336] The Committee welcomes the recent trend in many countries of increasing the duration of parental leave. For example, recent laws in *Canada* and *Cuba* have increased the duration of parental leave from 37 to 69 weeks and from 39 to 52 weeks (one year), respectively. Moreover, 39 weeks of parental leave have been introduced for the first time in *Ecuador*. The length of parental leave has also been doubled in *Australia* to a total of 104 weeks. Similarly, the duration of parental leave for families was increased in 2019 in the *Republic of Korea* from 52 to 104 days. In *New Zealand,* parental leave was increased from 22 to 26 weeks in 2020. Other examples of countries in which the period of parental leave has been substantially increased include *Belgium*, *Cuba*, *Denmark*, *Estonia* and *Greece*.[1337]

673. Rules may also be adopted at the national level on how parental leave can be taken. In *Portugal*, parental leave can be taken for 3 months on a full-time basis; for 12 months on a part-time basis at half of normal full-time working hours; in interspersed periods of extended parental leave and part-time work during which the total duration of absence and reduction in working time is equal to a normal period of 3 months' work; and in interpolated absences from work of a duration equal to a normal period of 3 months' work, as set out in collective agreements.[1338] In *Chile*, parental leave is available for 12 weeks, and can be extended to 18 weeks for half the working day.[1339] In *Croatia*, paid parental leave can be taken for between 8 and 30 months, depending on the number of children.[1340]

674. At the same time, the duration of parental leave has been reduced in other countries, in some cases through the provision of shorter but higher-paid entitlements, which may support women's return to work. In 2019, the parental leave system was reformed in *Sweden* with a reduction of the leave entitlement from 80 to 68 weeks, with 56 weeks paid at 80 per cent of previous earnings and 12 weeks at a flat rate.[1341]

675. The Committee notes that in some countries long periods of parental leave are intended to support the provision of parental care for children, thereby reducing the need for childcare services or addressing the lack of such services, particularly for young children, for whom such services can be relatively expensive or may not be available. In *Czechia,* parental leave is available for three years for each parent, which is one of the longest periods in the world.

1336 ILO, *Care at Work*, 26 and 133. In 40 of these 68 countries, the length of parental leave is more than one year for instance in *Armenia, Azerbaijan, Australia, Egypt, Israel, Japan, Kyrgyzstan, Mongolia* and *Republic of Korea*.

1337 In *Belgium*, before 2021 each parent was entitled to 17 weeks and since 2021, each parent is entitled to 4 months plus 1 year under time credit. Similarly, in *Denmark*, previously both parents were granted 32 weeks; since 2021, each parent has 32 weeks. In *Cuba*, parental leave was extended from 39 weeks to 52 weeks in 2021. In *Estonia*, both parents were previously entitled to 36 weeks whereas since 2021, they have 156 weeks (until child reaches the age of 3 for both parents). In *Greece*, total parental unpaid leave was 34 weeks. In 2021, total parental leave amounts to 51 weeks, with only 4 weeks unpaid. See ILO, *Care at Work*, 136.

1338 *Portugal* (section 51 of the Labour Code).

1339 *Chile* (arts 197 *bis* and 200 of the Labour Code).

1340 *Croatia* (section 14 of the Maternity and Parental Leave Act of 2008).

1341 ILO, *Care at Work*, 135.

However, there are no public childcare services for children up to the age of 2 and the parental leave entitlement acts as a substitute for public childcare services.[1342]

676. ***Taking into account the important role that parental leave plays in helping parents fulfil the essential role of care in the family and in society, the Committee welcomes the establishment in law of a minimum duration of such leave. It welcomes the flexible provisions established in the legislation in some countries, under which different options are available for parents to combine parental leave with part-time work, and to take leave at different periods.***

Distribution of parental leave periods

677. The Committee notes research findings, especially concerning developed countries, which suggest that, although parental leave may be provided for either parent, in practice it is overwhelmingly taken by women.[1343] The unequal distribution of family responsibilities may have a negative impact, such as burn-out among working mothers, with the risk of them leaving their jobs as a result. Research shows that, when parental leave is taken by fathers, it reduces burn-out among working mothers and provides an incentive for men to undertake a larger share of unpaid care work in the long term, thereby helping to change ascribed gender roles.[1344]

678. Moreover, the access of both women and men to adequate parental leave benefits and early childhood education and care services is essential to guarantee the income security and well-being of families with children. Investing in childcare services and benefits, and in parental leave, can enhance both child development and women's economic autonomy.[1345]

679. The Committee welcomes positive trends in encouraging fathers to make use of parental leave through the provision of their own paid parental leave entitlements on a "use it or lose it" basis. The Committee further notes that EU Directive 2019/1158 has strengthened the existing right to four months of parental leave by making two of the four months non-transferable from one parent to another.[1346] Parents may also have the right to flexible leave arrangements, such as part-time leave.

680. In *Sweden*, the "gender equality bonus" offers an economic incentive for parents to share parental leave more equally. Each parent receives a daily amount for each day that leave is taken equally, subject to a ceiling.[1347] In *Germany,* the 12-month entitlement to parental leave is increased to 14 months if both parents take at least 2 months paid parental leave.[1348] In *Italy*, each parent is entitled to 6 months of parental leave as an individual and non-transferable entitlement.[1349] The parental leave system in *France* was reformed in 2014 to offer incentives for the participation of men. Parents of children, who are currently entitled to 6 months parental leave, may take another 6 months leave if the second parent is the beneficiary, with the leave remaining available for 3 years.[1350] In *Japan* and the *Republic of Korea*, the legislation entitles each parent to 1 year of non-transferable paid parental leave.[1351] ***The Committee considers that equally shared parental leave is a transformative tool that enhances gender equality***

1342 ILO, *Care at Work*, 138.

1343 ILO, *Care at Work*, 131. See also CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020.

1344 ILO, *Care at Work*, 135.

1345 ILO, *World Social Protection Report 2020–22*, 91.

1346 Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on Work–life Balance for Parents and Carers and Repealing Council Directive 2010/18/EU.

1347 *Sweden* (sections 5–8 of the Parental Leave Act).

1348 *Germany* (section 1(4) of the Parental Allowances and Parental Leave Act).

1349 *Italy* (section 32 of Legislative Decree No. 151 of 2001).

1350 *France* (Law No. 873 of 2014 for Real Equality between Women and Men).

1351 *Japan* (Welfare of Workers Caring for Children or Other Family Members Act, as amended by Act No.14 of 2017) and *Republic of Korea* (art. 19 of the Act on Equal Employment and Support for Work-Family Reconciliation).

at work.[1352] ***In this regard, the Committee emphasizes that an expectation that childcare is provided exclusively by the mother, and only by the father in certain situations, such as the sickness or death of the mother, has the effect of reinforcing stereotypes concerning assigned roles in relation to family responsibilities.***

681. The Committee observes, from the information provided by the social partners that even though measures have been taken to extend parental leave to other carers in addition to the mother, the amount of parental leave actually taken by fathers is low. The Federal Chamber of Labour (BAK) *(Austria)* indicates that, although parental leave is available to both parents, it is taken by only 13 per cent of fathers due to inadequate financial incentives and the potential loss of earnings. Similarly, the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions of Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK) *(Finland)* report that women still take most parental leave. The General Union of Workers (UGT) *(Spain)* indicates that in *Spain* only one third of men take leave to care for children.

682. In some countries, positive developments have been observed in the more equal distribution of family responsibilities. For example, in *Iceland*, *Portugal* and *Sweden*, around 45 per cent of beneficiaries of parental leave are men, compared with a global average of only 20 per cent. In *Australia*, *Chile* and *New Zealand*, fewer than one in every hundred beneficiaries of paid parental leave is a man.[1353]

683. ***The Committee draws the attention of Member States to the importance of taking measures to promote the distribution of leave between men and women on an equal footing and of providing incentives for men to take up their parental leave entitlements with a view to ensuring genuine equality of opportunity and treatment. Moreover, the Committee recalls the importance of ensuring that single parents are entitled to the full duration of parental leave, including any periods normally assigned to the other parent. The Committee further encourages Member States to step up efforts to encourage men to exercise their right to parental leave through education, awareness-raising and training, as well as other innovative measures to eliminate discriminatory stereotypes.***

Adequacy of parental leave cash benefits and source of financing

684. Globally, cash benefits are provided in 46 of the 68 countries in which there is a statutory right to parental leave,[1354] and parental leave is unpaid in 21 countries.[1355] Parental leave cash benefits are usually provided through social protection systems.[1356] In some countries, parental leave is funded jointly by employer's liability schemes and social protection systems, or employers are solely responsible for paying parental leave cash benefits.[1357] In countries with paid parental leave, the level of cash benefits may be determined as a percentage of previous earnings, with or without a ceiling.[1358] In other countries, flat-rate benefits are provided.[1359]

1352 ILO, *Care at Work*, 151.

1353 ILO, *Care at Work*, 151.

1354 Examples include *Armenia, Azerbaijan, Belarus, Canada, Chile, Cuba, Japan, Kazakhstan, Kyrgyzstan, Republic of Korea, Tajikistan, Ukraine* and *United Arab Emirates*.

1355 Examples include *Angola, Chad, Ecuador, Egypt, Jordan, Morocco, Türkiye* and *United States of America*.

1356 Examples include *Australia, Austria, Azerbaijan, Belgium, Bulgaria, Belarus, Canada, Chile, Cuba, Finland, France, Hungary, Iceland, Ireland, Italy, Kazakhstan, Lithuania, Montenegro, Poland, Portugal, Republic of Moldova, Russian Federation, Serbia, Slovenia, Sweden, Tajikistan* and *Turkmenistan*.

1357 Examples include *Greece, United Arab Emirates* and *Uzbekistan*.

1358 Examples include *Chile, Croatia, Cuba, Denmark, Estonia, Finland, Germany, Hungary, Japan, Kazakhstan, Poland, Republic of Korea, Republic of Moldova, Russian Federation* and *United Arab Emirates*.

1359 Examples include *Armenia, Azerbaijan, Belgium, Bulgaria, Czechia, France, Kyrgyzstan, Slovakia* and *Turkmenistan*.

In the *Russian Federation,* the cash benefits amount to 40 per cent of previous earnings.[1360] In *Chile*, parental leave benefits are 100 per cent of previous earnings for 12 weeks or 50 per cent of earnings for 18 weeks if a parent returns to work on a part-time basis.[1361] In *Greece*, a flat-rate benefit is paid for two months, with 100 per cent of previous earnings for 3.6 months.[1362]

685. In certain countries, parental leave is divided into paid and unpaid periods. For example, in *Australia,* there are two components of parental leave, including unpaid parental leave for up to 12 months and leave paid at a rate based on the national minimum wage for up to 20 weeks.[1363] In *Tajikistan*, paid parental leave is available until children reach the age of 18 months, followed by unpaid leave until they are 3 years old.[1364] In *Iceland*, a flat rate is paid for 12 months and unpaid leave is then available for 4 months.[1365]

686. The Committee welcomes the increase in parental leave benefits in some countries. For instance, in the *Republic of Korea,* the average rate of earnings replacement for the 52 weeks of parental leave has increased from 40 to 58 per cent.[1366] The other countries in which parental leave cash benefits have been increased are in Europe and Central Asia.[1367] In the *United States of America*, the Federal Employee Paid Leave Act (FEPLA) of October 2020 provides up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020. However, the Committee observes that, although higher income replacement rates are usually associated with a greater take-up rate by fathers,[1368] parental leave cash benefits are only above two thirds of previous earnings in nine countries, where only 0.9 per cent of potential parents live.[1369]

687. The Committee notes the indication by Business New Zealand and the New Zealand Council of Trade Unions that increased benefits provided during parental leave would contribute to improving gender equality and the sharing of childcare responsibilities. Moreover, the Swedish Trade Union Confederation (LO) adds that, in addition to social insurance and assistance schemes to finance parental leave, collectively agreed renumeration may be paid by employers in *Sweden* to parents who are on leave with a view to increasing their income and providing them with an incentive to take parental leave.

688. ***Although Recommendations Nos 165 and 191, and other ILO social security and maternity protection standards, do not set any benchmarks for the level of parental benefits, the Committee observes that practice shows that unpaid and low paid parental leave contribute to further devaluing unpaid care work and promote the unequal distribution of childcare within the household.***[1370] ***The Committee emphasizes the importance of the provision by social security systems of cash benefits at a sufficient level to ensure the income security of parents during parental leave. The Committee observes that adequate cash benefits appear in particular to encourage employed fathers and second parents to take parental leave, resulting in a better distribution of family responsibilities and promoting gender equality.***

1360 *Russian Federation* (section 15 of the Federal Act on State Benefits to Citizens with Children No. 81-FZ of 1995).

1361 *Chile* (section 197 *bis* of the Labour Code).

1362 *Greece* (section 28 of Law No. 4808/2021).

1363 ILO, *Care at Work*, 141.

1364 *Tajikistan* (section 165 of the Labour Code).

1365 *Iceland* (art. 24, section VII, of the Act on Maternity/Paternity Leave and Parental Leave).

1366 *Republic of Korea* (art. 19 of the Act on Equal Employment and Support for Work-Family Reconciliation, as amended by Act No.16557 of 2019, and art. 70 of the Employment Insurance Act).

1367 Examples include *Armenia, Croatia, Estonia, Greece, Ireland, Kazakhstan, Romania* and *Slovenia*.

1368 ILO, *Maternity and Paternity at Work*, 61; ILO, *World Social Protection Report 2020–22*, 117.

1369 In *Serbia*, *Finland* and *Romania*, parental leave cash benefits are respectively at 66.7, 70 and 85 per cent of previous earnings. In *Chile*, *Croatia*, *Luxembourg*, *Montenegro* and *Slovenia*, parental leave cash benefits are paid at 100 per cent of previous earnings.

1370 ILO, *Care at Work*, 139.

1.2. Leave in the event of the illness of a family member

Leave of absence in case of illness of a dependent child

Recommendation No. 165, Paragraph 23

689. Leave of absence in case of illness is a special type of leave of short duration that a worker can take for urgent family reasons that make the immediate presence of the worker indispensable.[1371] This type of leave generally varies in length from two to ten days a month on average. Depending on the national legislation, the following contingencies may give workers the right to such leave: accidents to members of the worker's immediate family; a sudden illness of any member of the worker's immediate family requiring her or his assistance or presence; and the worker's presence during the births and deaths of members of their immediate family.

690. The Committee notes that countries have reported on the existence of statutory provisions on emergency leave that are generally granted irrespective of the sex of the worker, for instance in *Algeria, Bahrain, Bulgaria, Burundi, Dominican Republic, Ecuador, Egypt, Guatemala, Indonesia*, *Iraq, Nicaragua, Oman, Peru* and *Saudi Arabia*. The Committee notes that, in *Australia*, section 96 of the Fair Work Act of 2009 entitles employees (other than casual employees) to ten days paid personal/carer's leave for each year of service to care for a member of their immediate family or household who requires care or support due to personal illness, injury or an unexpected emergency; section 102 of the Act entitles employees to two days unpaid carer's leave on each occasion that a member of their immediate family or household requires care or support due to personal illness, injury or an unexpected emergency. In the *Seychelles*, by virtue of the Employment Regulations, employees are entitled to four days compassionate paid leave in any 12month period.[1372] In *Colombia*, section 57(6) of the Labour Code provides for leave in the event of a domestic emergency, which was defined in Decision No. 2194 of 2003 of the Administrative Chamber of the Higher Council of the Judiciary as including the death, illness or serious injury of family members up to the fourth degree of consanguinity, the second degree of affinity or the first degree of civil relationship. The duration of the leave is not specified by law and depends on workplace regulations or agreement with the employer. However, Constitutional Court decision No. C-930 of 2009 requires such leave to be paid.[1373]

691. According to ILO research,[1374] 101 countries provide for paid emergency leave, including *Argentina, Benin, Plurinational State of Bolivia, Brazil, Cameroon, Canada, China, Colombia, Fiji, Hungary, Israel, Maldives, Myanmar, Netherlands, Niger, Pakistan, Peru, Senegal, Slovakia, South Africa, Uganda* and *Viet Nam*. In 90 of the 101 countries where paid emergency leave exists, it is funded by the employer. There are only 8 countries where emergency leave cash benefits are provided through the social protection system: *Chile, Czechia, Estonia, Germany, Luxembourg, Portugal, Slovakia* and *Slovenia*. In *Norway* and *Singapore* there is a mixed system under which employers and social insurance are jointly responsible for the payment of emergency leave.

1371 ILO, *Care at Work*, 166.

1372 *Seychelles* (Act on Employment Relations No. 2 of 1995).

1373 The same decision further states in para. 5.8.2 the duration of such leave is to be established according to a "reasonableness criterion" that takes into account the gravity of the domestic emergency, the possibility of resolving it in a given period of time, the presence of other family members or friends that may provide support, and the worker's resources, as well as the impact on the workers' work and the enterprise, and the possibility to replace the worker concerned for a period of time.

1374 ILO, *Care at Work*, 166–169.

692. ***The Committee considers that leave of absence in the case of illness of a dependent child, including emergency leave facilitates the reconciliation of work and family responsibilities as it corresponds to a genuine need for all workers irrespective of their family situation. The Committee draws the attention of Member States to the importance of taking measures for the provision of paid emergency leave to workers with family responsibilities when they need to care for family members who are sick.***

Long-term leave to care for dependents

693. According to ILO research,[1375] the provision of leave for family reasons going beyond parenting is becoming more widespread as a result of the ageing of the population, transformations in the world of work, health crises, such as the COVID-19 pandemic, and other societal changes. Although Recommendation No. 165 envisages the provision of leave in the case of the illness of a member of the worker's immediate family, ILO instruments do not set any benchmarks or parameters for this type of leave, for example in relation to its duration, level of payment, financing or eligibility conditions.

694. Long-term leave to care for dependents is a special type of leave entitlement available to employed persons to care for a child with a disability or family members with long-term functional dependency.

695. The Committee notes that the legislation in a number of countries provides for leave without pay for family/personal reasons for a duration ranging between six months and two years.[1376] The Committee notes that, according to ILO research, globally there are only 55 countries in which workers have a statutory entitlement to long-term care leave.[1377] In the *Seychelles*, long-term care leave is funded up to a ceiling (2,480 Seychelles rupees a month (US$193.27)), with the employer paying the difference between the benefits provided and the full salary. In *Ecuador,* the *Islamic Republic of Iran, Israel* and *Kyrgyzstan*, employers pay for long-term care leave. In *Poland*, long-term care leave is funded through social insurance for establishments with fewer than 20 workers and by employers in establishments with over 20 workers.[1378]

696. In *Japan*, under the Childcare and Family Care Leave Act of 1995, as amended in 2017, workers are entitled, for eligible family members, to 93 days of long-term care leave during their career, which can be divided into a maximum of three segments and is paid at 67 per cent of previous earnings.[1379] In *Guatemala*, in accordance with section 59 of Decision No. 1090 of the Board of the Guatemalan Social Security Institute, unpaid leave may be granted to the Institute's workers for up to six months in cases of force majeure or family emergencies.

697. Long-term care for family members with long-term functional dependency has become more challenging as societies age. In its general observation of 2020 on Convention No. 156, the Committee expressed the hope that, in light of demographic projections demonstrating the growth of the dependency ratio of the elderly, more leave arrangements would be adopted to facilitate workers' care for their elderly family members. Long-term care needs can be met through care services, but most frequently, in the absence of such services, they are covered

1375 ILO, *Care at Work*, 27, 131 and 160.

1376 For example, *Bahamas, Burkina Faso, Honduras* and *Togo*.

1377 ILO, *Care at Work*, 160.

1378 ILO, *Care at Work*, 353–361.

1379 Shingou Ikeda, "Quitting Work for Elderly Care, and the Need for Family-care Leave", *Japanese Journal of Labour Studies* 52, No. 4 (2010); "Family Care Leave and Job Quitting Due to Caregiving: Focus on the Need for Long-Term Leave", *Japan Labour Review* 14, No. 1 (2017). Research based on case studies in Japan suggests that this type of leave works effectively for short-term terminal care in that it makes it possible to take leave during the acute phase of illness or towards the end of the recipient's life.

by the family members of the person in need of care, and mainly by women.[1380] As a result, in order to cope with such family responsibilities, family members, in particular women, often change from full-time to part-time work or leave their jobs. The introduction of leave to care for elderly immediate family members, as called for in Recommendation No. 165, is therefore important, alongside the provision of quality, accessible and affordable services in the community for older people and persons with disabilities.

698. ***The Committee encourages governments to envisage, in consultation with the social partners, the design of a long-term care leave system as an important means of support for the continued employment, not only of women, but also of men who are closely involved in caring duties. In this regard, the Committee considers that the following could be taken into account: (i) ensuring that the length of such leave is sufficient to provide the required care to sick members of the immediate family; (ii) the provision of adequate payments to ensure the income security of workers who take such leave; and (iii) the possibility of backing up the long-term care leave system with accessible and good quality social services to ensure the reconciliation of work and family responsibilities.***

1.3. Paternity leave

699. Although none of the standards under examination contain explicit references to paternity leave, the Committee has noted a positive change in recent years in paternity leave policies as a result of a transformation in societal values and demographic shifts. In this regard, the Committee recalls that the 2009 International Labour Conference resolution concerning gender equality at the heart of decent work contains a section on the role played by men in gender equality. The resolution recognizes that paternity leave can help working fathers to be more involved in childcare, thus contributing to breaking down long-standing gender stereotypes. The resolution also calls for governments, together with the social partners, to develop policies for a better balance between work and family responsibilities, including parental and/or paternity leave.[1381] Most recently, the 2021 International Labour Conference resolution concerning the second recurrent discussion on social protection (social security) has recognized the importance of designing gender-responsive social protection policies, including by fostering income security during paternity leave.[1382]

700. Statutory paternity leave is a leave entitlement which enables fathers to take a short period of leave immediately following the birth of a child. It is often associated with the provision of help and support to the mother and the newborn during the period around childbirth, as well as enabling fathers to bond with their newborn baby and to share unpaid care work. It is distinct from parental leave described in paragraphs 658 to 688 of this Survey. Paternity leave policies directly challenge the societal norm in many countries that women should be the main carers, leaving men to be the breadwinners. They also demystify fallacies about the role of fathers as distant parents.[1383]

701. The Committee notes that, despite the absence of explicit provisions in the international labour standards under examination, there is a trend in an increasing number of countries to introduce paid paternity leave. According to ILO estimates in 2021, paternity leave is available in 115 countries.[1384] The Committee observes that certain governments report statutory

1380 ILO, *Care at Work*, 160.

1381 ILO, Resolution concerning gender equality at the heart of decent work, International Labour Conference, 98th Session, 2009, paras 6, 28 and 42.

1382 ILO, Resolution concerning the second recurrent discussion on social protection (social security), International Labour Conference, 109th Session, 2021, para. 13(f).

1383 ILO, *Care at Work*, 97

1384 ILO, *Care at Work*, 96.

paternity leave, including the Governments of *Algeria, Burkina Faso, Colombia, Côte d'Ivoire, Cyprus*, the *Dominican Republic, Mali*, the *Maldives*, *Nicaragua*, *Saudi Arabia*, *Suriname* and *Switzerland*. The Government of *Jamaica* also indicates that discussions are being held to ascertain the feasibility of introducing paternity leave.

702. ***The Committee emphasizes the importance of including working fathers in childcare leave measures, such as paternity leave, which can have important implications for the equal sharing of family responsibilities and the promotion of genuine gender equality in employment and occupation. The Committee therefore encourages governments to adopt comprehensive and coordinated measures in consultation with the social partners with a view to the establishment in national legislation of a statutory right to paid paternity leave.***

Duration

703. Paternity leave is short throughout the world, with 9 days (1.3 weeks) as a global average, and significant regional variations. For example, 1 day of paternity leave is granted to working fathers in *Tunisia*, 2 days in *Indonesia*, 3 days in *Panama*, 5 days in *Fiji* and 10 days in *Australia*. The Committee notes that ILO research[1385] has found a positive trend of a substantial increase in the length of paternity leave in a number of countries. For instance, paternity leave was increased from 3 to 14 days in *Paraguay* in 2015; from 4 to 10 days in *Peru* in 2018; from 3 to 13 days in *Uruguay* in 2013; and from 8 working days to 2 weeks in *Colombia*. In 2012, the Government of *Myanmar* extended the duration of paternity leave from 6 to 15 days, which is the longest in the region. In 2019, in the *Republic of Korea,* the duration of paternity leave was increased from 3 days of unpaid leave to 10 days. In the *Seychelles,* the duration of paternity leave was also increased from 4 to 10 days in 2018. In *South Africa,* leave for fathers of newborn children was increased from 3 to 10 days in 2018. The Committee further notes the indication by the General Confederation of Labour of the Argentine Republic (CGT–RA) *(Argentina)* concerning the Bill "Caring in Equality", which proposes to extend paternity leave and leave for non-pregnant partner from 2 to 90 days.[1386] In particular, the Committee notes that in *Spain* paternity leave has been expanded from 15 days to 16 weeks. This leave is now called leave for the birth and care of a child "for parents who are not the biological mother", and of the same duration as maternity leave, now called leave for the birth and care of a child "for the biological mother" (section 48(4) of the Workers' Statute). The 16 weeks consist of non-transferable paid leave for each parent, the first 6 weeks of which have to be taken immediately following the birth, without interruption and full-time, while the remaining 10 weeks can be taken as decided by the parents, in whole or in stages, until the child reaches the age of 12 months. The Committee notes that 10 European Union Member States out of 27 are in compliance with the right to 10 working days of paternity leave set out in Directive (EU) 2019/1158 on work–life balance for parents and carers,[1387] which introduced the right to paternity leave for fathers and insofar as recognized by national law, for equivalent second parents (article 4(1) of Directive 2019/1158). The Directive also provides that the right to paternity leave shall be granted irrespective of marital or family status, as defined by national law, and recognizes the competence of Member States to define marital and family status, and to establish the persons who are to be considered a parent, mother and father. In *Iceland*, fathers are entitled to six months paternity leave with 80 per cent of previous earnings financed through social security. In *Finland*, they are entitled to 54 days with 70 per cent of previous earnings financed through social security. In *Norway*, fathers are entitled to either 15 weeks at 100 per cent pay or 19 weeks at 80 per cent pay through social security.[1388] ILO research

1385 ILO, *Care at Work*, 99–100.

1386 *Argentina* (section 37, of the Bill "Caring in Equality", ref. INLEG-2022-43571696-APN-PTE).

1387 For instance, *Belgium, Estonia, Italy, Luxembourg* and *Sweden*.

1388 ILO, *Care at Work*, 328.

has found that paternity leave is not a one-size-fits-all solution to promote the equal sharing of family responsibilities and, as entitlement to paternity leave is only for a few days in the majority of countries, this policy alone is unlikely to make a great difference in transforming traditional gender roles. However, by establishing a statutory right to paternity leave, governments, workers, employers and societies as a whole can publicly affirm that they value the care work of both women and men, which is a crucial step in advancing gender equality both at work and in the home.[1389]

704. The Committee also notes that a further step has been taken in some countries by introducing compulsory paternity leave in national legislation. Examples include *Chile*, the *Islamic Republic of Iran, Italy* and *Luxembourg*. In *Suriname*, working fathers are entitled to seven days paternity leave, made up of three working days following the day of the birth, two immediately after the end of maternity leave and two to be taken during the first four months following delivery, in consultation with the employer (section 4(1) and (2) of the Maternity Protection Act). In *France*, 4 out of 25 days of paternity leave are compulsory and must be taken during the first month following the birth.[1390] ***The Committee calls on governments and workers' and employers' organizations to strengthen their efforts to raise the awareness on the socio-economic benefits of providing paid paternity leave of sufficient length as a means of helping men and women workers reconcile work and family responsibilities.***

Source of financing

705. The Committee notes that employers are still individually liable for the full cost of paternity leave in 61 of the 102 countries in which paid paternity leave is available,[1391] including in *Algeria, Argentina, Angola, Bahrain, Plurinational State of Bolivia, Brazil, Chile, Djibouti, Ecuador, El Salvador, Equatorial Guinea, Ethiopia, Fiji, Greece, Iraq, Kenya, Lao People's Democratic Republic, Maldives, Malta, Nepal, North Macedonia, Republic of Korea*, *Romania, Saudi Arabia, South Sudan* and *Türkiye*. In other countries, paternity leave cash benefits funded by social insurance have been introduced, such as *Bulgaria*, *Cyprus*, *France*, *Hungary, Italy, Poland*, *Singapore, Slovakia, Spain, Timor-Leste* and *Viet Nam*. The Committee notes that, in 2022, the Government of *Morocco* granted public officials 15 days of paid paternity leave.[1392] It also notes that, in accordance with Directive (EU) 2019/1158, paternity leave is compensated at least at the level of sick leave. In *Australia*, 14 days of paternity leave are paid by the federal Government.

706. The Committee also notes that paternity leave cash benefits can be financed through a combination of collective funding and employer's liability (mixed systems), as is the case in *Belgium,* where the first three days are paid by the employer at a rate of 100 per cent of average remuneration, and the remaining seven days are paid by a sickness and indemnity insurance scheme at a rate of 82 per cent. In the *United Kingdom of Great Britain and Northern Ireland*, employers in large and medium-sized companies pay the benefit but are entitled to recover 92 per cent of the statutory paternity pay provided to employees.[1393] In its report, the Government of *France* refers to a number of legislative amendments introduced in 2021 increasing paid paternity leave from 14 to 28 days, and to 32 days in the case of multiple births.[1394] Employers are also required to grant 7 days of paternity leave immediately following childbirth, with the first 3 days being fully paid by the employer and the remaining days by the State.

1389 ILO, *Maternity and Paternity at Work*, 59.

1390 ILO, *Care at Work*, 118.

1391 ILO, *Care at Work*, 106.

1392 *Morocco* (Law No. 30.22 of September 2022 amending sections 38, 39, 46 of the Civil Service Status).

1393 ILO, *Maternity and Paternity at Work*, 57.

1394 *France* (sections L.1225-35 to L.1225-36, D.1225-8 and D.1225-8-1of the Labour Code; sections L.331-8, and D.331-3 to D.3318 of the Social Security Code; Decree No. 2021-574 of 2021 concerning the extension and the obligation to take a part of paternity leave or leave for the arrival of a child; and Act No. 2020-1576 of 2020 on the financing of social security for 2021).

1.4. Adoption leave

707. Recommendation No. 191 is the first ILO instrument to call for protection for adoptive parents. It indicates in Paragraph 10(5) that where "national law and practice provide for adoption, adoptive parents should have access to the system of protection offered by the Convention [No. 183], especially regarding leave, benefits and employment protection".[1395]

708. It was noted during the preparatory work that the objective of adoption leave is not related to the need to recover following childbirth, as in the case of maternity leave. Nevertheless, adoptive parents should have time to adapt to the arrival of the child.[1396] In addition, in the same way as biological parents, adoptive parents need to reconcile family and work responsibilities.

709. According to a recent ILO estimate, adoption leave is available in only 52 countries. Most of these countries are in Europe and Central Asia (35 out of 53), while adoption leave is available in 10 countries in the Americas, 5 countries in Asia and the Pacific and 2 countries in Africa. There are no countries in the Arab States in which adoption leave is available.[1397] The Committee observes that, in most of these countries, adoption leave is available for both parents. However, in some cases, only women are entitled to it.[1398] In other countries, adoption leave is shorter for fathers.[1399] In contrast, in many countries, the coverage of adoption leave is extended to include not only adoptive parents, but also the guardians of children and foster parents.[1400] In certain countries, same-sex couples are also entitled to adoption leave.[1401]

710. The Committee observes that, in countries where the national legislation provides for access to maternity protection for adoptive parents, the duration of the leave may be shorter as, in many cases, it does not include the prenatal part of maternity leave.[1402] However, in certain countries, adoption leave starts earlier,[1403] particularly in cases when parents are adopting a child from abroad. For example, in *Denmark*, each adoptive parent has the right to paid leave for up to four weeks if he/she needs to go abroad to pick up the child, which may also be extended by another four weeks.[1404] In *Hungary*, as a result of the legislative amendments introduced by Act No. LXV of 2020, employees who are planning to adopt a child have the right to 10 days of leave a year during the preparatory period for legal adoption to facilitate personal contact with the child. In *Argentina*, a Bill has been submitted proposing leave of 2 to 12 days a year for persons who are about to adopt children to facilitate the legal procedures and meetings with the children or young persons to be adopted. In the case of adoption, 90 days of leave is available, which can be extended to 180 days for the adoption of children with disabilities.[1405] In some countries, adoption leave can be extended for single

1395 Arrangements to facilitate the reconciliation of work and family life following maternity and paternity leave may include, among others, adoption leave. See General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020.

1396 Law and Practice Report on Convention No. 183, 99.

1397 ILO, *Care at Work*, 81.

1398 For example, *Costa Rica* and *Guatemala*.

1399 For example, in *Nicaragua*, adoption leave for employed mothers is 12 weeks, whereas it is only 5 weeks for employed fathers. The 12-week adoption leave is provided only to single adopting parents.

1400 For example, *Armenia, Azerbaijan, Brazil, Estonia, Greece, Italy, Myanmar* and *Serbia*.

1401 For example, *Belgium, France, Netherlands* and *United Kingdom of Great Britain and Northern Ireland*.

1402 For example, *Armenia, Azerbaijan, Belgium, Bulgaria, Chile, Costa Rica, Croatia, Estonia, Greece, Guatemala, Ireland, Kazakhstan, Mexico, Russian Federation, Suriname, Türkiye, Turkmenistan* and *Uruguay*.

1403 For example, *Denmark, Italy, Netherlands* and *Bolivarian Republic of Venezuela*.

1404 *Denmark* (section 8 of the Maternity Act No. 106 of 2020).

1405 See Government of *Argentina*, "Proyecto de Ley 'Cuidar en Igualdad'" ("'Caring in Equality' Bill").

adoptive parents,[1406] or for the adoption of more than one child.[1407] Adoption leave may also be available until the child reaches a certain age. For example, in *Myanmar*, leave is granted to adoptive parents of children under the age of 1, while in *Suriname* the age of the child may not exceed 18 months. In *Armenia*, adoption leave is provided until the child is 70 days old.[1408] In *Bulgaria*, 365 days of leave are available for the adoption of a child under the age of 5.[1409] In *Greece* and *Sweden*, adoption leave is provided to parents of children under 8 years of age, and in *Peru* the child has to be under the age of 12.

711. ***Recalling the importance of having sufficient time to adapt to the arrival of a child and of the integration of family and work responsibilities for adoptive parents, the Committee draws the attention of Member States to the importance of ensuring that adoptive parents benefit from similar protection to that established for biological parents in relation to leave, benefits and employment. In this respect, the Committee emphasizes that adoption leave should not be limited to women and should be available for adoptive parents, irrespective of their sex.***

2. Working-time and workplace arrangements

712. The Committee notes that ILO research found that the "balance between work and family" is one of the top challenges faced by working women worldwide.[1410] Within this context, the Committee recalls that it noted in its general observation of 2020 on Convention No. 156 that for many workers, rigid schedules and long daily and weekly working hours are incompatible with achieving a work-family balance. This fuels gender segregation in employment by creating barriers to labour market entry and career advancement for those with family responsibilities. As mentioned in this report, it is women who are mainly associated with family care responsibilities and face difficulties balancing them with work. The lack of family-supportive policies, including flexible working arrangements, often push women either to take a break in their career or to completely drop out of the labour market in order to care for small children or to provide care for one or more sick family members. Even if men are willing to take up care roles, they are often discouraged from doing so. This shows that even if there is legislation to encourage men to share the role of family responsibilities, society is not embracing it, and that mindset should be changed. This is more pronounced in traditionally patriarchal societies.

713. Noting these elements, the Committee recalls its general observation of 2020 on Convention No. 156 in that providing more autonomy and flexibility to workers allows for more adaptation and worker control over their working arrangements and can create a positive organizational climate that may lead to improved performance. The Committee welcomes such arrangements when they are voluntary and protected in accordance with other international labour standards. Furthermore, family-friendly policies should be progressively put in place in a holistic way; taking into account national conditions to benefit both men and women workers so that society's perceptions of family responsibilities evolve in order to promote gender equality and help women become integrated in the labour market.

1406 For example, in *Belgium*, single parents are entitled to 2 additional weeks since 2021. In *Ireland*, a single adopting parent will be granted leave of 24 weeks starting from the date of placement.

1407 In *Colombia* and *Portugal*, 2 additional weeks are granted to parents adopting more than one child. In *France*, adoption leave is extended by 6 weeks in case of multiple adoption, whereas in *Poland*, it is extended by 11 weeks in the case of adoption of two children.

1408 *Armenia* (arts 172 and 173 of the Labour Code).

1409 *Bulgaria* (art. 164b of the Labour Code).

1410 ILO and Gallup, *Towards a Better Future for Women and Work: Voices of Women and Men*, 39.

714. In this context, the Committee recalls that, in order to promote gender equality, working-time arrangements have to be designed in such a way as to enable men and women to combine paid work and family responsibilities. Article 4(b) of Convention No. 156 therefore calls for measures which take into account the needs of workers with family responsibilities with regard to terms and conditions of employment and social security. Regarding terms and conditions of employment, the Committee refers to Recommendation No. 165, particularly Paragraphs 18–20, which provide guidance on the measures that could be adopted by ILO Member States which would help to improve the working conditions of workers with family responsibilities,

715. The following sections – (1) progressive reduction of daily hours of work and overtime; and (2) flexible working arrangements – will show examples of law and practice in ILO Member States that promote and create an enabling work environment for workers with family responsibilities.

2.1. Reduction of working hours to accommodate workers with family responsibilities

Progressive reduction of daily hours of work

> **Recommendation No. 165**, Paragraph 18

716. The Committee recalls that, over the years, the ILO has adopted international standards on a variety of subjects related to working time, including hours of work, weekly rest, paid annual leave, night work and part-time work. Working hours originating from individual contract or collective agreements, are generally negotiated to accommodate the needs of workers with family responsibilities. In its 2018 General Survey, the Committee addressed several themes related to working time, including promoting health and safety, and advancing productivity and sustainability of enterprises. For the purposes of the present General Survey, the Committee will limit its focus to two aspects of working-time arrangements: (1) those that help to accommodate the needs of workers with family responsibilities in the workplace; and (2) those that help to promote gender equality in employment and occupation.

717. In 2018 the Committee had already observed that measures that assist workers in improving the balance between their working time and personal lives are taking on greater importance, including by allowing workers to change work schedules for personal reasons, such as maternity, childcare, care for sick family members or for elderly family members, or workers' own health issues.[1411]

718. With respect to the reduction of daily hours of work, the Committee recalls that Recommendation No. 165 does not set any limit on the reduction of working hours. During the preparatory work, it was also suggested using the concept of "daily working hours" as opposed to "normal hours of work", on the grounds that workers with family responsibilities have to meet their responsibilities on a daily basis and that it is therefore very important to reduce daily working hours.[1412]

1411 2018 General Survey, paras 659–660.

1412 ILO, *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, Report V(1), International Labour Conference, 67th Session, 1981 (hereinafter "Report V(1) on Convention No.156"), paras 202–219.

719. The Committee observes that many countries have recently moved towards reducing working time to 8 hours per day or 48 hours per week, benefiting all workers regardless of their family responsibilities.[1413] It is worth recalling here that a number of ILO standards calling for limits on hours of work were adopted in response to economic issues related to production and unemployment, or for health and safety reasons.[1414] Recommendation No. 165 is the first international standard that addresses the issue of working time from the perspective of workers with family responsibilities. One element concerns hours of work and the way in which they are organized, which can have an effect on the quality of work and on personal and family life.

720. For example, in *Azerbaijan* reduced working time of 36 hours per week is available for certain categories of workers, including pregnant women, women with a child under the age of 18 months, and single parents raising a child under the age of 3.[1415] In the *Republic of Korea,* workers can apply for a reduction of working hours for periods of childcare and in *Senegal* they can ask for reduced and flexible working hours subject to notification to the labour inspectorate.[1416] In *South Africa*, every employer must regulate the working time of each employee with due regard to family responsibilities.[1417]

721. The Committee also observes that in many countries there are no statutory provisions providing for the reduction of working hours to accommodate the needs of workers with family responsibilities. For example, in the *Bahamas*, the Government indicates that although the Employment Act does not provide for such measures, these could be agreed on later by specific employers.

722. ***The Committee considers that the reduction of working hours can help improve the daily life of working parents. The Committee also emphasizes the importance of the 8-hour day and the 48-hour week as a legal standard for hours of work in order to provide protection against undue fatigue and stress and to ensure reasonable leisure time and opportunities for recreation and social life for workers. The Committee recalls that when fixing limits on working hours, governments should take into consideration the health and safety of workers and the importance of the work–life balance. The Committee encourages governments, in consultation with employers' and workers' representative organizations, to use the reduction of working hours as a policy to enable workers to balance their work with their family responsibilities.***

Reduction of overtime

723. The Committee recalls that, as noted in its 2018 General Survey, hours of work as established by ILO Conventions, in particular the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), are limited to a maximum number of hours to be accomplished in the day and in the week. Exceeding those hours on a permanent or exceptional basis (as provided for in the Conventions) should be governed by national legislation.[1418]

1413 2018 General Survey, paras 84–89.

1414 Such as the Hours of Work (Industry) Convention, 1919 (No. 1), the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), the Forty-Hour Week Convention, 1935 (No. 47), and the Reduction of Hours of Work Recommendation, 1962 (No. 116).

1415 *Azerbaijan* (section 91 of the Labour Code).

1416 *Republic of Korea* (sections 19(2) and 22(2) of the Act on Equal Employment and Support for Work-Family Reconciliation) and *Senegal* (section L136 of the Labour Code).

1417 *South Africa* (section 7 of the Basic Conditions of Employment Act No. 75 of 1997).

1418 2018 General Survey, para. 148.

724. In a number of countries, legislation regulates the uptake of overtime by workers with family responsibilities. For instance, consent to engage in overtime work is required in *Armenia* for pregnant women and employees taking care of a child under the age of 1 and in *Switzerland* for a worker who has a child under the age of 15 or has a family member who needs particular support.[1419] In the *Russian Federation*, written consent needs to be obtained from mothers with children under the age of 3, single mothers and fathers with children under the age of 5, workers with children with disabilities, and workers taking care of sick relatives in order for them to engage in night work, overtime work, work on days off and on holidays, and business trips.[1420]

725. The Committee further refers to its 2018 General Survey, in which it recalled the impact that long hours of work can have on workers' health and their work–life balance. ***The Committee emphasizes the fundamental importance of prescribing clear statutory limits for the additional hours of work to be undertaken on a daily, weekly and yearly basis, and of keeping the number of additional hours within reasonable limits that take into account both the health and well-being of workers, and the employers' productivity needs.***[1421] ***The Committee highlights that policies and measures designed by governments in full consultation with employers' and workers' organizations for improving working conditions and the quality of working life for working parents can enhance the work–life balance for working parents.***

2.2. Flexible working arrangements

Recommendation No. 165, Paragraph 18

Working schedules

726. The Committee recalls that basic flexitime arrangements allow workers to choose when they start and finish work, on the basis of their individual needs (within specified limits), and in some cases even the number of hours that they work in a particular week.[1422]

727. The Committee notes that the use of flexible working hours has grown significantly in many countries. For example, in *Cyprus*, employees returning from parental leave may request changes to their working hours and patterns for a set period of time.[1423] In *Mali*, section L.132 of the Labour Code provides for flexible working hours *(horaires individualisés)* to cater for requests from workers with family responsibilities. In *Australia*, working arrangements such as changes in hours of work, patterns of work and work locations can be requested by employees who have at least 12 months' continuous service with their employer and who: (i) are parents or have responsibility for the care of a child who is school-age or younger; (ii) provide care or support to a member of their immediate family; and (iii) are carers within the meaning of the Carer Recognition Act 2010.[1424]

728. The Committee notes that the "compressed work-week", enabling work for just four days a week while still earning the regular five-day pay, has become an option available to all workers, not necessarily because of family responsibilities, in countries such as *New Zealand*

1419 *Armenia* (section 144 of the Labour Code) and *Switzerland* (section 36 of the Federal Labour Law).

1420 *Russian Federation* (sections 96, 99, 113 and 259 of the Labour Code).

1421 2018 General Survey, para. 151.

1422 Regarding regimes of flexible working hours, see 2018 General Survey, paras 698–701.

1423 *Cyprus* (section 10(2) of the Parental Leave and Leave on Grounds of Force Majeure Law No. 47(I)/2012)

1424 *Australia* (section 65 of the Fair Work Act). The Carer Recognition Act 2010 aims to increase recognition and awareness of the role carers play in providing daily care and support to people with disability, medical conditions, mental illness or who are frail aged.

and *Sweden.* The Committee also notes that in some countries, workers who have caring responsibilities can benefit from special working arrangements. For example, in *Panama*, employers shall grant the necessary time for fathers, mothers or relatives (within the fourth degree of consanguinity and second degree of affinity), guardians or persons authorized by the legal representative of the person with the disability to accompany a person with disabilities to appointments, treatments or educational activities related to their disability that require such accompaniment.[1425]

729. The Committee takes note of the findings from the ILO and other academic research showing that flexi-time arrangements are typically introduced in enterprises and other organizations with the objective of providing a tool to facilitate employees' work–life balance, rather than for specific business reasons. They can, however, also serve business objectives, especially by improving motivation and performance.[1426] In this regard the International Organisation of Employers (IOE) indicates that special arrangements that help to minimize the conflict between workers' family and professional responsibilities could increase productivity by reducing absenteeism and lateness, decrease the costs of employee turnover and assist employers in attracting new staff. The Committee notes that flexibility in working time has been increasingly adopted in response to factors including the ageing population, changes in the world of work, and health crises such as the COVID-19 pandemic.[1427] ***The Committee encourages governments to facilitate the introduction of flexible working-time arrangements in the workplace, in consultation with representatives of workers' and employers' organizations, in order to accommodate the needs of working men and women. The Committee emphasizes that workers should not be denied access to work organization entitlements, where they exist, and workers who take up these entitlements should not be subject to acts of reprisal or suffer a negative impact on their career advancement or employment.***

730. In some countries, the establishment of flexible arrangements is foreseen as a possibility rather than an obligation. In *Colombia,* the worker and the employer may agree on a flexible working schedule and conditions of work to facilitate workers being closer to their family, including their permanent partner, minor children and elderly persons of their family unit or their family within the third degree of consanguinity, as well as family members with disabilities or in a situation of dependence. Such arrangements shall be included in the Internal Work Regulations of the employer.[1428] ***The Committee considers that employers have a key role to play in supporting women and men with family responsibilities by offering flexible working arrangements, such as the compressed work-week, and promoting that they avail themselves of such arrangements.***

Holidays

731. Regarding holidays, the Committee recalls that Paragraph 18(b) of Recommendation No. 165 provides that workers should be in a position to take up their annual leave to coincide with their children's school holidays. Only a few governments provided information in this regard. For instance, in *France*, civil servants who have children are given priority to schedule their annual leave during the school break. Also, in *Tunisia,* civil servants with family

1425 *Panama* (section 17 of Law No. 42 of 1999 on Equal Opportunities for Persons with Disabilities, as amended by Law No. 15 of 2016).

1426 See ILO, *Guide to Developing Balanced Working Time Arrangements*, 2019; 2018 General Survey; OECD, *The Pursuit of Gender Equality: An Uphill Battle*, 2017; UN Women, *Progress of the World's Women 2019–2020: Families in a Changing World*, 2019.

1427 ILO, *Care at Work*, 131.

1428 *Colombia* (section 5 of Law No. 1361 of 2009 on Family Protection Measures, as amended by Law No. 1857 of 2017).

responsibilities are given priority in the choice of their annual leave period.[1429] Similar preferential rights are undoubtedly practised in many countries by law, collective agreements and good business practice. But while their spread within public administrations is made possible in some respects by the continuity of the public service and the relative flexibility of its organization, there is a concern that the implementation of this measure will encounter more difficulties in companies that work under continuous fire and are sometimes forced to close during the annual holiday. This situation should make a stronger case for flexible measures during the rest of the year to facilitate the reconciliation of work requirements and the demands of family responsibilities.

732. In *Colombia,* there is a paid "family day", by which every six months employers must facilitate a working day (not a rest day) for workers to spend time with their family in a space provided by the employer or managed by a family compensation fund. If unable to organize it, the employer shall allow workers to have this day without affecting their rest days and without requiring proof that workers spent it with family members. Participation in a "family day" is open to members of the "family" understood as a "sociological unit with the essential aim of mutual help and support among its members". According to criteria of reasonableness and proportionality, the employer decides who participates in the "family day".[1430]

2.3. Other working conditions

Shift and night work

> **Recommendation No. 165**, Paragraph 19

733. Legislation in many countries regulates shift work as a method of organization of working time in which workers succeed one another at the workplace. The two-shift fixed system (morning/afternoon and afternoon/evening) and three-shift fixed system (morning, afternoon/evening and night) are the most common.[1431] Shift work is mainly observed in the health sector or in workplaces that need to run for more than the specified work time of an employee, such as health services operating 24 hours-a-day and 7 days-a-week.

734. The Committee notes that information on measures to reconcile family responsibilities with shift work is scarce. Among the few governments that provided information, the Committee notes that in *Cabo Verde* where both spouses or domestic partners work in rotating shifts for the same employer, their respective schedules must be harmonized in light of the couple's interests, including their family responsibilities. Where a couple with dependent children separates, a shift worker may request not to perform this type of work, in which case the rules governing the reclassification of workers apply.[1432] ***The Committee encourages countries to consider seeking information from public and private sectors on the practice of shift work arrangements as this can help workers to balance work and family obligations as stipulated in Recommendation No. 165.***

1429 *France* (section 3 of Decree No. 85-1250 of 1985); *Tunisia* (section 37 of the Civil Servant Status Law No. 83-112 of 1983).

1430 *Colombia* (Law No. 1857 of 2017).

1431 2018 General Survey, para. 669.

1432 *Cabo Verde* (sections 168 and 180 of the Labour Code).

735. Similarly, night work is particularly disruptive to family life. Working on a different schedule from that of other family members upsets both day-to-day domestic arrangements and family life in general. For instance, it poses problems for the organization and preparation of meals, housework and the care and upbringing of children.[1433] According to ILO research,[1434] non-standard working hours, such as night work and regular overtime, are usually not preferred by workers, may pose risks to workplace safety and disrupt work–life balance. Working time should be organized in such a way as to promote safety and health, and so the principle of decent working time is even more important during maternity. While recognizing that flexibility may, in some instances, enhance the work–life balance, the Committee is mindful that considerations of predictability are often of major importance in achieving this balance. In this regard, the Committee recalls that Paragraph 20 of the Night Work Recommendation, 1990 (No. 178), highlights the need to take into consideration the special situation of workers with family responsibilities when decisions are taken on the composition of night crews. The Committee notes that a number of countries have statutory provisions regulating night work, particularly with respect to pregnant or breastfeeding women, but that no information was provided on the regulation of night work regarding family responsibilities.[1435]

736. ***The Committee encourages governments to take measures to ensure that non-standard working hours can be negotiated individually or, as appropriate, with social partners, in order to take account of the genuine needs of workers with family responsibilities.***

Transfer to a different workplace

Recommendation No. 165, Paragraph 20

737. A transfer from one workplace to another, whether as a result of a promotion or without any particular benefit to the worker, can put great strain on workers' lives, particularly on their ability to manage family responsibilities and balance them with their work. The Committee notes that few reports contained information on mobility policies affecting workers with family responsibilities. In *Cameroon,* section 94(1) of the Labour Code provides that the employer is responsible for paying the cost of travel, including luggage, for the worker's family (spouse and children).

738. Transfers may occur on a voluntary or non-voluntary basis. The Committee observes that where transfers are compulsory, conditions are more generous, normally including assistance for family members. Examples were also given of measures taken by large companies to facilitate family arrangements on transfer. These include a minimum of three months' notice, job search assistance for spouses, and financial support when the transfer makes it necessary for the employee's children to attend a boarding school.

739. The Committee considers that in order to take a worker's family responsibilities into consideration in accordance with Article 4(b) of Convention No. 156 and Paragraph 20 of Recommendation No. 165, the employer should give the fullest consideration possible to the worker's genuine need to care for family members. The worker's family responsibilities in this regard should be considered and given appropriate weight along with the business reasons underlying the transfer proposal. The Committee also points out that the fact that a worker accepted a transfer in the past does not necessarily mean that the worker is able or willing to accept a transfer to a distant workplace at another stage of his or her life, as family

1433 2018 General Survey, para. 396.

1434 ILO, *Care at Work*, 177.

1435 See Ch. VI, sections 1.1 and 1.2 concerning, respectively, blanket prohibitions of night work for women and the regulation of night work for pregnant or breastfeeding women.

circumstances can, and frequently do, change. In this context, the Committee points out that one of the objectives of the Convention is to promote the ability of workers with family responsibilities to balance their family responsibilities and work life. As a necessary corollary, this would include these workers' ability to balance their family responsibilities with any career development they may make in their professional lives. Therefore, as far as possible, employer practices should not force workers to choose between retaining their jobs or fulfilling their family responsibilities, in so far as these responsibilities do not impair their ability to perform the job. ***The Committee encourages governments in collaboration with the social partners to consider taking measures that take account of the genuine needs of workers to care for their family members, as required by the Convention and the Recommendation, when the question of imposing transfers of workers to other locations arises.***

2.4. Part-time work, temporary work and home work

Recommendation No. 165, Paragraph 21

Part-time work

740. In its 1993 General Survey, the Committee had already noted an increase in part-time employment and significant innovations in the arrangement of working time. Much new legislation has been introduced in this regard over the last two decades, mostly in industrialized countries, prompted by economic needs rather than concern for workers' family responsibilities. The Committee notes that legislation in several countries such as *Australia, Bulgaria* and *Malaysia* includes provisions on part-time for all workers regardless of their family responsibilities.

741. While certain working-time arrangements, such as part-time work, may help workers to combine employment with domestic responsibilities, they can also exacerbate gender inequalities and occupational segregation. Women are more likely than men to be in part-time work or marginal part-time work, partly due to their need to reconcile work with family responsibilities and care demands. Often out of necessity or restricted choice, women are also present in non-standard forms of employment, such as home work. Such a search for working arrangements that are compatible with family care responsibilities often relegates women to a narrow range of female-dominated jobs, thereby penalizing them in terms of earnings, career development and social protection, and further reinforcing their role as the primary carers within the family.[1436]

742. ***The Committee emphasizes that, while part-time work can provide flexibility for a better work–family balance, when imposed upon workers, in particular women, it could penalize them in terms of pay, job security, social security, training or opportunities for promotion. Involuntary part-time work exacerbates stereotyped perceptions and traditional attitudes regarding the role of women as caregivers and increases the gender gap in part-time employment.***[1437]

743. The Committee is pleased to note that a growing number of countries have extended the possibility of benefiting from part-time work to adoptive parents and fathers raising a child alone. For instance, in *Azerbaijan,* part-time work for adoptive parents and fathers raising a child under the age of 3 can be established by mutual agreement between the employee and

1436 ILO, *A Quantum Leap for Gender Equality*, 76; ILO, *World Social Protection Report 2020-22*; Colette Fagan et al., "The Influence of Working Time Arrangements on Work–Life Integration or 'Balance': A Review of the International Evidence", Conditions of Work and Employment Series No. 32, ILO Research Synthesis Paper, 2012.

1437 2018 General Survey, para. 558.

the employer for health or family reasons, including pregnancy, disability of a child under 18 years of age, and a chronic illness of a child or other family member.[1438] The Committee further notes that, under the law in *Germany*, an employee can request that his or her working hours be reduced. The employer must agree to the reduction of working time, unless there are operational reasons for not doing so. In order to exclude the risk that an employee will not be able to get out of part-time work later ("part-time trap"), he or she can also request that his or her working time be reduced for a period to be determined in advance. Again, the employer must agree to the reduction as far as operational reasons do not stand in the way.[1439]

744. Paragraph 21(2) of Recommendation No. 165 calls on governments to ensure that workers in part-time employment have the same rights as full-time and permanent workers, in particular regarding social security coverage. When legislation and welfare systems are largely designed for the full-time employment relationship, part-time workers are often left with lower levels of protection and benefits. The Committee recalls that the principle of equal treatment for part- and full-time workers lies at the heart of the part-time work instruments, based on the promotion of equality of employment conditions and social protection coverage for part- and full-time workers in similar positions. The intention is to protect against unequal treatment arising out of the contractual status of part-time workers. In this regard, the Committee refers to the Part-Time Work Convention (No. 175) and Recommendation (No. 182), 1994, which provides for the access of part-time workers to protection and conditions similar to those available for full-time workers in relation to association and collective bargaining, occupational safety and health, discrimination in employment and occupation, maternity protection, termination of employment, and entitlements regarding leave, holidays and rest days.[1440]

745. According to Paragraph 21(3) of Recommendation No. 165, part-time workers should be given the option to move or return to full-time work when their family circumstances change.[1441] The Committee recalls that part-time workers face discrimination in several ways on account of their shorter working hours, including in relation to lack of coverage by regulations or collective agreements and lack of access to protection and benefits adapted to their situation, "less than proportional" treatment in comparison to full-time workers, discrimination in terms of work scheduling, access to training and career development, and difficulties to exercise freedom of association and collective bargaining rights.[1442] ***The Committee therefore asks governments to take measures to ensure that part-time workers, particularly those with family responsibilities, have equal access to employment and occupation with the same terms and conditions of employment as full-time workers.***

Temporary work

746. In contrast with permanent or open-ended jobs, workers in temporary employment are engaged for a specific period of time, including via fixed-term, project- or task-based contracts, as well as seasonal or casual work, including day labour.[1443] The Committee notes that women are often more present in temporary work than men, which may be due, among others, to the fact that the traditional position of women in societies and their unequal care-giving responsibilities may undermine their bargaining power, making them more likely to accept jobs with

1438 *Azerbaijan* (section 94 of the Labour Code).

1439 *Germany* (sections 8 and 9a of the Part-Time and Fixed-term Employment Act).

1440 See Arts 4 and 7 of Convention No. 175 and Para. 14 of Recommendation No. 182. See also 2018 General Survey, paras 568–571.

1441 Standards on part-time work also follow the same spirit by addressing the voluntary nature of transfers between full-time and part-time work (see Art. 10 of Convention No. 175) and employers' management of job openings in full-time and part-time work (see Para. 18 of Recommendation No. 182).

1442 2018 General Survey, para. 592; 2020 General Survey, para. 289.

1443 2020 General Survey, para. 277; ILO, *Non-Standard Employment around the World*, 7.

less stability.[1444] ILO research also indicates that temporary work may be used to avoid hiring young or pregnant women on permanent contracts out of concerns regarding maternity leave costs.[1445] Few reports have provided information on statutory provisions related to temporary work. The Committee notes that in some countries the legislation covers temporary workers and provides them with equal conditions of work, including flexible working arrangements, as compared to workers in standard employment. In *Australia*, the definition of "employment" in the Equal Opportunity Act 2010 includes part-time and temporary employment. In *Iceland*, Act No. 95 of 2000 on maternity/paternity leave and parental leave, as amended in 2017, is applicable irrespective of whether the employee has been engaged on a permanent or a temporary basis.

Home work

747. As recalled during the preparatory work leading to the adoption of the Home Work Convention, 1996 (No. 177) and its Recommendation, 1996 (No. 184), home work is a primary source of income for a large number of workers throughout the world. It may take many forms from labour-intensive and skilled artisanal work (such as traditional embroidering) and industrial metal work to telework or other information technology services. In the contemporary global economy, homeworkers also assemble and package goods, such as electronics, pharmaceuticals and auto parts. However, home work is concentrated in the informal economy, and is highly gendered. In many industrial sectors, the majority of homeworkers are women who have not been able to gain access to regular employment due to family responsibilities or lack of skills, or opt to work from home due to cultural norms. Home work is also considered to be an alternative for older workers, workers with disabilities, isolated workers in rural areas, migrant workers in an irregular situation.[1446]

748. The Committee notes that only few reports refer to the regulation of home work. For example, in *Ireland,* the Organization of Working Time Act 2007 applies to all employees and contains specific requirements for homeworkers. In *Bulgaria*, by virtue of article 312 of the Labour Code homeworkers are free to determine their work schedules within the limits set out by law, as well as their daily and weekly rest periods, and cannot work overtime. In *Finland*, the Working Hours Act 2019 covers homeworkers.

749. According to ILO research, working-time provisions are among those from which homeworkers are most often excluded, typically on the grounds that they are not subject to the employer's close supervision.[1447] Knowing that most home-based workers are women[1448] and because home work is a highly gendered form of production, the Committee draws governments' attention to the particularly vulnerable position of homeworkers in the labour market, the inadequacy of their legal protection, their weak bargaining position and their isolation.[1449] ***The Committee therefore draws governments' attention to the importance of appropriate measures so that these workers are not deprived of the possibility of having flexible working arrangements, as well as daily and weekly rests, public holidays, and leave arrangements comparable to those enjoyed by other workers.***

1444 ILO, *Women in Non-standard Employment*, INWORK Issue Brief No. 9, 2017.

1445 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 151; ILO, *A Quantum Leap for Gender Equality*, 62; ILO, *Non-Standard Employment around the World*, 128.

1446 2020 General Survey, para. 480.

1447 ILO, *Working from Home: From Invisibility to Decent Work*, 2021, 190.

1448 According to ILO estimates, 147 million women and 113 million men worked from home in 2019, with women accounting for 56 per cent of all home workers. ILO, *Working from Home*, 8.

1449 2020 General Survey, para. 485.

Flexibility regarding the place of work: Telework

750. Although Recommendation No. 165 does not specifically refer to teleworking arrangements, the Committee observes that the law and practice of many countries include teleworking as a possibility, thereby contributing to promote the work–life balance. The Committee already observed in 2018 that regulation of telework had begun to take shape in several parts of the world. While not widespread, this was an indication that policymakers and the social actors in some countries were beginning to be aware of how technologies can have an impact on working time through emerging flexible working arrangements, such as telework/ICT-mobile work (T/ICTM).[1450] In 2020, it noted that regulations on telework, sometimes including a specific definition of such work, had been adopted in a number of countries.[1451] The Committee notes from the reports received that some countries further refer to the regulation of teleworking arrangements. For example, in *Ecuador,* the Labour Code (section 16(4)) and the Organic Law on the Public Service (section 25) provide for teleworking. In *Armenia*, telework is also possible for pregnant women and for employees caring for children under the age of 3 (section 149 of the Labour Code). The Government of *Senegal* indicates that teleworking arrangements are being considered for future insertion in the Labour Code. In *Peru*, Decree No. 017-2015-TR establishes that one of the principles governing telework is the promotion of a balance between personal, family and work life.

751. The Committee observes that despite the proven benefits of flexible working arrangements for both men and women workers, research suggests that while women are more likely to take up flexible working arrangements, men are more likely to avoid it, for fear of being stigmatized as performing less well at work.[1452] For instance, while telework may make it easier for mothers and fathers to juggle paid work and family responsibilities, empirical evidence shows that mothers still do a disproportionate amount of housework and childcare compared to fathers. This suggests that teleworking may help address childcare issues but does not necessarily foster co-responsibility between fathers and mothers or create more gender equal workplaces unless there is a conscious decision to do so.[1453]

752. ***In this context, the Committee calls on governments to take measures in law and practice, in consultation with the social partners, to ensure that flexible working arrangements, including telework, do not further exacerbate the unequal distribution of family responsibilities/unpaid work between men and women.***

1450 2018 General Survey, para. 592.

1451 Such as *Hungary* (section 196(1) of the Labour Code), *Türkiye* (section 14 of the Labour Law No. 4857, as amended by Act No. 6715 of 2016), *Greece* (section 1 of Act No. 3846/2010 on job security guarantees) and *Estonia* (2017 collective agreement). See 2020 General Survey, para. 619.

1452 OECD, *Caregiving in Crisis: Gender Inequality in Paid and Unpaid Work during COVID-19*, 2021, 13.

1453 Eurofound, *Living, Working and COVID-19*, COVID-19 series, 2020; Ellen Ernst Kossek and Clare Kelliher, "Mainstreaming Teleworking and Gender Equality: A Double-edged Sword?", *OECD Forum Network*, 3 March 2022.

3. Childcare, family services and facilities, and other help in the exercise of family responsibilities

753. Early childcare services, long-term care and other care and support services for persons with disabilities, children and elderly people are crucial for workers with family responsibilities. Childcare services have long been considered as a tool to improve the work–life balance for working parents.[1454] However, the Committee recalls its general observation of 2020 on Convention No. 156 that the lack of quality, affordable care services has been identified by both men and women as one of the biggest challenges for women with family responsibilities who are in paid work, as well as the inflexibility of the hours of care of these services. Services providing long-term care and support for older people and persons with disabilities have recently begun to enter the work–life balance debate, with the understanding that the demographic changes are having a substantial impact on families and on workers and their status in the labour market.

754. The Committee recalls that during the preparatory work for Convention No. 156 and Recommendation No. 165, it was emphasized that the aim of promoting equality of treatment between men and women with family responsibilities, and between such workers and other workers, should be achieved not only in terms of working conditions and vocational training but also in terms of the facilities available to them to discharge their responsibilities in all aspects of their lives. Research suggests that labour regulations (regarding leave policies and family-friendly work arrangements) along with care services (childcare and long-term care) are essential pillars of lifelong care policies and are part of the solution to eliminate discrimination towards workers with family responsibilities.[1455] For instance, it may help promote women's entry and advancement in the labour market, since research shows that family responsibilities are one of the main barriers to women's promotion.[1456]

755. Article 5(b) of Convention No. 156 calls on ILO Member States to develop or promote community services, public or private, such as childcare and family services and facilities. Paragraphs 24 to 26 of Recommendation No. 165 further elaborate on the provision of such services in light of ascertained needs and preferences, national circumstances, and technical requirements and standards. Paragraph 32 also outlines that public and private action to "lighten the burden deriving from the family responsibilities of workers" should be promoted.

756. The following sections on (1) community planning, (2) childcare services and facilities, (3) family services and facilities, and (4) other facilities to lighten household duties, will provide examples of law and practice in ILO Member States that contribute towards a better work–life balance and gender equality.

1454 1993 General Survey, para. 192; UN Commission on the Status of Women, *Social Protection Systems, Access to Public Services and Sustainable Infrastructure for Gender Equality and the Empowerment of Women and Girls: Agreed Conclusions*, 63rd Session, E/CN.6/2019/L.3, 2019.

1455 ILO and Gallup, *Towards a Better Future for Women and Work*, 44.

1456 These responsibilities encompass not only childcare but also eldercare; it is estimated that 300 million people aged 65 and older are currently in need of long-term care. See ILO, *Women in Business and Management: Gaining Momentum*, 2015; ILO, "Long-term Care Protection for Older Persons: A Review of Coverage Deficits in 46 Countries", Extension of Social Security Working Paper No. 50, 2015.

3.1. Community planning

Convention No. 156, Article 5(1)

757. In order to enable workers with family responsibilities to engage in employment, governments should take measures in community planning. The Committee recalls that this provision emphasizes the contribution which could be made by the development of the social infrastructure to the solution of the problems faced by workers with family responsibilities in the labour market as well as to the promotion of a more equitable sharing of such responsibilities within the family.[1457]

758. For instance, the Government of *Canada* indicates that the Federal Government is working with provincial, territorial and indigenous partners to build a high-quality, affordable, flexible and inclusive early learning and childcare system across Canada. This initiative aims to provide significant funding to reduce the cost for families of childcare for children up to 5 years old, achieving a cost of 10 Canadian dollars a day by 2025–26. As of March 2022, 12 of the 13 provinces and territories in *Canada* signed agreements committing to such system. Quebec has already been implementing its own system of affordable educational childcare services since 1997. The Government of *Canada* also indicates that home and community services, as well as long-term care services, are primarily regulated and delivered by provincial and territorial governments in most cases, with the Federal Government providing financial support. "Health Canada" also engages in research and policy analysis on home and community care and long-term care across the country.

759. The Committee also notes that, in *Estonia*, the Government is working towards easing the care burden of caregivers by enhancing childcare facilities and financing the most urgent long-term care measures. In 2018, an action plan for changes in the long-term care system was developed. The long-term care concept, financing schemes and proposals on how to support informal carers were approved by the Cabinet of Ministers in 2020 and 2021 and include measures such as the preference for home services to institutional care, the obligation of local governments to assess care needs, and sustainability schemes.

760. The Committee also notes that the provision of childcare and family services and facilities is generally decentralized. In *Viet-Nam*, the Provincial People's Committee is responsible of defining community services (Decree No. 145/2020/ND-CP dated 14 December 2020). In a number of countries, municipalities are responsible for organizing childcare services, such as in *Finland, Greece, Iceland, Kyrgyzstan, Latvia, Lithuania,* the *Netherlands, North Macedonia, Norway,* the *Russian Federation* and *Switzerland*.[1458]

761. The Committee also observes that the majority of countries have not provided sufficient information on the manner in which the needs of workers with family responsibilities are taken into account in community planning. Most of the countries have provided general information on available childcare services and facilities. The Committee recalls that in its general observation of 2020 on Convention No. 156 it called for surveys at community level to identify the needs of workers for childcare and family services and urged the establishment and extension of suitable services to meet those needs. ***The Committee considers that, while taking account of national circumstances, governments in cooperation with workers' and employers' organizations should ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for family services and facilities, as provided for under Paragraph 24(b) of Recommendation No. 165.***

1457 1993 General Survey, para. 195.

1458 ILO, *Care at Work*.

3.2. Childcare services and facilities

Convention No. 156, Article 5(2)
Recommendation No. 165, Paragraph 25

Statutory provisions on childcare services and facilities

762. From childbirth to the start of compulsory schooling, working parents need childcare for their children. The Committee notes that, according to the UNESCO classification, early childhood care and education (ECCE) services and programmes include: (i) early childhood educational development (ECED) for children aged 0–2 years; and (ii) pre-primary education programmes designed for children from 3 years of age to the start of primary education.[1459] The Government of *Australia* recognizes the significant role of ECCE to support the participation of families in the labour market and the learning and development outcomes of children. It classifies childcare services in: (i) centre-based day care providing ECCE in regulated centres; (ii) family day care, provided in the home of an educator; (iii) outside school hours care, provided before and after school hours and during school vacations; and (iv) home care, to support the participation of families in the labour market by fulfilling childcare needs where other options are not available or appropriate. The Government of *Sweden* indicates that 71 per cent of preschools are run by municipalities and 29 per cent are independent preschools, and that municipalities are required to provide preschool for children between the ages of 1 and 5 years, for at least 3 hours a day or 15 hours a week. The obligation also applies to children whose parents are unemployed or who are on parental leave with a sibling. Municipalities are also required to offer "general preschool" to all children for at least 525 hours from the autumn semester of the year in which the child reaches the age of 3.

763. The Committee recalls that Convention No. 156 and Recommendation No. 165 do not require ILO Member States to establish a particular childcare system. The instruments call for the adoption of measures "compatible with national conditions and possibilities" that respond to the needs of workers with family responsibilities. ***The Committee recognizes that the provision of childcare services is of paramount importance to enable both parents to freely choose their preferred work arrangement – either part- or full-time – and to increase women's participation and progression in employment. The Committee therefore encourages governments to take measures to ensure that mothers and fathers have access to public or subsidized childcare services. Enhancing the availability of childcare infrastructure is a crucial step towards the achievement of gender equality and the empowerment of all women and girls.***

764. Paragraph 25 of Recommendation No. 165 calls on governments to cooperate with the public and private organizations concerned to take appropriate steps to ensure that childcare services are available for workers with family responsibilities. In this regard, the Committee notes that in *Guinea*, for example, non-governmental organizations have constructed care and leisure facilities for children. Also, through community support, a number of centres for the children of workers with family responsibilities have been constructed or rehabilitated. For example, there are 628 public care structures and 348 private care structures providing childcare, and 1,746 urban, suburban and rural community support centres.[1460] The Committee cautions that governments should not shift their childcare responsibilities solely to non-governmental organizations; it should be a shared responsibility, with governments taking the lead.

1459 UNESCO, *Right from the Start: Build Inclusive Societies through Inclusive Early Childhood Education*, Policy Paper 46, July 2021.

1460 CEACR, Convention No. 156: *Guinea*, direct request, 2021.

765. The Committee notes the importance of childcare services provided for women working in the *informal economy*. In this regard, the Committee also refers to the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which addresses the exclusion of workers in the informal economy from childcare and calls on ILO Member States to encourage the provision of, and access to, affordable quality childcare and other care services in order to promote gender equality in entrepreneurship and employment opportunities and to enable the transition to the formal economy. The Committee observes that a number of initiatives are being taken to make childcare services available for informal economy workers, particularly in the form of cooperatives. The Committee notes that, often, these initiatives contribute to informal workers' access to better employment opportunities, to avoid the necessity that they bring their children to work, and to ensure that children in vulnerable situations are provided with basic food and healthcare.[1461] For instance, the Committee observes that the Self-Employed Women's Association (SEWA), which gathers close to two million women workers in the informal economy in *India*, set up the Sangini Child Care Workers Cooperative, which manages 13 childcare centres providing care (including basic education and social skills, nutrition and basic health services) to 350–400 children.[1462] In *Senegal*, a community-based childcare centre for women informal workers was established in the town of Bargny. This centre is run through the Young Workers' Union of Bargny (AMJOB) and is accessible to children aged from 1 to 6 years old, as well as children from 7 to 12 years old after school, on Wednesdays and Saturdays, hence allowing working mothers in the informal economy to no longer take small children to the workplace.[1463] In *India*, the organization "Mobile Crèches" helps provide childcare centres for workers on construction sites.[1464]

766. In *El Salvador*, the Act on the comprehensive protection of childhood and youth establishes a "national system for the comprehensive protection of childhood and youth", including the creation of child welfare centres for children aged 2–7 years from disadvantaged urban areas. By the first quarter of 2015, there were some 190 centres totally reaching 4,852 children. "Comprehensive development centres" have also been established to provide formal education for children aged from 6 months to 7 years, including children of municipal market workers and street vendors. Furthermore, since 2013 the Government has adopted the universal social protection system promoting community services that take account of the needs of workers with family responsibilities, including: (i) a basic universal pension and essential care for elderly persons over 70; (ii) school meals; and (iii) the provision of uniforms, shoes and school materials.

767. In certain other countries, parents have the main responsibility to make their own appropriate arrangements in relation to childcare. Here the Government of *Belize* indicates that the private sector has acknowledged the need for more childcare centres, and that the establishment of work-based childcare in the public service is not currently a reality.

768. In other countries, there is an increasing trend of promoting employer-supported childcare, even if Convention No. 156 does not explicitly refer to the responsibility of the employer to support it. Support provided by the employer includes, for instance, the provision of referral services, helping to match employees' childcare needs with services available in the community; voucher systems, involving a childcare subsidy paid to the employee to assist with childcare costs; and slot systems, whereby the employer makes arrangements with an established centre to reserve a number of places for the children of employees.

1461 ILO, *Expanding Women's Employment Opportunities: Informal Economy Workers and the Need for Childcare*, 2007; ILO, *The Informal Economy and Decent Work: A Policy Resource Guide supporting Transitions to Formality*, 2013.

1462 ILO and WIEGO, *Extending Childcare Services to Workers in the Informal Economy: Policy Lessons from Country Experiences*, 2020.

1463 ILO, *Care at Work,* 226.

1464 ILO and WIEGO, *Extending Childcare Services to Workers in the Informal Economy*; ILO, *The Informal Economy and Decent Work*.

Some employers may support direct services such as on-site or off-site childcare centres, or private agencies providing home day care. Other employers pool their resources to provide childcare services for working parents with the aim of sharing costs. The needs of workers who work unconventional hours and whose children cannot be accommodated in facilities open during conventional hours may be best met by employer-sponsored facilities. In *Egypt*, section 96 of Labour Act No. 12 of 2003 states that an employer who employs 100 female workers or more in the same place shall establish a nursery school or assign nursery school care for the female workers' children, according to the conditions and terms to be determined in a decree by the competent minister.

769. In *Japan*, measures to enhance childcare services include: (i) a pay rise equivalent to 3,000 yen per month for care workers; (ii) the creation of 535,000 childcare places between 2013 and 2017 through the "Plan for Accelerating the Elimination of Daycare Waiting Lists for Children" and 320,000 places by 2020 through the "Plan for Raising Children with Peace of Mind"; and (iii) enhancing after-school facilities through the "Comprehensive After-school Plan for Children", aimed at creating additional capacity for about 250,000 children for the period 2019–21 and 300,000 more by the end of 2023.[1465]

770. Research has shown that, by facilitating care through workplace nurseries or crèches for working parents, care work is redistributed from households to the public sphere. Providing care infrastructure and services helps to redistribute care responsibilities, therefore creating opportunities for carers to enter in the labour market, as well as employment opportunities in the care sector.[1466]

771. The Committee also notes that some governments indicate that statutory provisions provide for flexible or on-demand hours of operation, as is the case in *Cabo Verde*, where Decree-Law No. 58/2018 establishes that day care opening hours must be suited to the needs of parents or persons exercising parental authority. Similar provisions exist for instance in *Angola*, *Kyrgyzstan, Romania,* the *Russian Federation, Serbia, Slovenia, Ukraine* and *Uzbekistan*, where flexible operating hours for childcare services are available.[1467]

772. The Committee notes that in *Honduras,* there are child and family assistance services, children's canteens, childcare centres and organizations for persons with disabilities. These include the Teletón Honduras Foundation, the National Federation of Organizations for Persons with Disabilities in Honduras (FENOPDIH), the National Federation of Parents of Persons with Disabilities in Honduras (FENAPAPEDISH), and the Coordinating Committee for Rehabilitation Institutions and Associations of Honduras (CIARH).

773. The Committee further notes that, in *Argentina*, specific programmes addressed the development of childcare facilities in rural and agricultural areas. The *Jardines Cosecha* (harvest gardens) programme in the provinces of Salta, Jujuy and Misiones provide day care centres and services for the children of rural women workers. Under the *Buena Cosecha* (good harvest) programme, 135 centres service seasonal rural migrant workers' children under 16 years of age during the grape and other fruit harvesting periods in Mendoza. Furthermore, section 64 of the Agricultural Labour Scheme, adopted by Act No. 26727 of 2011, provides that agricultural holdings must include places where workers' children can be cared for and kept safe for the full working day, and ensure that they are accompanied by qualified staff and/or persons with childcare experience. However, the Committee also notes that the scope of the Act excludes, among others, workers occupied in harvesting and/or fruit packing work.

1465 CEACR, Convention No. 156: *Japan*, observation, 2020.

1466 See the 5R Framework for care policies: ILO, *Care Work and Care Jobs for the Future of Decent Work*, 292; ILO, *Care at Work*, 41. See also ILO, *A Quantum Leap for Gender Equality*, 78–80; and Valeria Esquivel, *Care in Households and Communities: Background Paper on Conceptual Issues*, Research Report, (Oxfam, 2013), 13.

1467 World Bank, *Women, Business and the Law 2022*, 2022, 59.

774. From the reports received, the Committee observes that governments have provided general information on the availability of childcare services/facilities, but that they do not indicate to what extent these services are accessible for workers with family responsibilities or for persons who wish to engage or return to work, or to what extent such services respond to the needs for childcare of such workers. The Committee recalls that Paragraph 24 of Recommendation No. 165 suggests that ILO Member States should take measures: (a) to collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care; and (b) to ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for childcare and family services and facilities. ***The Committee emphasizes the importance of data on the number of workers with family responsibilities engaged in or seeking employment, on the age of their children and other dependants requiring care, and on their needs and preferences for childcare and services and facilities.***

Source of funding

775. The Committee notes that in many countries, childcare facilities are subsidized by governments, such as in *Armenia* and *France.* Governments can also fund the supply of childcare by giving subsidies to facilities. For instance, in *Egypt,* private day-care centres are regulated and subsidized by the Ministry of Social Affairs. Moreover, governments can fund the demand for childcare by providing subsidies for parents to pay for private childcare services. In *Estonia* and *Latvia*, when public facilities do not have enough places, parents receive financial support to pay for childcare fees in private institutions. Financing demand for childcare rather than providing public facilities or public support for facilities has been viewed as a means to rapidly stimulate the creation of childcare services.[1468]

776. The Committee notes that in 2020–21, the Government of *Australia* delivered financial support for ECCE through a range of mechanisms, such as: (i) the Child Care Subsidy (CCS) which, being paid to childcare providers who, afterwards, reflect it on reductions of childcare fees, has the aim to help families to cover a portion of the cost of childcare, making it more affordable and accessible; and (ii) the Child Care Safety Net (CCSN), which includes an Additional Child Care Subsidy (ACCS) for disadvantaged families and children facing obstacles to accessing childcare, including for families who need help to support their children's safety and well-being, grandparents who are the primary carers for their grandchildren, families experiencing temporary financial hardship, and parents transitioning from income support payments to work.

777. ***The Committee calls upon governments to strengthen their efforts to develop childcare services and facilities free of charge or at an affordable rate in accordance with the workers' ability to pay, as recommended under Paragraph 25(b) of Recommendation No. 165. The Committee encourages governments, in collaboration with the social partners, to promote universal and free childcare services for young children as a tried and trusted solution that supports the work–life balance.***

778. The Committee notes that several countries did not provide any relevant information on this question. ***The Committee underlines the importance of establishing such services and facilities and recalls that if workers with family responsibilities are unable to secure the necessary services and care for their family members while engaging in employment, they may be forced to give up their jobs. Furthermore, it recalls that the objective of the Convention, which is to ensure equality of treatment between workers of both sexes who have family responsibilities and between these and other workers, should also be reflected***

1468 ILO, *Care at Work*, 223.

in the resources provided so that these workers can discharge their responsibilities in all areas of their lives. The Committee therefore encourages those countries to take guidance from Recommendation No. 165 and to take measures, in consultation with the social partners, to develop or promote the creation and implementation of public or private community services, such as childcare services and facilities.

3.3. Family services and facilities

779. The Committee recalls that according to Convention No. 156, the definition of "worker with family responsibilities" is twofold, including: (i) responsibilities towards one or more dependent children; and (ii) responsibilities towards other members of the immediate family. Accordingly, measures taken by ILO Member States to help this category of workers should be well designed to encompass all the elements of this definition and hence include persons living with disabilities, or the elderly, as envisaged under Article 1(3) of the Convention. Measures taken with respect to other members of the immediate family who need care or support, including adults with disabilities or the elderly, should be integrated in a gender-transformative package of care policies and services.[1469] This is particularly relevant since, in recent years, a growing number of workers have some responsibility towards ageing relatives or adults with disabilities. According to ILO findings, the demand for long-term care services for older persons has been sharply increasing, especially in middle- and high-income countries where life expectancy has increased. For example, in 2015, there were 906 million persons aged 60 years old and above worldwide; by 2030, this number is projected to be 1.4 billion, of whom 292 million will be above the healthy life expectancy age of 60 years and are likely to need long-term care services.[1470]

780. When Convention No. 156 and Recommendation No. 165 were adopted, countries commonly described services benefiting adult family members as family services and facilities. In the present General Survey, the Committee chooses to use the expression "long-term care services and facilities" to follow the global trend. For example, the OECD, Eurostat and WHO use long-term care in their classification, indicating that long-term care facilities include four main components: medical or nursing care, personal care services, assistance services and social care services.[1471]

781. The Committee recalls that Paragraph 33 of Recommendation No. 165 encourages ILO Member States to "develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with family responsibilities, as necessary, with qualified assistance at a reasonable charge in accordance with their ability to pay". The instrument calls for the adoption of measures "compatible with national conditions and possibilities" that respond to the needs of workers with family responsibilities. ***The Committee recognizes that the provision of long-term care services is of paramount importance to enable workers with family responsibilities to access or remain in employment. Considering that it is women who generally provide assistance to older members of the household, the Committee emphasizes that the lack of appropriate and affordable long-term care services has detrimental effects on women's employment opportunities. Enhancing the availability of long-term care infrastructure can only contribute to encouraging women to take up paid work and hence achieve gender equality.***

1469 ILO, *Care at Work*, 243.

1470 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 21.

1471 OECD, Eurostat and WHO, *A System of Health Accounts 2011: Revised Edition*, 2017.

Statutory provisions on long-term care services and facilities

782. The Committee welcomes the expansion of long-term care services in many countries. For example, *Uruguay* was the first country in Latin America to set up a Comprehensive National Care System (SNIC) in 2015, through Act No. 19353 of 2015, as a framework to provide assistance and care to persons in a situation of dependency. Section 8 of the Act defines persons in a situation of dependency as those requiring specific support to carry out their activities and meet the basic needs of daily life, including boys and girls up to the age of 12 years and persons with disabilities, as well as persons over 65 years of age who are in a situation of dependency. The Committee notes that the National Care Plan (2016–20) set a number of priorities, including the implementation of a cash transfer to cover the cost of entry of an elderly person into a private continuous care centre and the establishment of day centres in urban and rural areas for elderly persons.[1472]

783. The Committee notes that, in *Spain*, the system to promote personal autonomy and care for dependent persons (SAAD) has increased coverage to all people in situations of dependence, with some 1,141,950 beneficiaries in 2021. The SAAD provides a range of services, such as telecare, home help, day or night centres and residential care, as well as personal assistance and care in the family setting. According to the Government, the system is financed through contributions from the public administrations (the General State Administration and the Autonomous Communities) and the participation of the beneficiaries. The Committee has also noted that an agreement was reached between the Government and the social partners in 2021 to reinforce the care system for dependent persons, which provides, among other measures and objectives, for an increase in SAAD financing, and a reduction in the waiting list for the handling of requests.[1473]

784. In *Croatia*, home-care services are now provided by licensed social services providers.[1474] The Government of *Bahrain* reports that residential care centres for the elderly and persons with disabilities provide social, health and mental care, and legal support and other services for the elderly. The Government of *Qatar* also indicates that the "Shafallah" Centre has been established to provide model services in the field of education and rehabilitation to persons below the age of 21 years with mental disabilities and autism. It also strives to raise awareness in society about their issues and rights and thus to help them live more independently and to increase their integration into society. The Centre has been in operation since 2013 under the auspices of the Qatar Foundation for Social Work.

785. The Committee notes that research[1475] further points at other measures in the spectrum of long-term care solutions, such as in-home care services generally provided by both health and non-health professionals, day centres, residential care services, hospital-like or medical nursing facilities, and telecare services.

Provision of long-term care services and facilities

786. According to ILO research, in only 89 out of 179 countries is there a statutory obligation in national law to provide long-term care services for older persons. This is equivalent to 119 million or 49 per cent of older persons living in countries with statutory long-term care

1472 CEACR, Convention No. 156: *Uruguay*, direct request, 2018.

1473 CEACR, Convention No. 156: *Spain*, direct request, 2021.

1474 CEACR, Convention No. 156: *Croatia*, direct request, 2019.

1475 See 1993 General Survey; ILO, *Care at Work*, 249–250; Marco Stampini et al., "Working Less to Take Care of Parents? Labor Market Effects of Family Long-term Care in Latin America", Inter-American Development Bank (IDB) Working Paper Series, No. IDB-WP-1105, 2019; Sarah L. Barber et al., *Pricing Long-term Care for Older Persons*, WHO and OECD 2021.

services.[1476] The Committee observes that statutory provision for long-term care services can mainly be found in:

(i) existing social security laws and regulations and social insurance programmes: such as in *Egypt* and *Morocco*.[1477] In the *Seychelles*, the Social Security Act 2010 regulates the needs of workers with family responsibilities in community planning;

(ii) specific legislation, such as in *Canada* (Quebec) and *France*;[1478]

(iii) dedicated programmes/plans: for example, in *Canada* through the 2017 Shared Health Priorities programme.[1479]

787. The Committee notes that a few governments have reported the absence of long-term care structures and recognize the need to meet future challenges associated with population ageing (for instance, *Benin*, *Cambodia*, *Colombia* and the *Dominican Republic*). Many governments have not provided any information on this question.

788. The Committee notes the concern expressed by the Government of *Canada* regarding unpaid caregivers (i.e. family and friend caregivers). Although instrumental in supporting individuals to remain at home, rather than moving them to an institutional setting, unpaid caregivers are not always well supported and many caregivers are overburdened. It is expected that unpaid caregivers will benefit from investments aimed at helping senior citizens and people with disabilities in need of supportive care to live at home for as long as possible, through an increase in current efforts to enhance home care services. As unpaid caregivers continue to support their family members, they may benefit from a reduced workload as a result of enhanced home care support.

Source of funding

789. Securing the necessary financial resources for a national long-term care system is a fundamental challenge for many governments. According to ILO research, long-term care can be provided through in-kind or in-cash services (or a combination of both). Under community-based care services, elderly beneficiaries receive services from the public sector or from private providers that are fully or partially compensated by the State (through non-contributory or contributory systems, such as taxation or social insurance). Under institutional residential care services, beneficiaries receive transfers that can either be spent on long-term care services provided by paid care workers (in the home or in institutions) or can be used as they see fit, including to compensate for unpaid services provided by family members.[1480]

790. The Committee notes that the reports examined contain little information on the financing of public facilities for care of the elderly and family members with severe long-term care needs, including persons with disabilities. Some governments report, for example, that persons with disabilities are exempted from fees and taxes (*Egypt*, section 9 of Act No. 10 of

1476 ILO, *Care at Work*, 244.

1477 *Egypt* (Law No. 148 of 2019 on Social Insurance and Pensions); *Morocco* (Law No. 65-15 on Social Welfare Establishments).

1478 *Canada* (Quebec) (Act Respecting Health and Social Services and its Regulations Relating to Long-term Care) and *France* (Law No. 1776 of 2015 on the Adaptation of Society to Ageing).

1479 The 2017 Shared Health Priorities programme includes, among others: Increasing integration of care in the community, for example, the Home First and Complex Client Supports initiative in the Yukon is enhancing services at home in order to reduce demand on long-term care, and Saskatchewan is establishing Community Health Centres and teams to facilitate shifting delivery of care from hospitals into community settings; and Investing in digital and IT infrastructure, for example, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island and the Yukon are implementing various InterRAI Assessment Tools, which allow for the collection of consistent, pan-Canadian, interrelated data that allow clinicians to identify issues and develop care plans, and monitor home care client/long-term care resident progress.

1480 ILO, *Care at Work*, 249.

2018 on the rights of persons with disabilities). In other countries, an increasing proportion of long-term care is covered by public financing schemes such as in *France*, where medical long-term care services are essentially financed by the social health insurance scheme (*sécurité sociale*), while personal and social care is jointly financed by the State and the local authorities (at the *département* level). Social insurance in *Sweden* provides financial security during the various stages of life, including insurance and contributions to families with children, to persons with a disability or illness, and to the elderly. The various types of family support are thus designed to meet specific needs. The Swedish Social Insurance Agency *(Försäkringskassan)* administers benefits and allowances for families with children, people who are sick and persons with disabilities, while the Swedish Pensions Agency (*Pensionsmyndigheten*) is responsible for the national public pension system. In *Slovakia* and *Spain*, cash benefits can be used for unpaid caregivers. In the *Netherlands*, in-home care is provided by health insurance, and beneficiaries can choose in-kind service or 75 per cent of the value of the care in cash.

791. For more guidance on the subject, the Committee refers to the ILO Social Protection Floors Recommendation, 2012 (No. 202), Paragraph 3 of which calls for the application of the principles of, inter alia: universality of protection, based on social solidarity; entitlement to benefits prescribed by national law, and adequacy and predictability of them; and also solidarity in financing. The Committee also refers to ILO research which suggests making long-term care a top priority on the policy agendas of all countries by:

- guaranteeing universal long-term care protection based on the core principles of national social protection floors as outlined in Recommendation No. 202;
- providing financing through national social insurance schemes or taxes and reducing out-of-pocket payments to a minimum;
- increasing the long-term care workforce through decent working conditions to make quality services available to all in need, generating much-needed jobs;
- improving the gender balance and ensuring public support for family members who provide care for older relatives, including in the form of paid leave for care responsibilities.[1481]

792. ***The Committee considers that, while reflecting national circumstances, governments, in collaboration with workers' and employers' organizations, should ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for family services and facilities. The lack of good-quality family services and facilities can confine women to the traditional role of caregivers. Alleviating such a constraint can only encourage better participation in the labour market by women.***

Challenges in the provision of childcare and family services and facilities

793. From the reports received, the Committee recognizes that the lack of high-quality affordable childcare and long-term care services and facilities are among the main obstacles preventing women, particularly those on low incomes, from entering or re-entering the labour market. In such circumstances, women often commit to a larger share of unpaid work at home. The Committee takes the opportunity to recall that COVID-19 has had a profound and debilitating effect on the schooling and early childhood care and education (ECCE) systems. In addition to a range of other challenges, countries that faced long-lasting shutdowns of schools also tended to experience larger gender gaps in the distribution of added unpaid care work. Countries are attempting to draw lessons from the crisis and to modernize their education systems to support children in the "new normal" era, but governments should also consider

1481 ILO, "Long-term Care (LTC) Protection for Older Persons: A Review of Coverage Deficits in 46 Countries", Extension of Social Security Working Paper No. 50, 2015.

how to encourage gender equality in caregiving for children outside school.[1482] Moreover, the Committee recognizes that the COVID-19 pandemic has also disproportionally impacted people who rely on long-term care and those who provide it (both paid and unpaid), the latter being predominantly women and many of them migrant workers.[1483] Unless these challenges are addressed by adequate, good-quality, sustainable long-term care services, this extra demand for care would further restrict the participation of workers with care responsibilities, particularly women, in the labour market, with an adverse impact not only on their income security in working life and old age alike, but also on their physical and mental well-being. It would also undermine the conditions of work of care workers and further accentuate gender inequalities at work. ***The Committee recalls that affordable, accessible, good-quality childcare services and facilities are crucial for ensuring equality of opportunity regarding outcomes in children's learning and in parents' employment. The Committee also calls upon governments to take measures to ensure the provision of full-time childcare services to enable both parents to freely choose their preferred working arrangements, whether part-time or full-time.***

794. The Committee further observes that the organization and staffing of childcare and family facilities is an additional challenge for workers with family responsibilities. In this regard, the Committee refers to Paragraph 26 of Recommendation No. 165, which provides as follows:

(1) Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities.

(2) Such standards should prescribe in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff.

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.

795. The Committee recalls that the global care workforce includes care workers in care sectors (health, education and social work), care workers in other sectors and domestic workers, as well as non-care workers in care sectors (such as hospital cleaners and cafeteria workers). The care economy includes a broad range of workers who differ markedly in terms of education levels, skills, sectors and remuneration, ranging from doctors, psychologists, dentists and nurses to childcare workers, community health workers, social workers and personal care workers. It also includes persons who offer unpaid care work in their household (unpaid carers) or community (voluntary care workers).[1484]

796. Care facilities should therefore be adequately staffed and care workers should be well qualified, which implies that their terms and conditions of employment, including prospects for career advancement, should be sufficiently attractive. Furthermore, there should be arrangements for the registration and inspection of facilities. Legislation regulating staff qualifications, staff-to-child ratios, group sizes, and health and safety requirements, is key in this regard. The Committee notes that no information was provided in the reports received on the licensing and supervision of facilities for the care of children or the elderly or the training of their staff.

797. The Committee recalls the ILO 5R Framework for Decent Care Work, which is a human rights-based and gender-responsive approach to public policy. The Framework creates a virtuous circle that mitigates care-related inequalities, addresses the barriers preventing women from entering paid work, and improves the conditions of all care workers and, by extension, the quality of care. The road to care work needs to be grounded in transformative measures in

1482 OECD, *Caregiving in Crisis*, 2021.

1483 ILO, *Care at Work*, 243.

1484 2022 General Survey, 25.

five main policy areas: care, macroeconomics, social protection, labour and migration. These policies are transformative when they contribute to the *recognition* of the value of unpaid care work, the *reduction* of the drudgery of certain forms of care work, and the *redistribution* of care responsibilities between women and men and between households and the State. The policies need also to *reward* care workers adequately and promote their *representation*, as well as that of care recipients and unpaid carers.[1485]

3.4. Other facilities to lighten household duties

Recommendation No. 165, Paragraphs 32 and 34

798. The Committee recalls that Part VII of the Recommendation includes in Paragraph 34 a number of measures which should form part of a strategy to help workers reconcile their employment and family responsibilities. During the preparatory work for the instrument, it was emphasized that, in most countries, the increasing distances that need to be covered to provide the care and the time spent on travel, which may be more than two hours a day, is reaching the point where it may cancel out the progress made so far in the form of shorter hours of work. Moreover, workers with family responsibilities frequently have to take their children to the crèche, to the childminder or to the doctor. They also have to undertake other household chores such as providing food supplies or performing administrative tasks. This travel, which often occurs on public transport in peak traffic hours and consequently in uncomfortable conditions, is a source of further fatigue. In developing countries, rapid urbanization poses the same problems, further aggravated by the shortcomings of the public transport system. Wherever steps are taken to improve the situation, they must be part of a rational policy of town and country planning, industrial decentralization and reorganization of hours of work.[1486]

799. The Committee observes that the reports examined do not, in general, contain extensive information on the measures taken with respect to this part of the Recommendation. In most cases, the services described do not appear to have been developed with a view to supporting workers with family responsibilities, but rather in order to help the general population. For example, the Government of the *Dominican Republic* indicates that most jobs are concentrated in urban areas, where there is excellent communication and transportation infrastructure, electric power, and potable water. The Government currently provides functional housing programmes at the lowest cost for sectors that do not have their own housing. The Government of *Burkina Faso* also indicates that the rate of access to drinking water improved from 71.9 per cent in 2015 to 76.4 per cent in 2020, and the rate of access to sanitation rose from 18 per cent in 2015 to 25.3 per cent in 2020. As for the living environment, progress has been made in providing households with decent housing through the construction of 5,790 social and economic housing units and in improving national electrification, the rate of which increased from 18.8 per cent in 2015 to 22.57 per cent in 2019. ***The Committee recalls that other measures designed to improve the conditions of workers in general, such as the frequency of public transport facilities and the proximity of water and energy supplies, can only have a favourable impact on workers with family responsibilities. The Committee also emphasizes the importance of associating workers' and employers' organizations, and other bodies which are directly concerned, with the formulation and implementation of these measures.***

1485 ILO, *Care Work and Care Jobs for the Future of Decent Work*, 44–45.

1486 ILO, *Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities*, Report VI(1), International Labour Conference, 66th Session, 1980 (hereinafter "Law and practice report on Convention No.156"), 55.

4. Other social security measures

Convention No. 156, Article 4
Recommendation No. 165, Paragraphs 27, 29 and 30

800. One of the main objectives behind the adoption of Convention No. 156 and related Recommendation No. 165 was to ensure that workers with family responsibilities are not disadvantaged and discriminated against compared with other workers solely because of their family obligations. During the preparatory work for Convention No. 156 and Recommendation No. 165, it was emphasized that workers with family responsibilities, in particular women, were often disadvantaged with respect to their social security rights, as a result of interruptions in their occupational activities.[1487] The International Labour Conference discussion led to the adoption of the provisions aimed at extending various social security measures to workers with family responsibilities.[1488]

801. Indeed, workers with family responsibilities may still face challenges in access to social security benefits. This is particularly relevant for social insurance schemes, where entitlement and/or the level of benefits depend on the period of paid contributions or employment. In addition, the Committee has previously observed that some social security systems are based on stereotypes about women's role in society; in such systems, social security allowances are usually paid to the man as "head of the household" and a woman benefits from social protection only on the basis of her husband's entitlements.[1489]

802. At the same time, gender-responsive social protection systems may significantly contribute towards ensuring the income security and health protection of workers and their family members as well as fostering decent and productive employment.[1490] Such positive outcomes require the establishment and maintenance of a comprehensive and coordinated set of social security measures, such as child and family benefits, tax relief for workers with dependants, and recognition of periods spent on care for children or other family members when determining social security rights.

4.1. Child benefits

803. Child benefits provide additional income for parents or designated caregivers with the aim of ensuring the welfare of children and the economic stability of their families.[1491] Responsibility for the maintenance of children is considered as one of the contingencies covered by social security, in accordance with the international standards on social security, in particular Convention No. 102 and Recommendation No. 67. Child benefits may be provided in the form of cash benefits or tax transfers as well as benefits in kind, such as food, clothing, housing, holidays or domestic help.[1492] According to Recommendation No. 67, child benefits should represent a substantial contribution to the cost of maintaining a child and should allow for the higher cost of maintaining older children.[1493]

1487 Law and practice report on Convention No. 156, 31.

1488 For more information concerning the types of leaves see Chs VI and VII.

1489 2011 General Survey, para. 216.

1490 ILO, *World Social Protection Report 2020–22*, 103. See also CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020.

1491 2019 General Survey, para. 327.

1492 Art. 42 of Convention No. 102.

1493 Para. 28(4) of the Annex to Recommendation No. 67.

804. The Committee is pleased to note that many countries provide for child benefits through different types of systems, including social insurance, social assistance, and universal or quasi-universal schemes. For example, in *Denmark*, the Child and Youth Allowance, the affluence-tested quasi-universal child benefit, is paid for children below the age of 18; benefit amounts taper off according to the family's income.[1494] In *Cameroon*, family allowances of 2,800 CFA francs are granted for each dependent child under the age of 18, or under the age of 21 if he or she is a student or is incapable of working because of illness.[1495] In *Mongolia*, universal schemes provide a conditional cash transfer, with the aim of alleviating poverty, for all children under the age of 18, up to a maximum monthly payment of 20,000 Mongolian tugrik (US$7).[1496] Similarly, *Argentina* introduced the universal child allowance (UCA), which consolidated several non-contributory cash transfer schemes for families, with a maximum of five children up to the age of 18 per family, provided that beneficiaries fulfil certain requirements relating to health (such as vaccination for children under the age of 5) and education (school attendance).[1497]

805. ***The Committee further welcomes the positive legislative developments which have taken place in some countries in recent years with a view to extending coverage of child benefits.*** For example, in *Thailand*, since 2019, poor families with children under the age of 6 years are entitled to the child support grant.[1498] In 2018, *Lithuania* introduced universal child benefits for all children under 18 years of age, or under 23 years of age if they continue to study. Large or poor families are also entitled to additional payments for their children, depending on their age.[1499] In the spirit of progressive realization, *Montenegro*[1500], *Tunisia*[1501] and the *Republic of Korea*[1502] have introduced a child benefit for all children aged 0–6 years.

806. ***However, the Committee expresses concern about the measures taken in some countries resulting in reduced coverage of cash transfers to families with children.*** Thus, *Mexico*'s much-lauded "Prospera" (initially "Progresa", and then "Oportunidades") conditional cash transfer (CCT) programme was abolished in 2019, and *Brazil* discontinued its "Bolsa Familia" programme in 2021.[1503]

807. In many countries, families with children have access to CCT programmes under which benefits are provided subject to meeting certain requirements, for example school attendance by children or their vaccination.[1504] While CCT programmes have a positive impact on the well-being of children, such programmes may negatively affect women who are usually responsible for meeting their requirements. In this respect, evidence has demonstrated that imposing conditions for entitlement to cash transfers can be cumbersome and punitive

1494 *Denmark* (sections 1–4 of the Act on a Child and Youth Benefit, Decree No. 964 of 2011, as amended by Act No. 1382).

1495 *Cameroon* (sections 20-24 of the Family Benefits Code, Law No. 67-LF-7 of 1967).

1496 ILO, *Child Money Programme: Mongolia*, Social Protection in Action: Building Social Protection Floors, Country Note Series, 2016.

1497 *Argentina* (sections 6, 7, 14 and 18 of Law No. 24714 on the Family Allowance Scheme and resolution ANSES No. 135/2022).

1498 UNICEF, "Thailand takes Another Leap Towards a Universal Child Support Grant", 2020; and Economic Policy Research Institute and Thailand Development Research Institute, "How will Thailand Counteract Intergenerational Poverty with its Child Support Grant?", 2020.

1499 *Lithuania* (the Law on Benefits for Children, of 3 November of 1994, as amended in 2019).

1500 *Montenegro* (arts 40 and 42 of the Law on Social and Child Welfare).

1501 *Tunisia* (Law No. 60-30 of 14 December 1960 on the Organization of Social Security Schemes as amended in 2018).

1502 *Republic of Korea* (section 5 of the Child Allowance Act No. 15539 of 2018).

1503 It should be noted that in *Brazil*, there is a non-universal child benefit called "Salario-familia" paid to employed workers, including domestic workers and independent low paid workers since they are registered to general social security system and have dependants up to 14 years of age or with disabilities.

1504 For example, *Australia*, *Bulgaria* and *Gabon*.

for women.[1505] On the contrary, unconditional cash transfer programmes produce positive child well-being outcomes that are similar to, or better than, those of CCTs without entailing restrictive transaction and opportunity costs for women or the risks of exclusion resulting from sanctions which are synonymous with programmes containing "hard" conditions. In fact, evidence supporting the positive human development effect of conditional mechanisms is rather limited, and it may be the cash plus social messaging that deliver positive outcomes, which are unconnected with the conditions themselves.[1506] Furthermore, countries with long-established universal child benefits, with allowances for all children regardless of parental income and other conditions, have demonstrated better outcomes in terms of poverty reduction and gender equality.[1507] This is because of the typical design features of universal benefits: they are easy to access for prospective entitlement holders; they entail no or very low opportunity and transaction costs; they are predictable and usually adequate and are non-withdrawable (or are at least phased out slowly) upon work take-up or resumption. Hence, they not only provide better support with respect to child-raising costs and child well-being but can better facilitate parents' or caregivers' labour market participation, especially women's participation, as they enable parents to plan for childcare and to afford childcare services too. It is no coincidence that the ten countries with the best rankings in the UNDP's Gender Inequality Index all have comprehensive systems of family-friendly social protection policies with universal child benefits at their core.[1508]

808. ***The Committee recalls that child benefit schemes should be designed and implemented in a non-discriminatory and child-responsive manner, taking into account the circumstances and needs of boys and girls, and in such a way that the take-up of prospective entitlement holders can be maximized, and onerous procedural impediments removed.***[1509] ***The Committee also underlines the fact that vulnerable families, in particular those who live in rural and remote areas or in the poorest neighbourhoods with limited access, may face challenges in meeting eligibility requirements for contributory benefits owing to informality and limited contributory capacity. Furthermore, it can be difficult to meet the behavioural conditions for non-contributory cash transfers on account of the distance to schools and medical services and facilities.***

809. The Committee notes that child benefits are usually provided at the level of minimum subsistence thresholds.[1510] However, as previously observed by the Committee, the level of income support available for children in many countries still remains relatively low and insufficient to fulfil children's basic needs and this support is especially compromised in the context of high inflation and a cost-of-living crisis if it is not suitably indexed to an appropriate indicator, since benefits can be rapidly eroded in terms of value or purchasing power.[1511]

810. Among relevant ILO standards, Convention No. 102 and Recommendation No. 202 establish benchmarks as regards to the level that child or family benefits should reach to meet the minimum levels of protection set out therein. To determine if this minimum is met, Convention No. 102 assesses the total value of the benefits paid in respect of all children in a given country against a percentage of the reference wage in that country, multiplied by the total number of children of persons protected.[1512] Recommendation No. 202 calls for basic

1505 UN WOMEN, *Family-oriented Cash Transfers from a Gender Perspective: Are Conditionalities Justified?*, Policy Brief No. 13, 2.

1506 2019 General Survey, para. 672.

1507 ILO, *World Social Protection Report 2020–22*, 99.

1508 For more information on the UNDP's gender inequality index, see the website of the United Nations Development Programme.

1509 2019 General Survey, para. 355.

1510 Examples include *Canada*, *Germany*, *Finland*, *Ireland*, *Italy* and *United Kingdom of Great Britain and Northern Ireland*.

1511 2019 General Survey, para. 383.

1512 Art. 44 of Convention No. 102.

income security for children, at least at a nationally defined minimum level, providing access to nutrition, education, care and any other necessary goods and services.[1513]

811. Ensuring adequate income security for families with children is particularly important in the context of the COVID-19 pandemic, now compounded by the cost-of-living and food crisis. According to estimates, the number of children living in low-income households has increased by over 142 million, to around 725 million in total.[1514] This is a source of concern, as UNICEF and the UN Special Rapporteur on extreme poverty both concluded that the pandemic social response was not child-sensitive, tending to favour direct business support or children in families with high formal labour market affiliation and therefore missing many vulnerable children.[1515] ***The Committee encourages Member States to take the necessary measures to ensure that families with children have effective access to child benefits at a sufficient level. In this respect, the Committee highlights the importance of establishing benchmarks to ensure that benefits are set at a level that is sufficient to secure the well-being of children while enabling the full participation of their caregivers, especially women, in economic life. The Committee further draws Member States' attention to the potential of universal child benefit schemes to achieve coverage of all children.***

4.2. Recognition of periods spent caring for children or other family members

812. Workers with family responsibilities, who are usually women, may face reduction in their social security rights because of work interruptions owing to the need to take care of dependent family members. This is particularly the case when the entitlement to social security benefits depends on the periods of paid contributions or employment.[1516]

813. One of the measures taken by many countries to address unpaid care is recognition of periods of unpaid work through the adoption of caregiver credits for entitlement to social security benefits. This results in an increase in the level of benefits and improved access to social security benefits in general. The Committee observes that the design of caregiver credits varies significantly in different countries. In particular, different conditions relating to types and duration of periods of unpaid care are taken into account to determine entitlement and the level of benefits. For example, in *Latvia*, the period of parental leave for a child up to one and a half years of age is considered for the entitlement to pensions and unemployment benefits.[1517] In some countries, periods of caring for other family members are also taken into account. In the *Russian Federation*, the time spent taking care of a family member with a group I disability or over 80 years old is converted into pension points, the amount of which affects the entitlement to social insurance pensions and their level.[1518] In *Chile*, caregiver credits are financed by the State and amount 10 per cent of the minimum wage.[1519] However, in some

1513 Para. 5(b) of Recommendation No. 202. According to Para. 8(b): "basic income security should allow life in dignity. Nationally defined minimum levels of income may correspond to the monetary value of a set of necessary goods and services, national poverty lines, income thresholds for social assistance or other comparable thresholds established by national law or practice and may take into account regional differences".

1514 ILO, *World Social Protection Report 2020–22*, 85.

1515 ILO, *World Social Protection Report 2020–22*, 85 and 89.

1516 ILO, *World Social Protection Report 2020–22*, 54, 55, and 178.

1517 *Latvia* (section 9 of the Act on State Pensions of 1996).

1518 *Russian Federation* (section 12 of the Federal Law on Insurance Pensions of 2013).

1519 *Chile* (section 7 of Decree No. 28 of 5 May 2016 that establishes the Programme for Payment of Caregivers of People with Disabilities).

countries in Latin America, credits are provided only to mothers and not to other caregivers, which in turn does not challenge gender stereotypes.[1520]

814. ***Recalling that women are disproportionally responsible for taking care of dependent family members in many countries,***[1521] ***the Committee underlines the importance of a gender-responsive approach in designing social security schemes, in particular those based on social insurance. The Committee encourages Member States to take measures to ensure that periods of absence from work for the purpose of taking care of children or other family members requiring help are taken into account for the acquisition of social security rights and that such periods effectively result in an increase in the level of social security benefits and are provided not only to women but to all persons with family responsibilities.***

4.3. Tax relief measures[1522]

815. Negative income tax schemes are considered as one of the mechanisms for ensuring basic income security.[1523] In particular, tax relief measures may reduce the costs involved in employing domestic workers, using childcare services and facilities, and caring for a relative with a disability. In *Azerbaijan*, for example, the monthly taxable income is reduced by 50 Azerbaijan manat for one of the spouses who has at least three dependants, regardless of the degree of kinship, including full-time students and students under the age of 23.[1524] In *Burkina Faso*, tax reductions proportionally increase for each dependent family member, such as children and students under 25 years of age or a dependent spouse.[1525] In *Brazil*, tax relief is applied in the case of dependants, such as children or stepchildren, siblings, and grandchildren up to 21 years of age, or those attending high school or technical school, up to 24 years of age. If dependants have any disability that incapacitates them for work or study, there is no age limit.[1526] In *Czechia*, tax advantages for dependent children living with a taxpayer in a common household are applied in the form of tax relief, tax credit, or a combination of the two.[1527] ***The Committee considers that tax measures in combination with other schemes and benefits can contribute to the income security of workers with family responsibilities.***

4.4. Family needs and unemployment benefits

816. Family needs and family responsibilities should be taken into account when employment is offered to jobseekers. In particular, Paragraph 30(2) of Recommendation No. 165 states that where the employment offered involves moving to another locality, the place of employment

1520 OECD, *Enabling Women's Economic Empowerment: New Approaches to Unpaid Care Work in Developing Countries*, 2019, 70.

1521 ILO, *World Social Protection Report 2020–22*, 30, 54 and 55.

1522 This section focuses on tax relief and other fiscal measures which aim to provide income support to workers with family responsibilities. It is noted, however, that certain tax provisions, due to their design, may negatively affect women's participation in the labour market and disproportionately reduce their income. For example, in family-based taxation schemes, secondary (lower) earners, who often tend to be women, may be discouraged from working due to higher tax rates applied to a family unit. Gender biases in tax schemes may also take the form of the assignment of the responsibility for filing tax and claiming tax returns to a husband, who is frequently considered the head of the household. For more information on this topic, please see OECD, *Tax Policy and Gender Equality: A Stocktake of Country Approaches*, 2022; IMF, *Gendered Taxes: The Interaction of Tax Policy and Gender Equality*, 2022; and International Centre for Tax and Development at the Institute of Development Studies, *Tax and Gender in Developing Countries: What are the Issues?*, Summary Brief No. 6, 2017, which discusses the effects of different taxation arrangements on men and women in developing countries.

1523 Para. 9(3) of Recommendation No. 202.

1524 *Azerbaijan* (section 102.5 of the Tax Code).

1525 *Burkina Faso* (section 113(1) and (2) of the Tax Code).

1526 *Brazil* (section 35 of Law No. 9.250/95).

1527 *Czechia* (part III of the Act on Income Taxes).

of the spouse and the possibilities of educating children should be taken into account. Likewise, the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), requires an assessment of the impact of the employment offered to jobseekers on their family situation.[1528]

817. During the preparatory work for Recommendation No. 165, it was highlighted that such factors as marital status, the spouse's place of employment, the possibility of transferring the family home, education facilities available for the children, and the length and frequency of absences from home where it is not planned to move the family should be taken into consideration in defining "suitable employment" offered to a person. Refusal to accept employment which disregards these factors must not lead to the suspension or refusal of unemployment benefits.[1529]

818. The Committee notes that the employment legislation of some countries specifically refers to jobseekers' family situation for the purpose of offering suitable employment. In *Canada*, employment insurance services provide guidelines and requirements related to suitable employment opportunities and support to jobseekers, particularly taking account of compatibility with family obligations.[1530] In *Australia,* when assessing whether work is considered suitable for a jobseeker, family situations are taken into account, particularly if appropriate childcare services are not available during the hours the person would be required to work.[1531] In addition, some countries report on targeted assistance provided to persons with family responsibilities. In *Belgium*, for example, the Brussels Regional Employment Office takes into consideration the specific situation of jobseekers who are single parents in order to identify the obstacles to their employment and to provide them with the necessary information.[1532] In *New Zealand,* different assistance is provided to single-parent jobseekers. Apart from cash benefits, they receive help with education and training, and support in finding part-time work, so that suitable employment takes childcare into account.[1533]

819. ***The Committee emphasizes that social security plays a crucial role in implementing flexible working and leave arrangements by ensuring income security and access to medical care for workers and their families during periods of leave and beyond (for example, maternity benefits, paternity or parental allowances, childcare allowances or subsidies, family benefits, home care allowances, disability care allowances and carers' allowances, as well as various tax credits, subsidies and grants). The Committee notes that the lack of access to adequate benefits discourages men in particular from taking up family-friendly leave and working arrangements. In the case of women, they all too often work in forms of employment that are outside the scope of social security coverage or have only limited entitlement to social security. In this respect, the Committee calls for comprehensive, gender-responsive social security systems which address the specific situation of workers with family responsibilities, many of whom are women, with a view to ensuring adequate standards of living and promoting gender equality.***

1528 Art. 21 of Convention No. 168.

1529 Law and practice report on Convention No. 156, 36.

1530 *Canada* (section 27 of the Employment Insurance Act and section 3 of Ch. 9 of the Digest of Benefit Entitlement Principles).

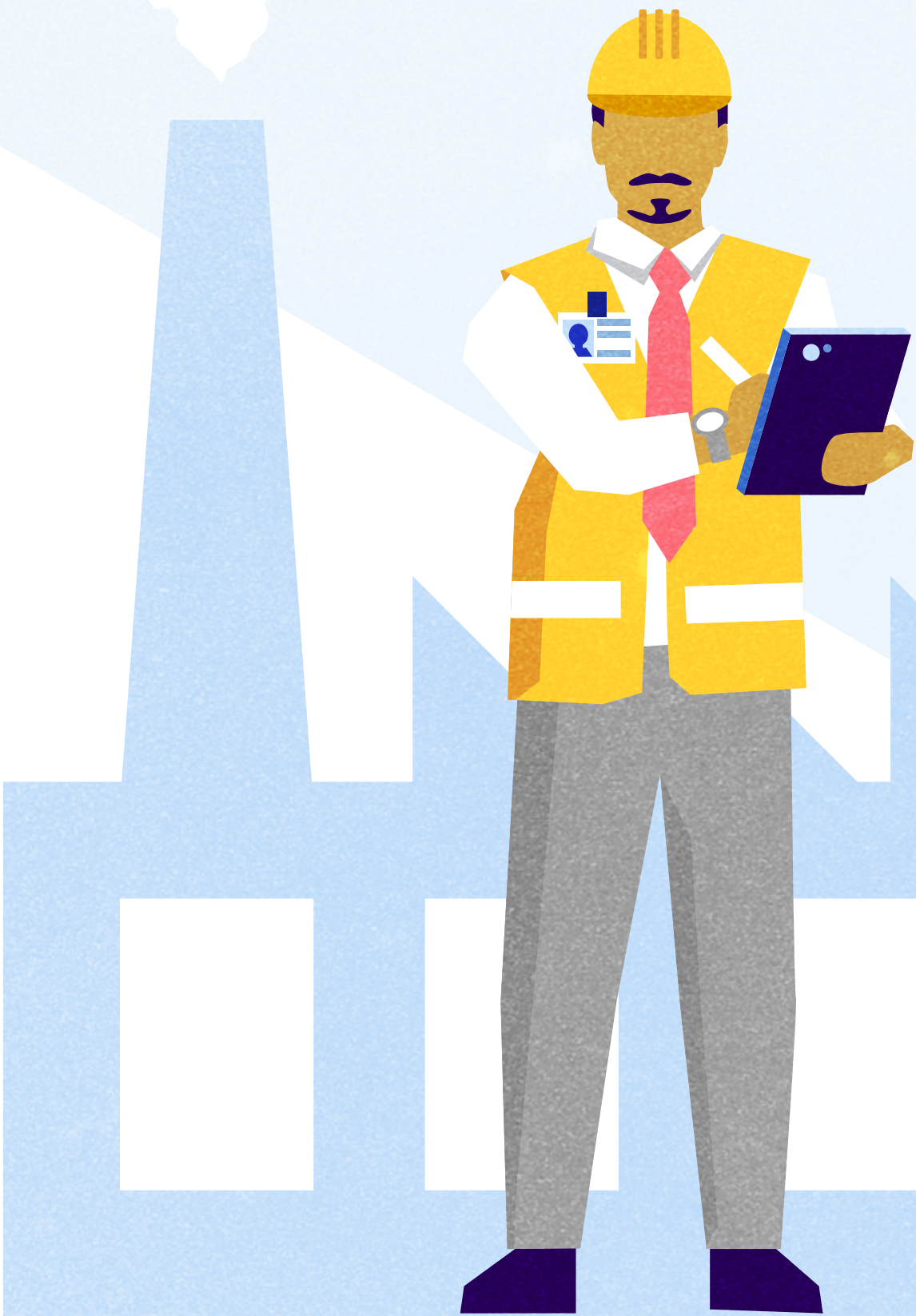
1531 *Australia* (section 3.11.1.20 of the Social Security Guide).

1532 See more on the website Parent Solo.

1533 See the governmental websites: Work and income – Our commitment to you; and Work and income – Sole parent support.



8 Enforcing and safeguarding rights



Recommendation No. 111, Paragraphs 4(b), 4(c) and 10

820. The Committee notes that a majority of the workers' organizations who submitted comments allude to the fact that, while legislation establishing principles and rights related to equality and non-discrimination exists to a higher or lesser extent, its full realization in practice is equally necessary. Some of them pointed at specific shortcomings in terms of implementation.[1534] The International Organisation of Employers (IOE) also indicates that the lack of implementation of the Conventions on non-discrimination is primarily related to societal perceptions based on historical attitudes and stereotypes which are difficult to change and sometimes require a long period of adaptation. It also considers that policies should not place a burden on enterprises which might impair their sustainability and their ability to create jobs, and that it is necessary to take into account the needs of sustainable enterprises. In order to achieve effective implementation of Convention No. 111, there is a critical need for adequately resourced and responsive enforcement procedures and mechanisms. The Committee would therefore like to recall the recommendations provided in its General Survey of 2012, which still remain relevant today.[1535]

821. The Committee further recalls the importance of effective monitoring and enforcement of maternity protection rights, including health protection of pregnant and nursing women, due provision of maternity leave, cash benefits, and high-quality, timely maternity medical care. In this respect, occupations and sectors with a high proportion of women workers must be given particular attention.[1536] These include sectors and occupations such as domestic work, home work, nursing and the care professions, textiles and clothing, and sales/supermarkets, in which there is a relatively high proportion of disguised and ambiguous employment relationships and informality.[1537] ***In order to ensure effective monitoring and enforcement of maternity protection rights, the Committee considers it necessary to extend the scope of labour and social security inspections to all enterprises and workers, in particular women in atypical forms of dependent work and workers in rural and remote areas, as well as to microenterprises.***[1538]

1534 Including organizations from *Austria* (Federal Chamber of Labour (BAK)), *Colombia* (the Confederation of Workers of Colombia (CTC) and the Single Confederation of Workers of Colombia (CUT)), *Costa Rica* (the Confederation of Workers Rerum Novarum (CTRN) and the Costa Rican Workers' Movement Central (CMTC)), *Dominican Republic* (the Autonomous Confederation of Workers' Unions (CASC), the National Confederation of Dominican Workers (CNTD) and the National Confederation of Trade Union Unity (CNUS)), *Finland* (the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA) and the Finnish Confederation of Professionals (STTK)), *Italy* (the Italian Confederation of Workers' Trade Unions (CISL), the Italian General Confederation of Labour (CGIL) and the Italian Union of Labour (UIL)), *Maldives* (the Maldives Trade Union Congress (MTUC)), *Netherlands* (the National Federation of Christian Trade Unions (CNV) and the Netherlands Trade Union Confederation (FNV)), *New Zealand* (the New Zealand Council of Trade Unions (NZCTU)), *Peru* (the Autonomous Workers' Confederation of Peru (CATP), the Confederation of Workers of Peru (CTP), the General Confederation of Workers of Peru (CGTP), the Single Confederation of Workers of Peru (CUT-Perú)), *Russian Federation* (the Confederation of Labour of Russia (KTR)), *Senegal* (the National Confederation of Workers of Senegal (CNTS)), *United Kingdom of Great Britain and Northern Ireland* (TUC) and *Zimbabwe* (ZCTU).

1535 2012 General Survey, para. 869.

1536 Para. 16 of the Employment Relationship Recommendation, 2006 (No. 198).

1537 2020 General Survey, para. 913.

1538 ILO, *Extending Social Security to Workers in the Informal Economy*, 164.

1. Enforcement mechanisms

822. The Committee notes that, in line with the trends identified in 2012, measures to ensure the implementation and enforcement of national frameworks continue to show a particular focus on the role of labour inspectorates and specialized equality bodies.

823. Since the labour inspection authorities are the primary supervisory body, many governments refer to them as playing a leading role in detecting and addressing cases of discrimination,[1539] and also in undertaking awareness-raising and providing guidance.[1540] As regards specialized bodies, the Committee recalls that their form, scope of action and mandate vary widely among countries while keeping the common objective of better addressing discrimination and promoting equality.[1541] Such bodies may include ombudsperson offices that address matters of discrimination at large,[1542] as well as more specific institutions focused on matters of employment, gender equality or on the enforcement of a specific law.[1543] Apart from their role in awareness-raising referred to in Chapter IV, many of such bodies are mandated to examine complaints and settle discrimination disputes. They may also provide advice or take part in judicial procedures. Courts and tribunals remain the principal bodies for ensuring enforcement of national legislation. In this regard, some countries have established specialized courts on issues of discrimination and equality. This measure may respond to the need to redirect a certain flow of complaints or to shorten delays, as well as to the need for specific technical knowledge in relation to discrimination issues. In *Finland*, a National Non-Discrimination and Equality Tribunal was established to address cases of discrimination in private activities, public administration and commercial activities.

824. A number of countries also refer to the establishment of procedures at the workplace level to address discrimination. For instance, employers in the *Maldives* are required by section 42(g) of the Gender Equality Act to establish a complaint mechanism for gender discrimination cases, and in the *Republic of Korea*, the Equal Employment Act provides that an employee is appointed in agreement between workers and employers as a honorary supervisor for equal employment, to counsel and advice employees who are victims of discrimination, participate in independent investigations and recommend possible policy improvements.

825. In order to carry out their functions effectively, enforcement authorities need to be adequately equipped to identify and address discrimination, which includes having technical knowledge and sufficient capacity. In this regard, the Committee notes that countries increasingly provide information on awareness-raising and training given to staff in monitoring and enforcement institutions, including labour inspectorates, and on matters of gender equality.[1544] Other measures adopted include promoting the presence of more women in the labour inspectorates, courts and tribunals.[1545] The Committee notes, however, that a number of workers'

1539 For instance, *Brazil, Colombia, Cook Islands, Côte d'Ivoire, Croatia, Finland, Greece, Ghana, Iraq, Israel, Maldives, Mali* and *Morocco*.

1540 For instance, in *Poland*, where the Chief Labour Inspectorate works in cooperation with the Commissioner for Human Rights and carries out advisory, training and dissemination activities, including in connection with cases under investigation.

1541 2012 General Survey, para. 877.

1542 Such as in *Australia* (Australian Human Rights Commission), *Canada, Croatia, Georgia, Greece and the Republic of Korea*.

1543 Such as in *Australia* (Fair Work Commission), *Denmark, Finland, Israel, Malta, Mexico* and *Qatar*.

1544 For instance, *Botswana, Colombia, Cyprus, Estonia, Finland, Guatemala* (regarding rights of LGBTIQ+ persons), *Israel*, *Lao People's Democratic Republic, Malaysia, Mexico* and *New Zealand*.

1545 In *Guatemala*, the recruitment and selection of judges follows criteria of non-discrimination, and the Public Ministry set out a policy to ensure a gender perspective in the recruitment of women in such Ministry.

organizations allude to the fact that enforcement and monitoring authorities lack sufficient resources, including budget or staff, in order to address cases of discrimination appropriately.[1546]

826. The participation of social partners is also key in relation to enforcement, as they usually have a closer view on how instruments are implemented in day-to-day practice. The Committee observes that workers' and employers' organizations are sometimes granted the right to bring claims before specialized bodies.[1547] On some occasions they are also invited to actively contribute, such as in *Estonia*, where social partners participate in the work of labour dispute committees as "lay assessors", independent representatives of social partners involved in the discussion of labour disputes. The Free Trade Union Confederation of Latvia (FTUCL) *(Latvia)* indicates that it cooperates with the labour inspector on work and safety issues.

827. The Committee also notes that some countries have continued their efforts to promote effective coordination between enforcement authorities and, more particularly, between equality bodies and labour inspection authorities.[1548] For instance, *Greece* refers to Law No. 3696/2010 by which a special cooperation scheme is established with the labour inspectorate, and *Italy* refers to the Protocol of understanding between the National Labour Inspectorate and the National Equality counsellor.

828. The Committee points out the significance of the right of complaint and appeal in guaranteeing protection against the unlawful or arbitrary deprivation of maternity protection, particularly the right to maternity benefits in cash and in kind.[1549] Effective realization of the right of complaint and appeal in social security matters, including in cases of maternity, is one of the main principles established in most ILO social security standards.[1550] More specifically, claimants and beneficiaries of maternity benefits should have the right to submit a complaint to the administrative authority which has rendered a decision on the entitlement to benefits. Furthermore, beneficiaries should have the right to appeal against the decision of this administrative authority before a court or specialized tribunal.[1551] With respect to the procedures for the examination of claims related to social security matters, the Committee recalls that they should be impartial, transparent, effective, simple, rapid, accessible, inexpensive and free of charge to the applicant, as determined by Recommendation No. 202.[1552] In addition, it is important to ensure respect for the rights and dignity of applicants at all stages of the complaint or appeal process. This concerns, for example, disclosure of private information in maternity-related matters or provision of maternal medical care and related services.[1553] ***Underlining the crucial role of complaint and appeal procedures in safeguarding rights, the Committee calls upon the Member States to ensure access to administrative and judicial dispute resolution mechanisms that are effective and timely.***[1554]

1546 Including organizations from *Costa Rica* (the Confederation of Workers Rerum Novarum (CTRN) and the Costa Rican Workers' Movement Central (CMTC)), *Italy* (the Italian Confederation of Workers' Trade Unions (CISL), the Italian General Confederation of Labour (CGIL) and the Italian Union of Labour (UIL)), *Maldives* (the Maldives Trade Union Congress (MTUC)), *New Zealand* (the New Zealand Council of Trade Unions (NZCTU)) and *Senegal* (the National Confederation of Workers of Senegal (CNTS)). Likewise, the *Cook Islands* and *Somalia* refer to specific challenges regarding the capacity of the labour inspection.

1547 For instance, in *Australia, Finland* and *Latvia*.

1548 For instance, in *Cyprus, Estonia, Greece* and *Italy*.

1549 2019 General Survey, para. 184.

1550 See, for example, Paras 63 and 112–114 of Recommendation No. 69, Para. 27(8) and (9) of the Annex of Recommendation No. 67, Art. 70 of Convention No. 102, Art. 23 of Convention No. 121, Art. 34 of Convention No. 128, Art. 29 of Convention No. 130, Art. 27 of Convention No. 168, and Para. 7 of Recommendation No. 202. For the Committee's examination of the right to complaint and appeal, see 2011 General Survey, paras 403–438 and 2019 General Survey, paras 177–196.

1551 2019 General Survey, para. 179.

1552 Para. 7 of Recommendation No. 202.

1553 2019 General Survey, para. 183.

1554 2019 General Survey, para. 178.

2. Number of reported cases of discrimination and improving access to enforcement mechanisms

829. The Committee welcomes the fact that certain countries have provided data on the number of cases and complaints of discrimination.[1555] Some of them have provided specific data on cases of discrimination based on pregnancy and maternity, or family situation and family responsibilities,[1556] sexual orientation and gender identity,[1557] as well as cases of sexual harassment.[1558] In *Greece*, data is disaggregated further according to specific alleged violations, such as refusal to grant leave or retaliatory dismissal of workers who have requested or taken leave, detrimental changes in employment on account of maternity or family responsibilities, dismissal or forced resignation of pregnant women, or non-renewal of their fixed-term contracts. Moreover, governments also provide data on cases of discrimination based on grounds other than sex, such as origin, citizenship, language, health, political views, age, religion, or disability.[1559]

830. While welcoming the amount of information provided, the Committee notes that statistics provided from certain countries reveal low or insignificant numbers of reported cases. Some other countries further indicate that there are no known reported cases of discrimination.[1560] As it similarly noted on the subject of sexual harassment in 2012, the Committee observes that, where data on claims of discrimination are not available, this may be due to a lack of awareness of the legislative framework or remedies available, as well as a lack of access to enforcement bodies.

831. The Committee observes that some workers' organizations emphasize that litigation processes are often morally and economically cumbersome for victims, and that the effective implementation of the Conventions examined should not be left to the burden for persons affected to bring a lawsuit.[1561] The Committee notes that mechanisms enabling enforcement bodies to act ex officio help to introduce a proactive perspective in the role of enforcement bodies. It notes, in this regard, that in *Spain*, the labour inspectorate has carried out a number of specific time-bound campaigns to identify and address cases related to gender equality.[1562] Other measures to promote easy access to enforcement mechanisms include the provision of targeted support and counselling for victims, as well as ensuring that dispute-resolution systems are free of charge. In relation to procedural requirements, governments have continued to report on the implementation of a shift in the burden of proof in cases of discrimination, sometimes conditional to the presentation of prima facie evidence of the case.[1563] The Committee observes in this regard that the International Organisation of Employers (IOE) considers that a shift of the burden of proof is an extremely heavy bureaucratic burden for employers, and that it should only operate when the complainant, in the first place, has produced plausible and prima facie evidence of discrimination. As regards the need to increase awareness on the enforcement mechanisms available for cases of discrimination, the Committee observes that specialized bodies sometimes publish collections of cases, statistics, jurisprudential

1555 Including *Czechia, Finland, Georgia, Greece, Guatemala, Honduras, Ireland, Israel, Kazakhstan, New Zealand, Republic of Korea* and *United States of America*.

1556 Including *Cyprus, Finland, Georgia, Greece, Israel, Mexico, New Zealand, Republic of Korea* and *Peru*.

1557 Including *Australia* (Queensland and Victoria), *Latvia* and *Republic of Korea*.

1558 Including *Australia, Poland, Republic of Korea* and *United States of America*.

1559 Including *Australia, Finland, Georgia, Greece, Israel* and *Latvia*.

1560 For instance, *Guyana, Kazakhstan* and *Lao People's Democratic Republic*.

1561 Organizations from *Finland* (the Central Organization of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) and the Finnish Confederation of Professionals (STTK)) and *Russian Federation* (Confederation of Labour of Russia (KTR)).

1562 CEACR, Convention No. 111: *Spain*, observation, 2021.

1563 Including in *Australia, Canada, Croatia, Finland, Greece, Iraq, Ireland, Israel* and *Republic of Korea*.

analysis or substantive reports on a given theme, which help to enhance public awareness and knowledge of discrimination and gender equality, as well as to provide information tools to interested parties.[1564]

832. The Committee also notes that data on claims of discrimination are in some cases not available. However, the Committee observes that some countries have explored methodologies in order to collect such data. In *Georgia*, in collaboration with a Council of Europe project, new forms of registration of discrimination cases have been developed in order to enable the construction of a database of files that identifies not only the number of cases but also the grounds of discrimination and the outcome of the cases.

3. Effective redress and sanctions

833. Beyond access and treatment of cases, particular attention is due to their outcome. On many recent occasions the Committee has requested governments to provide information on the number of cases of discrimination in employment and occupation brought before or identified by the authorities, as well as the "sanctions imposed and the remedies granted".[1565] The Committee highlights the fact that while information on the sanctions established by law for violations of the prohibition on discrimination provides an indication, the application of sanctions may be very different in practice. Information on the actual outcomes of discrimination cases, including on the sanctions imposed and the remedies granted, is needed in order to evaluate whether the enforcement system is working properly. In this regard, the Federal Chamber of Labour (BAK) *(Austria)* indicates that the sanctions and damages awarded by courts as a result of discrimination are not sufficiently dissuasive.

834. A few countries have been able to provide information regarding the outcome of cases of discrimination.[1566] The Committee notes that, in some instances, the proportion of cases presented that culminate in the imposition of an actual sanction is very small, and this may suggest a lack of awareness on the part of enforcement body staff or be a sign of particular difficulties in providing proof or substantiating discrimination cases. The Committee takes note of indications from *Honduras* and *Spain* that collecting data on sanctions imposed and remedies may be challenging since cases are subject to judicial procedures and fall out of the government's competencies and that sanctions are sometimes until a certain time has passed without appeal.[1567]

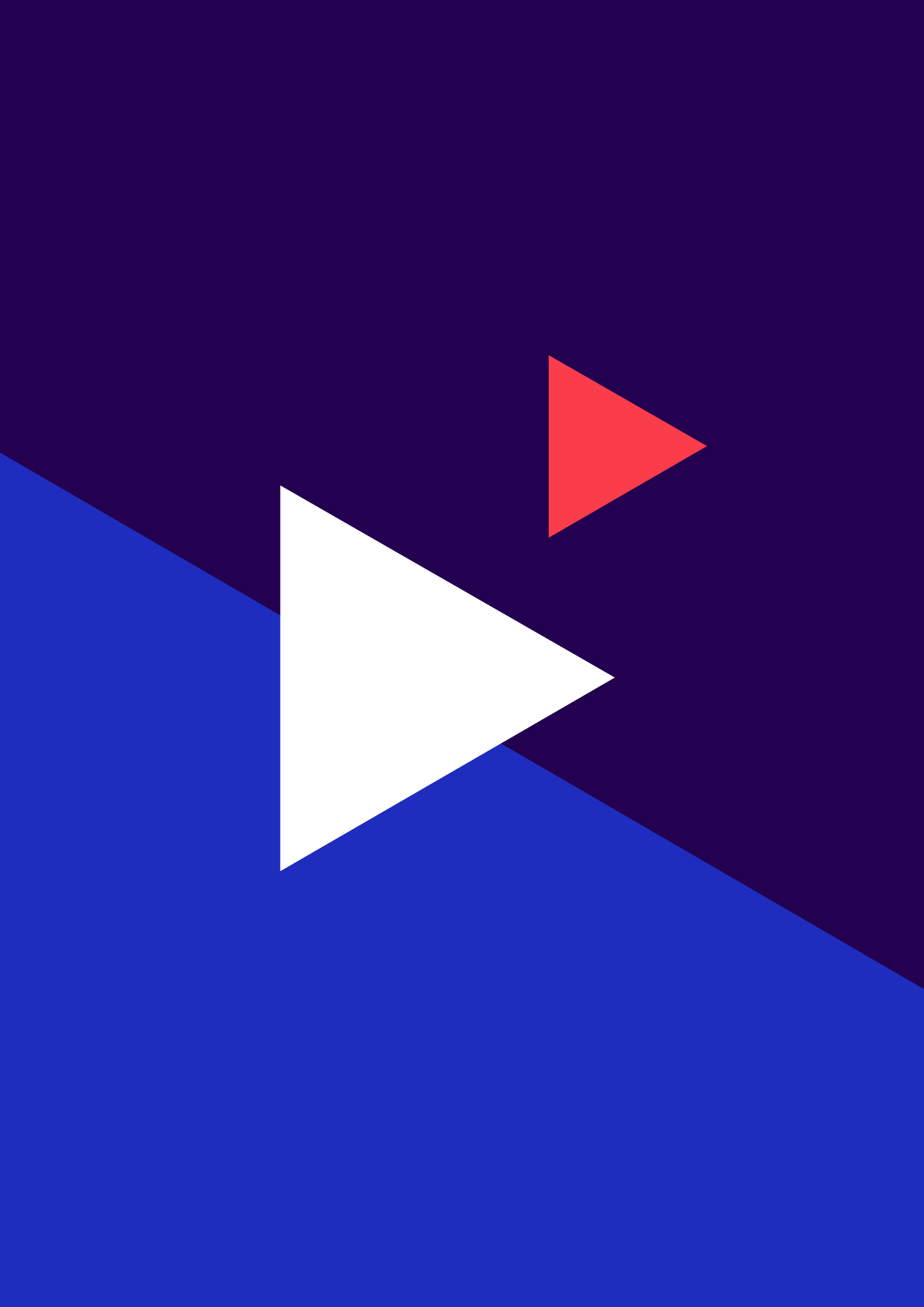
835. ***The Committee encourages governments to take the necessary measures to be able to provide detailed information on the number of cases of discrimination in employment and occupation brought before or identified by the authorities and their outcome, including information on sanctions imposed and remedies granted.***

1564 For example, in *Finland* and *Ireland*.

1565 See CEACR comments, Convention No. 111: *Nigeria*, observation, 2021; *Portugal*, direct request, 2021; *Sri Lanka*, direct request, 2021; *Uzbekistan*, direct request, 2021; *Georgia*, observation, 2020; *Bolivarian Republic of Venezuela*, direct request, 2021; *Greece*, observation, 2020; *Cyprus*, direct request, 2019; *Maldives*, direct request, 2019; and *Nepal*, observation, 2019.

1566 Such as *Finland, Israel, Latvia, Poland* and *Peru*.

1567 CEACR, Convention No. 111: *Spain*, direct request, 2021.



Part III. Achieving the potential of the instruments

1. Gender equality as a catalyst for sustainable development

836. Achieving gender equality at work is key for sustainable development. In this regard, the questionnaire contained an optional question on measures to implement Sustainable Development Goal (SDG) 5 (gender equality) and the Beijing Platform for Action. The promotion of gender equality and, more particularly, equality between women and men, is articulated through a multiplicity of axes, most of them being also reflected in SDGs 3, 5 and 8. This includes action regarding access to and equality in education, training and employment; the promotion of women's empowerment and economic autonomy; access to productive resources such as land and credit; the prevention of violence and harassment, including gender-based violence, domestic violence, and sexual harassment; maternity protection; the protection of health, including reproductive health and the reduction of maternal mortality; awareness-raising to challenge gender stereotypes and norms, including from a very young age; the promotion of women in leadership positions and their representation in public authorities; gender-responsive budgeting; and the promotion of an equal distribution of unpaid care work between men and women, including through the establishment of parental leave, care services, cash transfers and medical care.

837. The Committee welcomes the extensive information received on the inclusion or mainstreaming of gender equality in national development strategies, plans and measures,[1568] as well as in relation to policy measures regarding population, education, public administration, employment, social security, rural areas, indigenous peoples, prevention of violence and abuse, health, environment, and climate.[1569]

838. Several countries also referred to the implementation of the Beijing Platform for Action, including the review of its implementation on the occasion of Beijing +25,[1570] which highlights the importance of this tool as a guiding light to scale up efforts towards equality for women.

1568 For example, *Austria, Burkina Faso, Canada, Costa Rica, Croatia, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Germany, Guatemala, Indonesia, Jamaica, Lithuania, Malaysia, Maldives, Malta, Mexico, Nepal, Panama, Peru, Poland, Qatar, Republic of Korea, Sweden, Switzerland* and *Viet Nam*.

1569 For example, *Algeria, Cambodia, Guatemala, Guinea, Honduras, Russian Federation, Sweden, Türkiye, Viet Nam* and *Zimbabwe*.

1570 For example, *Algeria, Angola, Austria, Bosnia and Herzegovina, Denmark, Estonia, Germany, Greece, Indonesia, Ireland, Jamaica, Japan, Kazakhstan, Mexico, Morocco, Panama, Portugal, Sweden, Switzerland* and *Trinidad and Tobago*.

839. Reference was also made to international and multilateral forums where governments have been able to engage to exchange experiences and promote the adoption of gender equality measures, including the spaces provided by UN Women, the United Nations Committee on the Status of Women, the United Nations Human Rights Council, the Third Committee of the United Nations General Assembly, and the Generation Equality Forums. At the regional and group level, governments particularly referred to the European Union Gender Action Plan (GAP), the G7 "Women Entrepreneurs Finance Initiative", the Affirmative Finance Action for Women in Africa (AFAWA Initiative), the Caribbean Joint Statement on Gender Equality, the Montevideo Consensus on population and development of 2013, and the Santo Domingo Consensus of 2013.[1571]

2. Ratification of ILO Conventions Nos 111, 156 and 183: Prospects and challenges

840. As of December 2022, there are 175 ratifications of Convention No. 111, 45 ratifications of Convention No. 156, and 43 ratifications of Convention No. 183. Only 20 countries have ratified all three Conventions: *Albania, Azerbaijan, Belize, Bosnia and Herzegovina, Bulgaria, El Salvador, Kazakhstan, Lithuania, Mauritius, Montenegro, Netherlands, Niger, North Macedonia, Norway, Peru, Portugal, San Marino, Serbia, Slovakia* and *Slovenia*.[1572]

841. The International Trade Union Confederation (ITUC) indicates that more efforts are needed to ensure universal ratification and *effective* implementation of Convention No. 111 and to promote the wide ratification of Conventions Nos 156 and 183. It recalls that maternity protection is a precondition for gender equality and that the protection of workers with family responsibilities is essential to promote gender equality, rendering the ratification and implementation of Conventions Nos 156 and 183 of paramount importance. It also considers that the ratification of the Violence and Harassment Convention, 2019 (No. 190), and its implementation together with Recommendation No. 206 should be an integral part of any strategy for gender equality.

842. The International Organisation of Employers (IOE) points out that, while gender equality and non-discrimination, maternity protection and support to workers with family responsibilities are critical for social, economic and business development, concerns exist regarding the scope, content, and effective implementation of the instruments examined. It points at the need for the Office to promote inclusive, balanced and effective implementation, in consultation with the most representative social partners, to ensure that national realities and circumstances are adequately taken into account.

843. The Committee observes that a few countries consider that their national framework implements, or has been amended to implement, many of the requirements of the instruments under examination, but do not expressly indicate whether they currently envisage their ratification.[1573] Contextual obstacles to ratification, such as constraints on resources, budget, capacity or technical knowledge, are also alluded to by *Burkina Faso*, *Cook Islands*, *Lao People's Democratic Republic* and *Viet Nam*.

1571 For example, *Germany, Jamaica, Japan* and *Republic of Korea*.

1572 See Appendix I.

1573 For example, *Bahrain, Canada* and *Egypt*.

Convention No. 111

844. Regarding Convention No. 111, which is already highly ratified, *Malaysia* informs that efforts on legislative reviews have been undertaken with a view towards ratification. *Japan* refers to the need for careful consideration of the consistency between the Convention and domestic legislation, particularly regarding restrictions of the expression of political views by public service employees and the provisions on gender-based employment protection and working conditions when it comes to physical and physiological differences. The *United States of America* recalls that the legal review process prior to ratification for Convention No. 111, which determined that the *United States of America* is in full compliance, was submitted to the Senate in 1998 but was never acted upon. *Oman* indicates that the development of legislation and awareness-raising is ongoing.

Convention No. 156

845. The Committee welcomes that *Grenada, Morocco* and *Namibia* confirmed they are considering ratifying Convention No. 156. Such ratification could be envisaged in the future in the *Bahamas*, *Botswana* and *Panama,* consultations will be undertaken in *Mali,* and the Inter-Union Council of Women Workers has promoted ratification in the *Dominican Republic*. Other respondents inform that the instrument has been brought to the attention of legislative authorities and tripartite committees,[1574] or point at the need to adopt measures, such as the review of national frameworks, before ratifying.[1575] *Algeria* and *Suriname* point at the existence of gaps between national legislation and the Convention and hence are not currently envisaging its ratification. *Tunisia* specifies that the broad scope of application to "all categories of workers" under Article 2 can be an obstacle to the ratification, as temporary workers are not covered by labour legislation. *Austria* and *Denmark* stress that ratification of Convention No. 156 is not currently being considered due to its Article 8, which provides for protection against termination of employment due to family responsibilities. These Governments indicate that such protection does not exist in their national frameworks. The Committee refers to paragraphs 466–472 of this Survey, which present the requirements set out in Article 8.

Convention No. 183

846. The Committee welcomes the intention expressed by some governments to ratify Convention No.183 or to examine the prospects of such ratification. For example, *Suriname* is in the process of ratifying the Convention, whereas, in the *Philippines*, a gap analysis is currently being conducted. *Georgia* indicates that the discussion on the feasibility of ratifying the Convention is a part of the action plan of the Tripartite Social Partnership Commission. *Armenia* confirms that ratification will be considered within the future labour law reforms.

847. The Committee further observes that certain governments evoke the possibility of ratifying Convention No. 183.[1576] Some governments indicate that there are no major obstacles for the ratification[1577] or there are no gaps or inconsistencies in their legislation related to the provisions of this instrument.[1578]

1574 For example, *Colombia, Georgia, Guyana* and *Senegal*.

1575 For example, *Algeria, Brazil, Indonesia, Jamaica* and *Zimbabwe*.

1576 For example, *Bahamas, Colombia, Ghana, Guinea,* and *Guyana*.

1577 For example, *China, Israel, Spain*, and *Togo*.

1578 For example, *Canada* and *Costa Rica*.

848. In some Member States, however, the ratification of Convention No. 183 is not foreseen.[1579] Some governments indicate the need to adjust their national legislation to ensure the compliance with the Convention in case of its ratification.[1580] The extension of maternity leave duration,[1581] ensuring a six-week compulsory postnatal leave,[1582] and providing a right to paid nursing breaks[1583] are reported among the required legislative changes necessary for the ratification of the Convention.

3. Proposals for ILO Action

Provision of technical assistance

849. The Committee notes that, while most governments do not request ILO technical assistance in relation to the instruments examined, several indicate they may avail themselves of such assistance in the future. Some governments indicate they have received or are currently receiving technical assistance, including *Panama, Philippines, Qatar, Seychelles, Saudi Arabia* and *Saint Kitts and Nevis*. Regarding Convention No. 183, assistance was provided in *Togo* to conduct a comparative analysis, which was validated by the tripartite constituents; and *Senegal* benefited from ILO technical assistance with respect to the ratification of the Convention in 2017 through support for the establishment of a tripartite monitoring committee. The *Lao People's Democratic Republic* requests technical assistance for future ratifications and *Grenada* and the National Confederation of Workers of Senegal (CNTS) *Senegal* solicit assistance for the ratification of Convention No. 156. Willingness to receive technical assistance is expressed by *China* as regards unratified Conventions and *Iraq* regarding Recommendations.

850. A number of governments stress that ILO technical support could be useful in relation to legislative matters, such as in the undertaking of legislative reviews to bring national law into line with international labour standards, as well as the development and amendment of specific legislation.[1584] *Cook Islands* notes in this regard that technical assistance could be provided to revise the Employment Relations Act, 2012 from a gender equality perspective, and that the ILO is currently providing support for the extension of maternity leave from 6 to 12 weeks. *Trinidad and Tobago* announces that it will solicit support in ensuring that non-discrimination in employment based on maternity is covered under the Maternity Protection Act. *Japan* refers to the need for information on good practices related to how countries that have ratified Convention No. 111 are ensuring consistency between their laws and the Convention. The implementation in practice of the instruments under examination also seems to be an area where governments would appreciate technical assistance, including regarding cooperation with social partners.[1585]

851. Replies submitted also identify the need for training and capacity-building on gender equality and the implementation of the instruments examined, for government officials (such as labour inspectors and other persons working in the labour administration and relevant

1579 For example, *Argentina, Australia, Estonia, France, Honduras, Ireland, St Kitts and Nevis* and *Zimbabwe*.

1580 For example, *Algeria* and *Brazil*.

1581 For example, *Burundi* and *Republic of Korea*.

1582 For example, *Sweden*.

1583 For example, *Denmark* and *Japan*.

1584 For example, *Botswana, Cambodia, Cook Islands, Egypt, Guinea, Montenegro* and *Oman*.

1585 For example, *Egypt, Japan, Latvia, Panama* and *Viet Nam*.

ministries) and for workers' and employers' organizations.[1586] For instance, the *Dominican Republic* suggests that technical staff from the Ministry and representatives of workers and employers be trained on the effective application of the Conventions. *Viet Nam* proposes that training courses and workshops be organized to share experiences of different countries in the implementation of national regulations. *Saint Kitts and Nevis* indicates that training and dialoguing would be useful in the pilot stages of gender mainstreaming measures.

852. Technical assistance to promote and raise awareness on gender equality and on the instruments examined is also referred to by a number of countries.[1587] *Cambodia* points out that further trainings and publications could improve public awareness. *Grenada* requests technical assistance to promote gender equality at work, and *Peru* for the organization of working groups between workers and employers. In *Namibia,* assistance could be provided to undertake awareness-raising campaigns to educate the public on the provisions of the Conventions. The International Trade Union Confederation (ITUC) considers that the ILO should carry out promotional activities to ensure the ratification of the Conventions examined and their effective implementation, as well as that of their accompanying Recommendations.

853. Particular attention should also be given to efforts in data collection, as the Governments of *Mali* and *Viet Nam* highlight the need for technical support regarding the setting up of statistical and informational collection systems.

Proposals for standards-related action

854. In terms of future standard-setting, the Committee notes that a number of governments have not indicated any item that would need specific action.[1588] *Canada* has expressed interest in the opinion of the Standards Review Mechanism Tripartite Working Group (SRM TWG) on possible gaps regarding the instruments.

855. *Jamaica* and *Mali* refer to the lack of regulation on various care leave regimes for workers with family responsibilities, including paternity leave, parental leave, adoption leave, and leave in case of illness of a family member. In this respect, the Committee observes that although the current international labour standards establish general provisions regarding different care leaves, they do not provide any detailed guidance which could assist Member States in the elaboration of the design of care leave policies, including benchmarks as to duration of such leaves, distribution between caregivers, and benefits levels provided during the periods of absence.

856. Potential areas of interest for standard-setting related action are also identified by *Israel* concerning child benefits, *Lithuania* in relation to women's psychological health and well-being (including access to professional counselling during maternity), and *Malaysia* and *Mali* regarding methods for statistical collection and analysis. The *Philippines* also refers to the emergence of new forms of work as a possible area to be examined. *Indonesia* and *Saudi Arabia* also referred to the need to take into consideration the different circumstances present in diverse countries. Respondents also identify that further standards-related action is necessary to clarify the concept of family responsibilities *(Iraq)*, and to provide information on workplace practices to reconcile work and family responsibilities *(Algeria)*, and education *(Cyprus)*.

1586 For example, *Bahamas, Burkina Faso, Cambodia, Dominican Republic, Guatemala, Guinea, Mali* (the Democratic Confederation of Workers of Mali (CDTM)), *Saint Kitts and Nevis, Suriname, Togo* and *Viet Nam*.

1587 For example, *Cambodia, Egypt, Ghana, Grenada, Malaysia, Namibia, Oman* and *Peru.*

1588 For example, *Argentina, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Burundi, Cabo Verde, Cameroon, Chile, China, Costa Rica, Croatia, Denmark, Dominican Republic, Ecuador, Estonia, France, Germany, Ghana, Grenada, Guyana, Honduras, Hungary, Iceland, Ireland, Japan, Lao People's Democratic Republic, Luxembourg, Mauritania, Mauritius, Mexico, Montenegro, Namibia, Netherlands, Panama, Peru, Poland, Portugal, Republic of Korea, Serbia, Seychelles, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Uruguay* and *Bolivarian Republic of Venezuela.*

Concluding remarks



857. In light of the Governing Body's decision, the Committee has carried out, for the first time, a joint examination of Conventions Nos 111, 156 and 183 and their respective Recommendations. The Committee welcomes this first-ever opportunity to examine these instruments jointly and through a gender equality perspective. It acknowledges the detailed responses submitted by governments, as well as the comments sent by the various organizations of workers and employers. Through this Survey, the Committee has endeavoured to provide, as concisely as possible, explanations on the scope and the meaning of the provisions of the instruments under examination, as well as on good practices and obstacles to their implementation and ratification. It expresses the hope that this General Survey will provide a helpful overview of the current situation of law and practice in ILO Member States in relation to these instruments. This study may also inspire Member States as to the measures that could be taken, taking into account the views of the social partners, to overcome the obstacles to the eventual ratification of the Conventions under consideration.

858. Addressing these obstacles and gaps in a timely and effective fashion is essential for advancing a transformative agenda for gender equality as called for by the ILO Centenary Declaration for the Future of Work (Centenary Declaration), as well as to adapt to a changing world of work and to demographic transitions. In this regard, the Committee wishes to recall that the Centenary Declaration calls on the ILO to direct its efforts to achieving gender equality at work through a transformative agenda, with regular evaluation of progress made, which: (i) ensures equal opportunities, equal participation and equal treatment, including equal remuneration for women and men for work of equal value; (ii) enables a more balanced sharing of family responsibilities; (iii) provides scope for achieving better work–life balance by enabling workers and employers to agree on solutions, including on working time, that consider their respective needs and benefits; and (iv) promotes investment in the care economy.[1589]

859. This General Survey shows the interconnection and, to some extent, the interdependence of the effective application of the instruments examined. The application of Conventions Nos 156 and 183 is essential for the realization of gender equality at work; at the same time, unless discrimination based on sex and gender is eliminated in line with Convention No. 111, the full realization of Conventions Nos 156 and 183 will remain a challenge.

860. Most of the matters identified in this General Survey have a common denominator that ***there cannot be full equality at work in a broader context of existing and ongoing inequality.***

861. Eliminating discrimination based on sex and gender, including through the promotion of special protection in cases of maternity and family responsibilities, is essential but not sufficient on its own to ensure substantive gender equality at work. ***A qualitative and comprehensive change is urgently needed in the gender dynamics where gender-specific constraints and structural obstacles find their origins. In this regard, the Committee observes that combating stereotypes and archaic understandings and practices that attribute certain skills or capacities to men and women, or that assign specific roles because of sex or gender, must be a priority.*** This change is not only necessary to operationalize the application of the instruments examined, but also to ensure their long-term efficacy. Equality of women and men in the world of work is a core value of the ILO. Gender equality is an essential component of the notion of decent work. The goal of work of an acceptable quality, ensuring social protection, allowing a career and continuous training, balanced with family life cannot be reached without gender equality.

862. The Committee wishes to raise a number of specific points in relation to each instrument.

1589 ILO, Centenary Declaration for the Future of Work, International Labour Conference, 108th Session, 2019, Part II(A)(viii).

Convention No. 111

863. The Committee draws from this General Survey that, more than 60 years after the adoption of Convention No. 111, eliminating all forms of discrimination in employment and occupation remains a challenge. Strategies need to innovate to address multiple and intersecting forms of discrimination, including discriminatory practices that are less visible and entrenched in structural inequalities.

864. The Committee observes that, legal frameworks to address discrimination are in constant evolution, and that the range of grounds of discrimination prohibited in national legislation is very large. At the same time, gaps continue to exist in many countries as regards the prohibition of discrimination based on the seven grounds explicitly mentioned in Article 1(1)(a) of the Convention. In addition, there is still much to be done to prohibit and address sexual harassment, discriminatory harassment based on sex and gender, and multiple and intersecting discrimination. Furthermore, legislative and regulatory protections against discrimination, and policies promoting equality in employment and occupation, still fall short of overcoming labour market dynamics that often leave behind certain groups, such as workers in the informal economy, workers in non-standard forms of employment, self-employed workers and domestic workers. ***The Committee emphasizes that achieving gender equality in employment and occupation necessarily involves the full implementation of Convention No. 111, that is that all forms of discrimination in employment and occupation are addressed, at least as regards discrimination based on the grounds encompassed in Article 1(1)(a) of the Convention. When developing and adopting measures to tackle discrimination in employment and occupation, Member States should consider the situation of specific groups that are in disadvantaged situations and address the impact of multiple discrimination.***

865. The Committee has further noted that gender stereotypes and occupational segregation remain a main obstacle and a systematic barrier for gender equality at work. Often perpetuated throughout all stages of employment and occupation, gender stereotypes tend to relegate particular groups to specific areas of study, jobs, sectors or occupations that are considered more appropriate or fit for them. In this regard, women continue to face barriers in accessing education and training opportunities of their choice, particularly in areas where they are less present or that are traditionally considered "masculine", hence being led to jobs, sectors or occupations that are less well paid, have worse working conditions and terms of employment, or that are at the lower part of the occupational ladder. Sometimes, jobs or occupations are forbidden to women on the basis of gender stereotypes on their roles, aspirations and capabilities. Even where they could seize specific opportunities for employment and occupation, women are sometimes constrained to choose or remain in jobs that offer them the possibility to reconcile work and family responsibilities or where they feel more protected against violence and harassment. Men may also be faced with discrimination and stigmatization when trying to access education or employment and occupation that is traditionally considered "feminine".

866. The Committee recalls the importance of adopting a holistic approach to address occupational segregation and gender stereotypes that encompasses both legislative and regulatory frameworks as well as measures for societal change. In this regard, the Committee welcomes the numerous efforts undertaken by governments and social partners to promote access to men, boys, women and girls to more, better and more diversified opportunities for employment and occupation, including in the context of a fast-changing world of work where digital skills are becoming indispensable. ***The Committee asks Member States to take proactive measures in collaboration with the social partners, including awareness-raising measures, to dismantle gender stereotypes and norms that underlie occupational segregation. It also encourages Member States to continue adopting measures to promote the presence of women in more jobs, including those traditionally considered as "masculine" and management-level positions, and to promote the presence of men in jobs that traditionally are considered "feminine".*** The Committee also recalls that, as regards terms and conditions of employment, gender inequalities are also persistent, particularly in relation to the gender

remuneration gap. The Committee refers to the Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951, which, while not being under examination in this Survey, remain one of the essential normative tools in the ILO to promote gender equality and women's economic empowerment.

867. The Committee notes that gaps and lack of coverage continue to be a challenge in applying Convention No. 111 and in following guidance established in Recommendation No. 111. Some sectors, jobs and occupations are not fully covered by anti-discrimination provisions or are afforded unequal protection in comparison to general labour law. Furthermore, when combined with occupational gender segregation, the different legislative and regulatory treatment of specific jobs, sectors and occupations may amount to indirect discrimination based on sex and gender. In this regard, particular attention is due to work in the informal economy. ***The Committee trusts that all Member States will take the necessary measures to ensure that all jobs, sectors and occupations are afforded protection against discrimination in employment and occupation in line with the Convention, and that different legislative and regulatory treatment regarding employment and occupation is reviewed to ensure that it does not amount to indirect discrimination.***

868. The Committee further notes that national frameworks for gender equality in employment and occupation keep developing and acknowledges that significant progress has been achieved in practice. The Committee welcomes, in this regard, the efforts undertaken in a number of countries to provide statistical data on employment and occupation, most commonly regarding labour force indicators disaggregated by sex. The Committee notes that in most cases it is difficult to clearly determine whether this data is used effectively and in a constructive way to inform policymaking. The Committee notes that countries commonly provide information on successive and concatenated national policies and action plans for gender equality at work, but that they rarely indicate whether their application and results are monitored and taken into account when elaborating the next policy. Furthermore, it also notes the varying degree of detail of statistical information among Members, and that some have indicated that they encounter challenges in establishing an effective data collection system. The Committee also further notes that, despite efforts undertaken in many countries, the effective enforcement of national frameworks in cases of discrimination remains a real challenge to be addressed to achieve the application of the Convention in practice. ***The Committee emphasizes that the collection of accurate and detailed data is essential to implement Convention No. 111, as it enables the evaluation of the effectiveness of the measures adopted and, at the same time, the development of future policy measures in light of evidence-based information. For this purpose, data collection methodologies need to be developed and strengthened to gather relevant statistical information disaggregated by sex and other personal characteristics, occupations, and sectors of the economy.***

Convention No. 156

869. The Committee is pleased to observe that many Member States have prohibited discrimination in employment against workers with family responsibilities in their legislation. The Committee had the opportunity to present throughout this General Survey good practices of family-friendly policies that are responsive to the diverse, specific and changing needs of workers with family responsibilities.

870. The Committee recalls that Article 4(b) of the Convention calls for the adoption of measures, compatible with national conditions and possibilities, to take account of the needs of workers with family responsibilities in terms and conditions of employment and in social security. Based on the information provided by Member States, the Committee notes that the majority of these measures include inter alia:

- ***Leave arrangements,*** such as parental leave, maternity leave, paternity leave, adoption leave, or emergency leave have become a reality in the legislation of many countries. The Committee observes, however, that even where such leave exists, challenges remain in ensuring that men have equal access to them and avail themselves of this right. *Equally* distributed *paid* leaves between women and men workers strongly contribute to promoting effective gender equality in employment and occupation and help reduce the stigma associated with leave take up. It can also help women accessing employment, and retain their employment during childbearing/raising periods, and facilitate entry and re-entry into labour markets after leave periods. A recent trend has also emerged in some countries consisting of the availability of long-term care leave to care for dependents (a child with a disability or family members with long-term functional dependency)[1590]. In that regard, the Committee wishes to emphasize the importance of developing appropriate leave (and working) arrangements to facilitate workers' care for their elderly family members, as an anticipation of the increase of care needs linked to the aging population.[1591] ***The Committee has observed the positive impact of taking proactive measures by Member States, in consultation with workers' and employers' organizations to promote and extend leave policies accompanied by income security measures, particularly for working fathers and other caregivers.***
- ***Flexible working arrangements*** as provided for in the Workers with Family Responsibilities Recommendation, 1981 (No.165) (Paragraphs 18 and 19), are also among the enabling factors that can help facilitate work–life balance of working parents. The lack of flexible work arrangements has often impacted the women who find themselves in the need of taking a break in their career or dropping out of the labour market to care for their children or for sick family members. The Committee considers that governments, in collaboration with representative workers' and employers' organizations, have the responsibility to create an enabling environment that starts by facilitating equal access to flexible working arrangements. ***The Committee emphasizes the importance of providing conditions of work that meet the needs of workers with family responsibilities as called for in Article 4(b) of the Convention. It encourages Member States, in consultation with workers' and employers' most representative organizations to follow the guidance provided in Recommendation No.165 (Paragraphs 18 and 19) on different types of working arrangements.***
- ***Childcare and family services and facilities*** as provided for in Article 5 of the Convention[1592] have proven to help working parents accessing, participating in or advancing in economic activity and hence reduce gender gaps in the labour market. ***The Committee considers it important that the tripartite constituents strengthen their efforts to provide accessible, affordable, and quality social care services, including childcare and long-term care facilities, to reconcile work and care for young, elderly, or sick relatives.***

871. ***The Committee recognizes that family-friendly measures that assist both men and women with reconciling work and family responsibilities are essential to promote gender equality in employment and occupation and to close the gender pay gap. These measures should be part of the transformative agenda that contributes to achieving gender equality.***

1590 See Ch. VII.

1591 CEACR, General observation on the Workers with Family Responsibilities Convention, 1981 (No. 156), 2020,.

1592 Recommendation No. 165 (Paras 24 to 26 and 32 to 34).

Convention No. 183

872. The Committee welcomes the positive developments that have taken place in many Member States, aimed at strengthening employment and health protection of pregnant and nursing women, extending social security coverage in cases of maternity, increasing maternity leave duration and cash benefits levels, facilitating access to affordable maternal healthcare services, and adopting measures against discrimination at work on the ground of maternity. ***The Committee emphasizes that full and effective maternity protection is vital for achieving genuine equality of opportunity and treatment of women and men at work because it provides support to workers for raising families in conditions of income security, prevents harm to their or their child's health, and at the same time ensures that they will not lose their job simply because of pregnancy or maternity leave.***

873. The Committee however observes that challenges in achieving full maternity protection still remain, and that many pregnant and nursing women all over the world are not sufficiently protected due to legislative gaps or the lack of effective implementation of maternity protection legislation. This particularly concerns women in atypical forms of dependent work, such as part-time and temporary employment, home work or disguised employment, who are frequently among the most vulnerable and most in need of protection. They may fall outside the scope of the national legislation or de facto be excluded from maternity protection schemes and statutory provisions due to the challenges to meet the eligibility criteria. ***The Committee therefore firmly encourages Member States to take the necessary measures to ensure that all women workers, and particularly those who are in atypical forms of dependent work, and to the extent possible the self-employed, enjoy the right to maternity protection and benefit from a comprehensive set of public measures provided by Convention No. 183 and the Maternity Protection Recommendation, 2000 (No. 191). In this respect, the Committee considers it important to address the legal, financial, administrative and other barriers which may prevent women from enjoying maternity protection, as well as to ensure effective monitoring and enforcement of maternity protection rights.***

874. The Committee points out the continuing challenge of ensuring, both in law and in practice, employment protection for pregnant and nursing women, and non-discrimination at the recruitment stage, as well as ensuring their right to return to work following maternity leave and protecting them against dismissal on the ground of maternity. The Committee observes with concern that the discriminatory practice according to which women employees or candidates for employment are asked information about family planning or requested to undergo pregnancy testing is still observed in various countries. Moreover, instances where women are not guaranteed the right to return to their position or an equivalent job after maternity leave, either in law or in practice, are still frequent. The Committee has also taken note of the significant number of cases where a woman's employment has been terminated as a result of pregnancy, and during her pregnancy or in the months following childbirth, or of absence due to maternity-related leave. ***The Committee calls upon Member States to prevent and eliminate discrimination based on maternity at all stages of employment and occupation. Measures to this end should ensure that pregnancy and maternity are not an obstacle to women accessing and remaining in decent work, and that women of childbearing age are not penalized for fear that they may absent themselves from work, or become "costly" employees, due to pregnancy or maternity.***

875. The Committee recalls the importance of maternity health protection in the workplace in achieving gender equality. While a safe and healthy working environment should be guaranteed for both men and women, specific protection for pregnant and nursing women should be provided to ensure the health of both mother and child. The Committee welcomes the fact that a number of countries have recognized the right of pregnant and breastfeeding women not to perform any job deemed hazardous or dangerous, both in nature and circumstance, including night work. ***The Committee emphasizes the importance of maternity health protection in the workplace in achieving gender equality. The Committee strongly encourages Member States to ensure that pregnant and nursing women are not obliged to perform work which is prejudicial to the health of the mother or the child, or where an assessment***

has established a significant risk to the mother's health or that of her child. It recalls that the determination of what constitutes a "dangerous or unhealthy" job for pregnant women should be left to the competent authority, and not to the employer itself, and that women have the right to decide to continue working if their safety and health are secured.

876. In this regard, the Committee recalls that specific interventions for the protection of pregnant and breastfeeding women shall be strictly related to maternity protection and not be based on stereotypes of women's professional abilities and role in society. ***The Committee once again emphasizes that protective measures beyond maternity protection in the strict sense are in violation of the principle of equality of opportunity and treatment between men and women. In this regard, certain safeguards should be adopted, including consulting social partners and seeking the advice of experts in the process of determining the types of work to be prohibited and establishing of workplace risk assessment procedures, and the provision of alternative measures in cases where the work was determined to be dangerous or unhealthy.***

877. The Committee underlines the indispensable role of paid maternity leave in ensuring the health and economic protection of pregnant and nursing mothers and their children. The Committee is pleased to observe that certain Member States have extended the length of maternity leave.[1593] Nevertheless, paid maternity leave of at least 14 weeks, as provided by Article 4(1) of the Convention, is still not established in many countries, and the level of cash benefits is sometimes lower than the benchmarks established by Article 6(2) and (3) of the Convention. ***The Committee strongly encourages Member States to ensure that all women protected by the Convention and to the extent possible self-employed women, are entitled to collectively financed paid maternity leave in accordance with its requirements. The Committee further emphasizes the importance of providing access to benefits out of social assistance funds for women who do not meet conditions to qualify for cash benefits and who are often among the most vulnerable categories of workers.***

878. The Committee is pleased to observe in some countries the extension of medical care benefits and maternal medical care provided free of charge. Available, accessible, acceptable, and quality maternal medical care is essential to reduce maternal mortality and improve health outcomes for mothers and their children. The Committee recalls that Paragraph 3 of Recommendation No. 191 indicates the types of maternal medical care benefits that should be provided, to the extent possible, in a timely manner. Governments are also encouraged to allow paid time off for pregnant workers for their antenatal medical appointments, as provided by Paragraph 6(6) of Recommendation No. 191. ***The Committee emphasizes the importance of affordable or free maternal medical care and paid time off for antenatal care to prevent financial hardship and ensure income security for pregnant and nursing women. The Committee calls upon Member States to take the necessary measures to facilitate equal access to available, accessible, acceptable, and quality maternal medical care that is affordable or free of charge, to the extent possible, for all women, including the most vulnerable ones.***

879. The Committee recalls that the effectiveness of maternity protection partly depends on how maternity cash and medical care benefits are financed. Where employers are directly liable for the costs of maternity benefits, they may be unwilling to hire, retain or promote women workers. Furthermore, employer's liability for maternity cash benefits may turn out to be burdensome, particularly for small enterprises. In this respect, the Committee welcomes that many countries established social insurance schemes or extended the social insurance coverage in case of maternity to more workers. ***The Committee calls upon Member States to progressively move from employer's liability mechanisms to the establishment of social security schemes based on the principles of collective financing and solidarity as well***

1593 For example, *Colombia, Ethiopia* and *Zambia*.

as risks-sharing, to ensure broader and better protection of workers in accordance with Article 6(8) of the Convention.

880. The Committee welcomes the fact that the right to daily nursing breaks upon return from maternity leave is provided in most Member States, in accordance with Article 10 of the Convention. It also welcomes the fact that in certain countries, nursing facilities or childcare services, or both, are provided at the workplace. The Committee however wishes to point out the importance of ensuring that nursing breaks are counted as working hours and remunerated in line with Article 10 of the Convention, in order to prevent any financial constraints for the women concerned and their families, which could have the effect of preventing them from availing themselves of this right. ***In view of the above and recalling the positive impact of nursing breaks for the well-being of both child and mother and for facilitating the mother's re-integration into the workplace, the Committee encourages Member States to take the necessary measures to ensure their legislation duly provides for nursing breaks or a daily reduction of working hours***.

881. The Committee highlights that national law and practice in many countries go beyond the requirements of international standards on maternity protection. Examples include but are not limited to: the extension of maternity protection to women in atypical forms of employment by adapting social security schemes to the nature of their work; the prohibition of requesting pregnancy testing or any information on family planning from job candidates; vocational training for women returning from maternity leave; the requirement of prior consent of a competent body before the dismissal of a pregnant or breastfeeding worker to ensure that such dismissal is not due to maternity; the provision of compensation and remedies for women whose right to protection against wrongful dismissal has been violated; the extension of the length of maternity leave; higher levels of maternity cash benefits; the absence of qualifying periods for maternity cash benefits entitlements; and the funding of paid breastfeeding breaks and nursing and childcare facilities through social insurance. Furthermore, certain countries extend specific entitlements to fathers or other caregivers, for example by providing paid parental leave for fathers, paid time off for fathers to attend antenatal healthcare appointments, paternity leave, and nursing breaks to fathers or other caregivers, and by allocating the unexpired portion of postnatal maternity leave to fathers in case of the mother's death, sickness, or hospitalization. ***The Committee welcomes the developments in law and practice that go beyond minimum requirements set out by maternity protection standards, as well as measures aimed at recognizing the role of fathers and other caregivers, which help promote a shared responsibility for the care of the child and dismantle related gender norms. Such practices not only offer greater protection to pregnant and nursing women, but also contribute to gender equality in employment and occupation and in society at large.***

Appendices



Appendix I. Ratification status (Conventions Nos 111, 156 and 183)

Members	Convention No. 149	Convention No. 189	Convention No. 183
Afghanistan	Ratified 01/10/1969	—	—
Albania	Ratified 27/02/1997	Ratified 11/10/2007	Ratified 18/08/2004
Algeria	Ratified 12/06/1969	—	—
Angola	Ratified 04/06/1976	—	—
Antigua and Barbuda	Ratified 02/02/1983	—	Ratified 06/05/2022
Argentina	Ratified 18/06/1968	Ratified 17/03/1988	—
Armenia	Ratified 29/07/1994	—	—
Australia	Ratified 15/06/1973	Ratified 30/03/1990	—
Austria	Ratified 10/01/1973	—	Ratified 30/04/2004
Azerbaijan	Ratified 19/05/1992	Ratified 29/10/2010	Ratified 29/10/2010
Bahamas	Ratified 14/06/2001	—	—
Bahrain	Ratified 26/09/2000	—	—
Bangladesh	Ratified 22/06/1972	—	—
Barbados	Ratified 14/10/1974	—	—
Belarus	Ratified 04/08/1961	—	Ratified 10/02/2004
Belgium	Ratified 22/03/1977	Ratified 10/04/2015	—
Belize	Ratified 22/06/1999	Ratified 22/06/1999	Ratified 09/11/2005
Benin	Ratified 22/05/1961	—	Ratified 10/01/2012
Bolivia (Plurinational State of)	Ratified 31/01/1977	Ratified 01/09/1998	—
Bosnia and Herzegovina	Ratified 02/06/1993	Ratified 02/06/1993	Ratified 18/01/2010
Botswana	Ratified 05/06/1997	—	—
Brazil	Ratified 26/11/1965	—	—
Brunei Darussalam	—	—	—
Bulgaria	Ratified 22/07/1960	Ratified 03/04/2006	Ratified 06/12/2001
Burkina Faso	Ratified 16/04/1962	—	Ratified 04/03/2013
Burundi	Ratified 25/06/1993	—	—
Cabo Verde	Ratified 03/04/1979	—	—
Cambodia	Ratified 23/08/1999	—	—
Cameroon	Ratified 13/05/1988	—	—
Canada	Ratified 26/11/1964	—	—
Central African Republic	Ratified 09/06/1964	—	—
Chad	Ratified 29/03/1966	—	—
Chile	Ratified 20/09/1971	Ratified 14/10/1994	—
China	Ratified 12/01/2006	—	—
Colombia	Ratified 04/03/1969	—	—

Members	Convention No. 149	Convention No. 189	Convention No. 183
Comoros	Ratified 17/03/2004	—	—
Congo	Ratified 26/11/1999	—	—
Cook Islands	—	—	—
Costa Rica	Ratified 01/03/1962	Ratified 11/07/2019	—
Côte d'Ivoire	Ratified 05/05/1961	—	—
Croatia	Ratified 08/10/1991	Ratified 08/10/1991	—
Cuba	Ratified 26/08/1965	—	Ratified 01/06/2004
Cyprus	Ratified 02/02/1968	—	Ratified 12/01/2005
Czechia	Ratified 01/01/1993	—	Ratified 03/07/2017
Democratic Republic of the Congo	Ratified 20/06/2001	—	—
Denmark	Ratified 22/06/1960	—	—
Djibouti	Ratified 28/02/2005	—	Ratified 25/09/2020
Dominica	Ratified 28/02/1983	—	—
Dominican Republic	Ratified 13/07/1964	—	Ratified 09/02/2016
Ecuador	Ratified 10/07/1962	Ratified 08/02/2013	—
Egypt	Ratified 10/05/1960	—	—
El Salvador	Ratified 15/06/1995	Ratified 12/10/2000	Ratified 07/06/2022
Equatorial Guinea	Ratified 13/08/2001	—	—
Eritrea	Ratified 22/02/2000	—	—
Estonia	Ratified 17/08/2005	—	—
Eswatini	Ratified 05/06/1981	—	—
Ethiopia	Ratified 11/06/1966	Ratified 28/01/1991	—
Fiji	Ratified 17/04/2002	—	—
Finland	Ratified 23/04/1970	Ratified 09/02/1983	—
France	Ratified 28/05/1981	Ratified 16/03/1989	—
Gabon	Ratified 29/05/1961	—	—
Gambia	Ratified 04/09/2000	—	—
Georgia	Ratified 22/06/1993	—	—
Germany	Ratified 15/06/1961	—	Ratified 30/09/2021
Ghana	Ratified 04/04/1961	—	—
Greece	Ratified 07/05/1984	Ratified 10/06/1988	—
Grenada	Ratified 14/05/2003	—	—
Guatemala	Ratified 11/10/1960	Ratified 06/01/1994	—
Guinea	Ratified 01/09/1960	Ratified 16/10/1995	—
Guinea-Bissau	Ratified 21/02/1977	—	—
Guyana	Ratified 13/06/1975	—	—
Haiti	Ratified 09/11/1976	—	—
Honduras	Ratified 20/06/1960	—	—

Members	Convention No. 149	Convention No. 189	Convention No. 183
Hungary	Ratified 20/06/1961	—	Ratified 04/11/2003
Iceland	Ratified 29/07/1963	Ratified 22/06/2000	—
India	Ratified 03/06/1960	—	—
Indonesia	Ratified 07/06/1999	—	—
Iran (Islamic Republic of)	Ratified 30/06/1964	—	—
Iraq	Ratified 15/06/1959	—	—
Ireland	Ratified 22/04/1999	—	—
Israel	Ratified 12/01/1959	—	—
Italy	Ratified 12/08/1963	—	Ratified 07/02/2001
Jamaica	Ratified 10/01/1975	—	—
Japan	—	Ratified 09/06/1995	—
Jordan	Ratified 04/07/1963	—	—
Kazakhstan	Ratified 06/12/1999	Ratified 17/01/2013	Ratified 13/06/2012
Kenya	Ratified 07/05/2001	—	—
Kiribati	Ratified 17/06/2009	—	—
Kuwait	Ratified 01/12/1966	—	—
Kyrgyzstan	Ratified 31/03/1992	—	—
Lao People's Democratic Republic	Ratified 13/06/2008	—	—
Latvia	Ratified 27/01/1992	—	Ratified 09/02/2009
Lebanon	Ratified 01/06/1977	—	—
Lesotho	Ratified 27/01/1998	—	—
Liberia	Ratified 22/07/1959	—	—
Libya	Ratified 13/06/1961	—	—
Lithuania	Ratified 26/09/1994	Ratified 06/05/2004	Ratified 29/09/2003
Luxembourg	Ratified 21/03/2001	—	Ratified 08/04/2008
Madagascar	Ratified 11/08/1961	—	—
Malawi	Ratified 22/03/1965	—	—
Malaysia	—	—	—
Maldives	Ratified 04/01/2013	—	—
Mali	Ratified 02/03/1964	—	Ratified 05/06/2008
Malta	Ratified 01/07/1968	—	—
Marshall Islands	—	—	—
Mauritania	Ratified 08/11/1963	—	—
Mauritius	Ratified 18/12/2002	Ratified 05/04/2004	Ratified 13/06/2019
Mexico	Ratified 11/09/1961	—	—
Mongolia	Ratified 03/06/1969	—	—
Montenegro	Ratified 03/06/2006	Ratified 03/06/2006	Ratified 19/04/2012
Morocco	Ratified 27/03/1963	—	Ratified 13/04/2011

Members	Convention No. 149	Convention No. 189	Convention No. 183
Mozambique	Ratified 06/06/1977	—	—
Myanmar	—	—	—
Namibia	Ratified 13/11/2001	—	—
Nepal	Ratified 19/09/1974	—	—
Netherlands	Ratified 15/03/1973	Ratified 24/03/1988	Ratified 15/01/2009
New Zealand	Ratified 03/06/1983	—	—
Nicaragua	Ratified 31/10/1967	—	—
Niger	Ratified 23/03/1962	Ratified 05/06/1985	Ratified 10/06/2019
Nigeria	Ratified 02/10/2002	—	—
North Macedonia	Ratified 17/11/1991	Ratified 17/11/1991	Ratified 03/10/2012
Norway	Ratified 24/09/1959	Ratified 22/06/1982	Ratified 09/11/2015
Oman	—	—	—
Pakistan	Ratified 24/01/1961	—	—
Palau	—	—	—
Panama	Ratified 16/05/1966	—	Ratified 22/03/2022
Papua New Guinea	Ratified 02/06/2000	—	—
Paraguay	Ratified 10/07/1967	Ratified 21/12/2007	—
Peru	Ratified 10/08/1970	Ratified 16/06/1986	Ratified 09/05/2016
Philippines	Ratified 17/11/1960	—	—
Poland	Ratified 30/05/1961	—	—
Portugal	Ratified 19/11/1959	Ratified 02/05/1985	Ratified 08/11/2012
Qatar	Ratified 18/08/1976	—	—
Republic of Korea	Ratified 04/12/1998	Ratified 29/03/2001	—
Republic of Moldova	Ratified 12/08/1996	—	Ratified 28/08/2006
Romania	Ratified 06/06/1973	—	Ratified 23/10/2002
Russian Federation	Ratified 04/05/1961	Ratified 13/02/1998	—
Rwanda	Ratified 02/02/1981	—	—
Saint Kitts and Nevis	Ratified 25/08/2000	—	—
Saint Lucia	Ratified 18/08/1983	—	—
Saint Vincent and the Grenadines	Ratified 09/11/2001	—	—
Samoa	Ratified 30/06/2008	—	—
San Marino	Ratified 19/12/1986	Ratified 19/04/1988	Ratified 19/06/2019
Sao Tome and Principe	Ratified 01/06/1982	—	Ratified 12/06/2017
Saudi Arabia	Ratified 15/06/1978	—	—
Senegal	Ratified 13/11/1967	—	Ratified 18/04/2017
Serbia	Ratified 24/11/2000	Ratified 24/11/2000	Ratified 31/08/2010
Seychelles	Ratified 23/11/1999	—	—
Sierra Leone	Ratified 14/10/1966	—	—

Members	Convention No. 149	Convention No. 189	Convention No. 183
Singapore	—	—	—
Slovakia	Ratified 01/01/1993	Ratified 14/06/2002	Ratified 12/12/2000
Slovenia	Ratified 29/05/1992	Ratified 29/05/1992	Ratified 01/03/2010
Solomon Islands	Ratified 13/04/2012	—	—
Somalia	Ratified 08/12/1961	—	—
South Africa	Ratified 05/03/1997	—	—
South Sudan	Ratified 29/04/2012	—	—
Spain	Ratified 06/11/1967	Ratified 11/09/1985	—
Sri Lanka	Ratified 27/11/1998	—	—
Sudan	Ratified 22/10/1970	—	—
Suriname	Ratified 04/01/2017	—	—
Sweden	Ratified 20/06/1962	Ratified 11/08/1982	—
Switzerland	Ratified 13/07/1961	—	Ratified 04/06/2014
Syrian Arab Republic	Ratified 10/05/1960	—	—
Tajikistan	Ratified 26/11/1993	—	—
Thailand	Ratified 13/06/2017	—	—
Timor-Leste	Ratified 10/05/2016	—	—
Togo	Ratified 08/11/1983	—	—
Tonga	—	—	—
Trinidad and Tobago	Ratified 26/11/1970	—	—
Tunisia	Ratified 14/09/1959	—	—
Türkiye	Ratified 19/07/1967	—	—
Turkmenistan	Ratified 15/05/1997	—	—
Tuvalu	—	—	—
Uganda	Ratified 02/06/2005	—	—
Ukraine	Ratified 04/08/1961	Ratified 11/04/2000	—
United Arab Emirates	Ratified 28/06/2001	—	—
United Kingdom of Great Britain and Northern Ireland	Ratified 08/06/1999	—	—
United Republic of Tanzania	Ratified 26/02/2002	—	—
United States of America	—	—	—
Uruguay	Ratified 16/11/1989	Ratified 16/11/1989	—
Uzbekistan	Ratified 13/07/1992	—	—
Vanuatu	Ratified 28/07/2006	—	—
Venezuela (Bolivarian Republic of)	Ratified 03/06/1971	Ratified 27/11/1984	—
Viet Nam	Ratified 07/10/1997	—	—
Yemen	Ratified 22/08/1969	Ratified 13/03/1989	—
Zambia	Ratified 23/10/1979	—	—
Zimbabwe	Ratified 23/06/1999	—	—

Appendix II. Governments that provided reports

- Algeria
- Angola
- Argentina
- Armenia
- Australia
- Austria
- Azerbaijan
- Bahamas
- Bahrain
- Belgium
- Benin
- Bosnia and Herzegovina
- Botswana
- Brazil
- Bulgaria
- Burkina Faso
- Burundi
- Cabo Verde
- Cambodia
- Cameroon
- Canada
- Chile
- China
- Colombia
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Cyprus
- Czechia
- Denmark
- Dominican Republic
- Ecuador
- Egypt
- El Salvador
- Estonia
- Eswatini
- Finland
- France
- Georgia
- Germany
- Ghana
- Greece
- Grenada
- Guatemala
- Guinea
- Guyana
- Honduras
- Hungary
- Iceland
- Indonesia
- Iraq
- Ireland
- Israel
- Italy
- Jamaica
- Japan
- Kazakhstan
- Lao People's Democratic Republic
- Latvia
- Lithuania
- Luxembourg
- Malaysia
- Maldives
- Mali
- Malta
- Mauritania
- Mauritius
- Mexico
- Montenegro
- Morocco
- Myanmar
- Namibia
- Nepal
- Netherlands
- New Zealand
- Nicaragua
- Oman
- Pakistan
- Panama
- Peru
- Philippines
- Poland
- Portugal
- Qatar
- Republic of Korea
- Republic of Moldova
- Russian Federation
- Saint Kitts and Nevis
- Saudi Arabia
- Senegal
- Serbia
- Seychelles
- Slovakia
- Slovenia
- Somalia
- South Africa
- South Sudan
- Spain
- Suriname
- Sweden
- Switzerland
- Tajikistan
- Togo
- Trinidad and Tobago
- Tunisia
- Türkiye
- Turkmenistan
- United States of America
- Uruguay
- Venezuela (Bolivarian Republic of)
- Viet Nam
- Zimbabwe

Appendix III. Workers' and employers' organizations that provided reports

Workers' organizations

Argentina

- General Confederation of Labour of the Argentine Republic (CGT–RA)

Austria

- Federal Chamber of Labour (BAK)

Belgium

- Confederation of Christian Trade Unions (CSC)
- General Confederation of Liberal Trade Unions of Belgium (CGSLB)
- General Labour Federation of Belgium (FGTB)

Burundi

- Trade Union Confederation of Burundi (COSYBU)

Colombia

- Confederation of Workers of Colombia (CTC)
- Single Confederation of Workers of Colombia (CUT)

Costa Rica

- Confederation of Workers Rerum Novarum (CTRN)
- Costa Rican Workers' Movement Central (CMTC)

Dominican Republic

- Autonomous Confederation of Workers' Unions (CASC)
- National Confederation of Dominican Workers (CNTD)
- National Confederation of Trade Union Unity (CNUS)

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professional and Managerial Staff in Finland (Akava)
- Finnish Confederation of Professionals (STTK)

France

- French Confederation of Management – General Confederation of Professional and Managerial Employees (CFE–CGC)

Italy

- Italian Confederation of Workers' Trade Unions (CISL)
- Italian General Confederation of Labour (CGIL)
- Italian Union of Labour (UIL)

Lao People's Democratic Republic
- Lao Federation of Trade Unions (LFTU)

Latvia
- Free Trade Union Confederation of Latvia (FTUCL)

Maldives
- Maldives Trade Union Congress (MTUC)

Mali
- Confederation of Workers' Union of Mali (CSTM)
- Democratic Confederation of Workers of Mali (CDTM)

Netherlands
- National Federation of Christian Trade Unions (CNV)
- Netherlands Trade Union Confederation (FNV)

New Zealand
- New Zealand Council of Trade Unions (NZCTU)

Peru
- Autonomous Workers' Confederation of Peru (CATP)
- Confederation of Workers of Peru (CTP)
- General Confederation of Workers of Peru (CGTP)
- Single Confederation of Workers of Peru (CUT-Perú)

Poland
- Independent and Self-Governing Trade Union "Solidarnosc"

Portugal
- General Confederation of Portuguese Workers – National Trade Unions (CGTP–IN)

Republic of Korea
- Korean Confederation of Trade Unions (KCTU)

Russian Federation
- Confederation of Labour of Russia (KTR)

Senegal
- National Confederation of Workers of Senegal (CNTS)

Serbia
- Confederation of Autonomous Trade Unions of Serbia (CATUS)

Spain
- General Union of Workers (UGT)
- Trade Union Confederation of Workers' Commissions (CCOO)

Sweden

- Swedish Confederation for Professional Employees (TCO)
- Swedish Confederation of Professional Associations (SACO)
- Swedish Trade Union Confederation (LO)

United Kingdom of Great Britain and Northern Ireland

- Trades Union Congress (TUC)

Zimbabwe

- Zimbabwe Congress of Trade Unions (ZCTU)

International workers' organizations

- International Trade Union Confederation (ITUC)
- International Transport Workers' Federation (ITF)

Employers' organizations

Brazil

- National Confederation of Industry (CNI)

Costa Rica

- Costa Rican Federation of Chambers and Associations of Private Enterprise (UCCAEP)

Finland

- Confederation of Finnish Industries (EK)
- Federation of Finnish Enterprises (FFE)

Lao People's Democratic Republic

- Lao National Chamber of Commerce and Industry (LNCCI)

Latvia

- Employers' Confederation of Latvia (ECL)

Portugal

- Confederation of Portuguese Industry (CIP)

Serbia

- Serbian Association of Employers (SAE)

International employers' organizations

- International Organisation of Employers (IOE)

ISBN 978-92-2-037743-7