INTERNATIONAL LABOR STANDARDS FOR WORKING WOMEN

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Among the varied activities which the International Labor Organization (ILO) pursues on many fronts, none is perhaps more basic or less spectacular than its traditional standard-setting work. International labor standards are formulated in two forms, Conventions and Recommendations, and are adopted by the International Labor Conference which is the annual world forum for labor and social questions and which is the supreme body of the Organization.[1]

Conventions are instruments which not only set standards of achievement, but which when ratified create binding international obligations for the country concerned.[2] These obligations are: to take necessary measures to make the provisions of the instrument effective and to report periodically to the ILO on all such measures taken.

Recommendations are essentially guides to national action and create no binding obligations.

General Application of Most Conventions and Recommendations

Almost all the Conventions and a majority of the Recommendations are equally applicable to men and women. These cover the following fields:

1. employment and unemployment
2. conditions of work
3. freedom of association and industrial relations
4. occupational health and safety
5. welfare

The reason for this is the ILO's conviction that the interests and problems of women as workers are generally similar to those of men.[3]

A few Conventions and Recommendations which apply basically to all workers contain certain provisions relating to women, like the ones on

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[1] I.L.O., INTERNATIONAL LABOUR STANDARDS 1 (1965).

[2] *Ibid.*, p. 6.

[3] I.L.O., THE I.L.O. AND WOMEN 16 (1969).

discrimination in employment and occupation,[4] vocational training,[5] and social policy in non-metropolitan territories[6] which have clauses prohibiting sex discrimination.

Special Conventions and Recommendations for Women

Only a few Conventions and Recommendations deal exclusively with the employment and the conditions of work of women. These have been only in circumstances where it appeared necessary to provide special health protection, or to assure equality of opportunity or treatment for women.[7]

The Conventions that deal with women workers may be classified into six general topics:

1. maternity protection[8]
2. night work of women[9]
3. underground work[10]
4. equal remuneration[11]
5. minimum standards for social security[12]
6. discrimination in employment and occupation[13]

Recommendations regarding employment of women cover the following areas:

1. lead poisoning (women and children)[14]
2. childbirth (agriculture)[15]
3. night work for women (agriculture)[16]
4. migration (protection of females at sea)[17]
5. income security (includes recommendations on maternity benefit and age of retirement for women)[18]
6. equal remuneration[19]
7. maternity protection[20]

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[4]Convention No. 111 (1958); Recommendation No. 111 (1958).
[5]Recommendation No. 117 (1962).
[6]Convention No. 82 (1947).
[7]THE I.L.O. AND WOMEN, *supra*, note 3 at 16.
[8]Convention No. 3 (1919); Convention No. 103 (1952); Convention No. 110, Part VII (1958).
[9]Convention No. 4 (1919); Convention No. 41 (1934); Convention No. 89 (1948).
[10]Convention No. 45 (1935).
[11]Convention No. 100 (1951).
[12]Convention No. 102 (1952).
[13]Convention No. 111 (1958).
[14]Recommendation No. 4 (1919).
[15]Recommendation No. 12 (1921).
[16]Recommendation No. 13 (1921).
[17]Recommendation No. 26 (1926).
[18]Recommendation No. 67 (1944).
[19]Recommendation No. 90 (1951).
[20]Recommendation No. 95 (1952).

8. discrimination in employment and occupation[21]
9. occupational health services in places of employment.[22]
10. protection of workers against ionising radiations[23]
11. vocational training[24]
12. employment of women with family responsibilities[25]

Guiding Principles for Protective Legislative for Women

During the ILO's First General Conference in Washington in 1919, international standards were adopted providing for maternity protection and limiting the employment of women at night in the interest of their health. At that time women workers were peculiarly liable to abuse and in many countries their conditions of employment were deplorable and constituted a serious menace to their health and the future health of their children.[26]

In 1937, the Conference restated the objectives with respect to women workers and declared that in order to promote the best interests of society, women should have:

1. full political and civil rights
2. full opportunity for education
3. full opportunity to work
4. remuneration without discrimination based on sex
5. legislative protection against physically harmful employment conditions and economic exploitation
6. legislative safeguards for maternity
7. freedom of association without discrimination based on sex[27]

The foregoing policies were prompted by social problems brought about by the increase in number of women working outside the home. First, her maternal role must be protected. She must be permitted to be a mother under the best possible conditions for herself and her children. Second, her economic position must be protected to the end that she enjoy the same opportunities as men. This involves such matters as equal pay, equal opportunity for vocational training and advancement, as well as access to various professions.[28]

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[21]Recommendation No. 111 (1958).
[22]Recommendation No. 112 (1959).
[23]Recommendation No. 114 (1960); see also Resolution concerning protection of female workers against ionising radiation (1960) and ILO Model Code of Safety Regulations (Ionising Radiations), Part II (1959).
[24]Recommendation No. 117 (1962).
[25]Recommendation No. 123 (1965).
[26]THE I.L.O. AND WOMEN, *supra*, note 3 at 14.
[27]*Ibid.*, p. 14.
[28]I.L.O., THE I.L.O. AND THE WORLD OF WORK 53 (1971).

After the war, in 1947, the Conference adopted a resolution which emphasized that the employment of women, particularly of mothers, had a variety of economic, social, physical and psychological consequences. It declared that the status of women workers was closely related to the social and economic regime and structure and to technical and economic developments. It stressed the desirability of eliminating "the inequitable treatment of women workers, with full understanding of the specific problems which arise from actual but changing social, economic and industrial conditions in the various parts of the world."[29]

With the rationale and general framework for protective legislation for working women established, let us now examine in greater detail the Conventions and Recommendations dealing with women workers.

Maternity Protection

As early as 1890, during the International Conference on Labor Legislation at Berlin, a resolution concerning female labor was passed embodying, among others, this statement: "that women after childbirth should not be admitted to work for four weeks after delivery."

The first Convention on this subject was Convention No. 3 entitled "Convention Concerning the Employment of Women Before and After Childbirth" which was adopted in 1919 but came into force only on June 13, 1921.

Article 3 of said Convention provides:

> "In any public or private industrial or commercial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, a woman —
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> (a) shall not be permitted to work during the six weeks following her confinement;
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> (b) shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks;
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> (c) shall, while she is absent from her work in pursuance of paragraphs (a) and (b), be paid benefits sufficient for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority in each country, and as an additional benefit shall be entitled to free attendance by a doctor or certified midwife; no mistake of the medical adviser in estimating the date of confinement shall preclude a woman from receiving these benefits from the date of the medical certificate up to the date on which the confinement actually takes place;
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> (d) shall in any case, if she is nursing her child, be allowed half an hour twice a day during her working hours for this purpose."[30]

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[29]THE I.L.O. AND WOMEN, *supra*, note 3 at 15.

[30]See Art. 452, 1 THE INTERNATIONAL LABOUR CODE, 358-359 (1951).

Article 4 states:

> "Where a woman is absent from her work in accordance with paragraph (a) or (b) of Article 3 of this Convention, or remains absent from her work for a longer period as a result of illness medically certified to arise out of pregnancy or confinement and rendering her unfit for work, it shall not be lawful, until her absence shall have exceeded a maximum period to be fixed by the competent authority in each country, for her employer to give her notice of dismissal during such absence, nor to give her notice of dismissal at such a time that the notice would expire during such absence."[31]

In October 25, 1921, the General Conference met in its Third Session and adopted Recommendation No. 12[32] which urged member-countries to ensure to women wage-earners employed in agricultural undertakings maternity protection similar to that provided in Convention No. 3 for women employed in industry and commerce and that such measures should include the right to a period of absence from work before and after childbirth and to a grant of benefit during the said period, provided either out of public funds or by means of a system of insurance.[33]

In 1952, the Convention Concerning Maternity Protection was adopted[34] which revised Convention No. 3. The basic principles were not altered but its scope was broadened and the provisions for benefits extended. Its salient features, as compared with those of Convention No. 3, are:

1. It applied to women employed in industrial undertakings and in non-industrial and agricultural occupations, including women wage-earners working at home[35] unlike Convention No. 3 which only covered women in industrial or commercial undertakings.[36]

2. In cases of doubt on whether the Convention applied to an undertaking or occupation, the question shall be determined by the competent authority after consultation with the representative organizations of employers and workers concerned where such exist.[37] Convention No. 3 left it to the competent authority in each country to define the line of division separating industry and commerce from agriculture.[38]

3. Undertakings in which only members of the employer's family are employed may be exempted from the application of the Convention by national laws or regulatians.[39] Such undertakings were expressely exempted from the coverage of Convention No. 3.[40]

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[31]See Art. 453, *Ibid.*, p. 359.

[32]Recommendation Concerning the Protection, Before and After Childbirth, of Women Wage-Earners in Agriculture.

[33]See Article 454, THE INTERNATIONAL LABOUR CODE, *supra*, note 3 at 359-360.

[34]Adopted by the General Conference during its Thirty-fifth Session on June 4, 1952 and came into force on September 7, 1955.

[35]Convention No. 103, Art. 1(1).

[36]Convention No. 3, Art. 3.

[37]Convention No. 103, Art. 1(5).

[38]Convention No. 3 Art. 1(3).

[39]Convention No. 103, Art. 1(16).

[40]*Supra*, note 36.

4. A woman shall be entitled to maternity leave for a period of at least twelve weeks, including a period of compulsory leave after confinement which shall in no case be less than six weeks.[41] Convention No. 3 states that a woman shall not be permitted to work during the six weeks following her confinement and shall have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks.[42]

5. A woman shall be entitled to receive cash and medical benefits while absent from work on maternity leave. The rates of cash benefit shall ensure benefits sufficient for the full and healthy maintenance of herself and her child in accordance with a suitable standard of living. Medical benefits shall include pre-natal, confinement and post-natal care by qualified midwives or medical practitioners as well as hospitalization care where necessary, and freedom of choice of doctor and hospital shall be respected. The cash and medical benefits shall be provided either by means of compulsory social insurance or by means of public funds and in no case shall the employer be individually liable for the cost of such benefits due to women employed by him.[43] Cash and medical benefits shall be provided as a matter of right to all women who comply with the prescribed conditions. Women who fail to qualify shall be entitled, subject to the means test required for social assistance, to adequate benefits out of social assistance funds.[44] Convention No. 3 entitled a woman to be paid benefits for the full and healthy maintenance of herself and her child, provided either out of public funds or by means of a system of insurance, the exact amount of which shall be determined by the competent authority in each country, and to free attendance by a doctor or certified midwife as an additional benefit.[45]

6. A woman who is nursing her child shall be entitled to interrupt her work for this purpose for such period of time prescribed by national laws and regulations and such interruptions of work shall be counted as

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[41]Convention No. 103, Art. 3(2, 3).

[42]Art. 3(a, b), Convention No. 3. The Explanatory Report refers to the competent Committee of the First Session of the International Labour Conference having approved the principle "That for a certain period before childbirth, a woman should be either (a) prohibited from employment in an industrial undertaking or (b) permitted to leave her work on a medical certificate, and that in either case she should be entitled to benefit." 1 R.P. 244. It would therefore appear that the fact that this provision only refers to the right to leave work on producing a medical certificate does not preclude parties to the Convention from adopting the alternative of prohibiting employment during the period preceding childbirth. (Footnote No. 12, Book IV, THE INTERNATIONAL LABOUR CODE, p. 358.)

[43]An employer, singly or with the employees, may shoulder the contributions due under a compulsory social insurance scheme providing maternity benefits and tax based upon payroll which is raised for the purpose of providing such benefits. (Art. 4(7), Convention No. 103).

[44]Convention No. 103, Art. 4(1-5; 8).

[45]Convention No. 3, Art. 3(c).

working hours and remunerated accordingly in cases in which the matter is governed by laws or regulations. In cases in which the matter is governed by collective agreement, the position shall be as determined by the relevant agreement.[46] Convention No. 3 provides that a woman who is nursing a child shall be allowed half an hour twice a day for this purpose.[47]

7. Member countries may exempt from the application of the Convention the following: (a) certain categories of non-industrial occupations; (b) occupations carried on in agricultural undertakings, other than plantations; (c) domestic work for wages in private households; (d) women wage-earners working at home, and (e) undertakings engaged in the transport of passengers or goods by sea.[48] Convention No. 3 provides that member countries shall apply it to its colonies, protectorates and possessions which are not fully self-governing (a) except where, owing to the local conditions, its provisions are inapplicable or (b) subject to such modifications as may be necessary to adapt its provisions to local conditions.[49]

Convention No. 103 was supplemented by Recommendation No. 95 which was adopted by the General Conference in its Thirty-fifth session on June 4, 1952. This instrument proposed the following:

1. Maternity leave should be extended to a total of 14 weeks whenever practicable and where necessary to the health of the woman. The supervisory bodies should have power to prescribe in individual cases, on the basis of a medical certificate, a further extension of the ante-natal and post-natal leave provided for in Convention No. 103, if such extension seems necessary for safeguarding the health of the mother and the child, and, in particular, in the event of actual or threatening abnormal conditions, such as miscarriage and other ante-natal and post-natal complications.[50]

2. Whenever practicable cash benefits should be fixed at a higher rate than the minimum standard set in Convention No. 103[51] equalling 100 per cent of the woman's previous earnings taken into account for the purpose of computing benefits. Medical benefits should be given with a view to maintaining, restoring or improving the health of the woman protected

[46]Convention No. 103, Art. 5(1, 2).
[47]Convention No. 3, Art. 3(d).
[48]Convention No. 103, Art. 7(1).
[49]Convention No. 3, Art. 6(1).
[50]Recommendation No. 95, Part I, No. 1(1, 2).
[51]Art. 4 (6), Convention No. 103 provides: "Where cash benefits provided under compulsory social insurance are based on previous earnings, they shall be at a rate of not less than two-thirds of the woman's previous earnings taken into account for the purpose of computing benefits."

and her ability to work and to attend to her personal needs and should comprise, whenever practicable, general practitioner and specialist outpatient and in-patient care, including domiciliary visiting; dental care; the care given by qualified midwives and other maternity services at home or in hospital; nursing care at home or in hospital or other medical institutions; maintenance in hospitals or other medical institutions; pharmaceutical, dental or other medical or surgical supplies; and the care furnished under appropriate medical supervision by members of such other profession as may at any time be legally recognized as competent to furnish services associated with maternity care. Other benefits in kind or in cash, such as layettes or payment for the purchase of layettes, the supply of milk or of nursing allowance for nursing mothers, etc., might be usefully added to the foregoing benefits.[52]

3. Whenever practicable, nursing breaks should be extended to a total period of at least one-and-a-half hours during the working day and adjustments in the frequency and length of the nursing periods should be permitted on production of a medical certificate. Provision should be made for the establishment of facilities for nursing or day care, preferably outside the work-place and financing or subsidizing of such facilities at the expense of the community or by compulsory social insurance, whenever possible. The equipment and hygienic requirements of the facilities for nursing and day care and the number and qualifications of their staff should comply with adequate standards laid down by competent authority.[53]

4. Protection from dismissal by the employer of a woman should be extended from the date when such employer was notified by medical certificate of her pregnancy up to at least one month after the end of her maternity leave. Dismissals during such period should be allowed only for legitimate reasons such as cases of serious fault on the part of the employed woman, shutting down of the undertaking or expiry of the contract of employment; but where work councils exist, they should be consulted regarding such dismissals. During her legal absence from work before and after confinement, the seniority rights of the woman should be preserved as well as her right to reinstatement in her former work or in equivalent work paid at the same rate.[54]

5. Night and overtime work should be prohibited for pregnant and nursing women and their working hours should be planned so as to ensure adequate rest periods. Employment of a woman in work prejudicial to her, or her child's health should be prohibited during pregnancy and

[52]Recommendation No. 95, Part II, No. 2(1-3; 6).
[53]*Ibid.*, Part III, No. 3(1-3).
[54]*Ibid.*, Part IV, No. 4(1-3).

up to at least three months after confinement and longer if the woman is nursing her child. Such work should include, in particular: (a) any hard labor involving heavy weight-lifting, pulling or pushing, or undue and unaccustomed physical strain, including prolonged standing; (b) work requiring special equilibrium; and (c) work with vibrating machines. The right to transfer to another kind of work not harmful to health without loss of wages shall pertain to a woman ordinarily employed at work defined as prejudicial to health or a woman who presents a medical certificate stating that a change in the nature of her work is necessary in the interest of her health and that of her child.[55]

In 1958, Convention No. 110 entitled "Convention Concerning Conditions of Employment of Plantation Workers" was adopted[56] which extended the maternity protection under Convention No. 103 to plantation workers, with the following changes·

1. "Medical certificate" of the presumed date of confinement was changed to "appropriate evidence" of such; and instead of requiring that the illness arising out of pregnancy or of confinement be "medically certified", it is sufficient if the same is "suitably certified." Also, in providing that freedom of choice of doctor or hospital shall be respected, the phrase "as far as practicable" was added.[57]

2. The competent authority may, after consultation with the most representative organizations of employers and workers, where such exist, prescribe a qualifying period for maternity leave which shall not exceed a total of 150 days of employment with the same employer during the 12 months preceding the confinement.[58]

3. The dismissal of a woman solely because she is pregnant or a nursing mother shall be prohibited.[59]

The foregoing Conventions and Recommendations attest to the fact that ILO recognizes the special problems faced by women workers because of their function of maternity and motherhood.

Nighttime Employment

The International Conference on Labour Legislation held in Berlin in 1890 passed a resolution expressing, among others, the desirability —

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[55]*Ibid.*, Part V, No. 5(1-5).

[56]Adopted by the General Conference during its Forty-second Session on June 4, 1958 and became effective January 22, 1960.

[57]Convention No. 110, Part VII, Art. 47(1; 6-7), and Art. 48(3).

[58]*Ibid.*, Art. 47(2).

[59]*Ibid.*, Art. 50(2).

"1. (a) That girls and women from sixteen to twenty-one years of age should not work at night;

2. That their actual work should not exceed eleven hours a day, and that it should be broken by rest of a total duration of one and a half hours at least;

3. That exceptions be allowed for certain industries."

Three ILO Conventions regulate the employment of women in industry during the night. The first was adopted in 1919. This was subsequently superseded by a revised Convention in 1934. This in turn was succeeded by a second revised Convention in 1948.

Convention No. 4 entitled "Convention Concerning the Employment of Women During the Night"[60] provides as follows:

ARTICLE 2

1. For the purpose of this Convention, the term "night" signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

2. In those countries where no Government regulation as yet applies to the employment of women in industrial undertaking during the night, the term "night" may provisionally, and for a maximum period of three years, be declared by the Government to signify a period of only ten hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

ARTICLE 3

Women without distinction of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

ARTICLE 4

Article 3 shall not apply —

(a) In cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;

(b) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve the said materials from certain loss.

ARTICLE 6

In industrial undertakings which are influenced by the seasons and in all cases where exceptional circumstances demand it, the night period may be reduced to ten hours on sixty days of the year.

ARTICLE 7

In countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day.

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[60]Adopted by the General Conference during the Convention held at Washington, U.S.A., on October 29, 1919 and came into force on June 13, 1921. See Article 465, THE INTERNATIONAL LABOUR CODE, 365-368.

This Convention was supplemented by Recommendation No. 13[61] which urged member countries to "take steps to regulate the employment of women wage-earners in agricultural undertakings during the night in such a way as to ensure to them a period of rest compatible with their physical necessities and consisting of not less than nine hours, which shall, when possible be consecutive."

In 1919, the instrument reflected a wide-felt need to protect the health of women workers, who at that time were in a very weak bargaining position almost everywhere and particularly liable to exploitation. By 1934, however, it was felt that the severe restrictions necessary in 1919 were no longer desirable and should be modified to take account, among other things, of systems of shift work and to permit certain categories of women, like those employed in managerial and technical work, to be employed at night.[62] Thus, Convention No. 41[63] made the following changes on the previous Convention:

1. It provided for additional exemption to the prohibition for nighttime work of women by stating that: "x x where there are exceptional circumstances affecting the workers employed in a particular industry or area, the competent authority may, after consultation with the employers' and workers' organizations concerned, decide that in the case of women employed in that industry or area, the interval between eleven o'clock in the evening and six o'clock in the morning may be substituted for the interval between ten o'clock in the evening and five o'clock in the morning."[64]

2. It excluded from its coverage women holding responsible positions of management who are not ordinarily engaged in manual work.[65]

The prohibition against nightwork of women was further relaxed in 1948 when the General Conference adopted Convention No. 89 entitled "Convention Concerning Night Work of Women Employed in Industry (Revised 1948)".[66] Said Convention introduced the following changes:

1. The definition of "industrial undertaking" in so far as the build-

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[61]"Recommendation Concerning Night Work of Women in Agriculture" adopted during the Third Session on Oct. 25, 1925. See Art. 466, THE INTERNATIONAL LABOUR CODE, 373.

[62]THE I.L.O. AND WOMEN, *supra*, note 3 at 19.

[63]Entitled "Convention Concerning Employment of Women During the Night (Revised 1934)", it was adopted by the General Conference during its Eighteenth Session on June 4, 1934 and came into force on Nov. 22, 1936. See also Art. 465, THE INTERNATIONAL LABOUR CODE, pp. 365-368.

[64]Convention No. 41, Art. 2(2).

[65]*Ibid.*, Art. 8.

[66]Adopted during the Thirty-First Session on June 17, 1948 and came into force on Feb. 27, 1951. See Arts. 455-464, THE INTERNATIONAL LABOUR CODE, 360-365.

ing trades are concerned was summarized thus: "undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work."[67]

2. It provided that the competent authority shall define the line of division which separates industry from agriculture, commerce and other non-industrial occupations.[68]

3. The term "night" was redefined to signify "a period of at least eleven consecutive hours, including an interval prescribed by the competent authority of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning.[69] In those countries where no government regulation as yet applies to the employment of women in industrial undertakings during the night, the term "night" may provisionally, and for a maximum period of three years, be declared to signify a period of only ten hours including the same interval specified earlier.[70] However, the competent authority of any country may prescribe different intervals for different areas, industries, undertakings or branches of industries or undertakings, but shall consult the employers' and workers' organizations concerned before prescribing an interval beginning after eleven o'clock in the evening.[71]

4. It provided that the prohibition of night work for women may be suspended by the government, after consultation with the employers' and workers' organizations concerned, when in case of serious emergency the national interest demands it.[72]

5. It exempted from coverage (a) women holding responsible positions of a managerial or technical character; and (b) women employed in health and welfare services who are not ordinarily engaged in manual work.[73]

Hazards to Health

One of the Berlin Conference Resolutions[74] in 1890 recommended "that restrictions be provided for particularly unhealthy or dangerous occupations" with respect to female workers.

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[67]Convention No. 89, Art. 1(1) (c).
[68]Ibid., Art. 1(2).
[69]*Ibid.*, Art. 2.
[70]*Ibid.*, Part II, Art. 9.
[71]*Ibid.*, Art. 2.
[72]*Ibid.*, Art. 5(1).
[73]*Ibid.*, Art. 8.
[74]Resolutions of the International Conference on Labour Legislation, Berlin, March 1890.

Since then, two Conventions and two Recommendations of the ILO have placed limitations on the employment of women in unhealthy work.

Convention No. 13 entitled "Convention Concerning the Use of White Lead in Painting"[75] provided in Article 3 thereof:

> "1. The employment of males under eighteen years of age *and of all females* shall be prohibited in any painting work of an industrial character[76] involving the use of white lead or sulphate of lead or other products containing these pigments.
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> 2. The competent authorities shall have the power, after consulting the employers' and workers organization concerned to permit the employment of painters' apprentices in the work prohibited by the preceding paragraphs, with a view to their education in their trade."

Convention No. 45[77] prohibits the employment of any female on underground work in any mine. The term "mine" was defined to include "any undertaking, whether public or private, for extraction of any substance from under the surface of the earth." However, the prohibition may, by national laws or regulations, not extend to: (a) females holding positions of management who do not perform manual work; (b) females employed in health and welfare services; (c) females who, in the course of their studies, spend a period of training in the underground parts of a mine; and (d) any other females who may occasionally have to enter the underground parts of a mine for the purpose of a non-manual occupation."

The General Conference recommended protective measures for women and children against lead poisoning in its Recommendation No. 4[78] in view of the dangers involving proximity to lead and zinc to the function of maternity and to the physical development of children. Thus, women and young persons under the age of eighteen years were recommended to be excluded from employment in the following processes:

> "(a) in furnace work in the reduction of zinc or lead ores;
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> (b) in the manipulation, treatment, or reduction of ashes containing lead, and the desilvering of lead;
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> (c) in melting lead or old zinc on a large scale;

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[75]Adopted during the Third Session on Oct. 25, 1921 and came into force on Aug. 31, 1923. See also Art. 471 and Art. 480, THE INTERNATIONAL LABOUR CODE 379; 384-385.

[76]The phrase "any painting work of an industrial character" was interpreted by the ILO to refer only to "the painting of buildings" not to employment in pottery works — 1930 Office Opinion, XV O.B. 34. See also VI O.B. 227.

[77]Entitled "Convention Concerning the Employment of Women on Underground Work in Mines of all Kinds, it was adopted by the General Conference in its Nineteenth Session in June 4, 1935, and came into force on May 30, 1937. See Arts. 467-470, THE INTERNATIONAL LABOUR CODE 374-376.

[78]Recommendation Concerning the Protection of Women and Children Against Lead Poisoning — adopted by the General Conference in its Convention in Washington, U.S.A., on October 29, 1919. See also Arts. 484-485, THE INTERNATIONAL LABOUR CODE, 387-390.

(d) in the manufacture of solder or alloys containing more than ten per cent of lead;

(e) in the manufacture of litharge, massicot, red lead, white lad, orange lead, or sulphate, chromate or silicate (frit) of lead;

(f) in mixing and pasting in the manufacture or repair of electric accumulators;

(g) in the cleaning of workrooms where the above processes are carried on."

It was further recommended that the use of lead compounds be permitted only subject to the following conditions:

"(a) Locally applied exhaust ventilation, so as to remove dust and fumes at the point of origin;

(b) cleanliness of tools and workrooms;

(c) notification to Government authorities of all cases of lead poisoning, and compensation therefor;

(d) periodic medical examination of the persons employed in such proceesses;

(e) provision of sufficient and suitable cloakroom, washing, and messroom accomodation, and of special protective clothing;

(f) prohibition of bringing food or drink into workroom."

In 1960, Convention No. 115[79] was adopted to give protection against all activities involving exposure of workers in general to ionising radiations in the course of their work. Recommendation No. 114 was adopted during the same session to supplement the Convention. Said Recommendation deals with maximum permissible levels, technical questions dealing with methods of protection, monitoring, medical examination, and inspection. It provides in Part IV, No. 16 thereof: "In view of the special medical problems involved in the employment of women in childbearing age in radiation work, every care should be taken to ensure that they are not exposed to high radiation risks."

A resolution was likewise passed during the same session requesting the Governing Body to keep the problems relating to ionising radiation under review in the light of advancing scientific knowledge to ensure the continuation of the study of these problems in collaboration with the competent international organizations and to take in respect of this study the action it may consider desirable, including the possibility of placing this question on the agenda of an early session of the Conference.[80]

Equal Pay for Work of Equal Value

The "recognition of principle of equal remuneration for work of equal value" is one of the principles embodied in the second paragraph of the

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[79]Entitled "Convention Concerning the Protection of Workers Against Ionising Radiation", it was adopted during the Forty-fourth Session on June 1, 1961 and came into force on June 17, 1962.

[80]THE I.L.O. AND WOMEN, *supra*, note 3 at 22.

Preamble of the Constitution of the ILO, as amended in 1946, as constituting one of the means of achieving the improvement of those conditions "involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled."

In 1951, Convention No. 100[81] entitled "Convention Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value" was adopted. It asked each member to promote and ensure, the application of this principle by means appropriate to the methods in operation for determining rates of remuneration. Said principle may be applied by means of: (a) national laws or regulations; (b) legally established or recognized machinery for wage determination; (c) collective agreements between employers and workers, or (d) a combination of these various means. One of the means suggested to give effect to the provisions of this Convention was to take measures to promote objective appraisal of jobs on the basis of the work to be performed.[82]

Recommendation No. 90[83] which accompanied the Convention proposed a number of procedures to be followed to ensure the progressive introduction of the principle in question. As a first step, equal pay should be made the rule in government employment, then to workers whose earnings are publicly controlled. Legislation requiring equal remuneration is urged where law or custom permits. It then adds that when it is considered unfeasible to follow these suggestions immediately, wage differentials based on sex should be progressively reduced, and men and women should be given equal periodical wage increments where such a system is in force. It further suggests the establishment, or the encouragement of such establishment, of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex.[84]

In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers through such measures as —

> (a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;

[81]Adopted during the Thirty-fourth Session on June 6, 1951 and came into force on May 23, 1953. See also Arts. 233 (M) to 233 (O), THE INTERNATIONAL LABOUR CODE, 185-186.

[82]Convention No. 100, Arts. 2(1, 2) and 3(1).

[83]Recommendation Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted during the Thirty-fourth Session on June 6, 1951. See also Arts. 234 (A) to 234 (F), THE INTERNATIONAL LABOUR CODE, 186-188.

[84]Recommendation No. 90, Nos. 1-5.

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments without regard to sex; and

(d) promoting equality of man and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

Earlier Recommendations also dealt with this fundamental principle. The Minimum Wage-Fixing Machinery Recommendation of 1928[85] called the attention of governments of member countries to the principle affirmed by Article 41 of the Constitution of the ILO that men and women should receive equal remuneration for work of equal value.[86] It also provides that "without prejudice to the discretion left to the member countries to decide in which trades or parts of trades in their respective countries it is expedient to apply minimum wage-fixing machinery, special regard might usefully be had to trades or parts of trades in which women are ordinarily employed." With respect to membership in the wage-fixing machinery, it states that "whenever a considerable proportion of women are employed, provision should be made as far as possible for the inclusion of women among the workers' representatives and of one or more women among the independent persons who may sit in the wage-fixing body.[87] The Employment (Transition from War to Peace) Recommendation in 1944[88] states in Part IX, No. 37 (1 & 2) thereof that "in order to place women on a basis of equality with men in the employment market, and thus to prevent competition among the available workers prejudicial to the interests of both men and women workers, steps should be taken to encourage the establishment of wage rates based on job content, without regard to sex. Investigations should be conducted, in cooperation with employers' and workers' organizations, for the purpose of establishing precise and objective standards for determining job content, irrespective of the sex of the worker, as a basis for determining wage rates."

Discrimination in Employment and Occupation

The two main instruments concerning discrimination in employment and occupation are Convention No. 111 and Recommendation No. 111

[85]Recommendation No. 30, adopted during the Eleventh Session on May 30, 1928. See also Art. 234, THE INTERNATIONAL LABOUR CODE, 186.

[86]This refers to the Constitution of the ILO prior to its amendment in 1946. In the amended Constitution, a reference to equal remuneration appears in the Preamble.

[87]Recommendation No. 30, Part I (2) and Part II (1)(d).

[88]Recommendation No. 71, adopted during the Twenty-Sixth Session on April 20, 1944. See also Art. 175, THE INTERNATIONAL LABOUR CODE, 139-140.

which were both adopted during the Forty-Second Session of the General Conference on June 4, 1958.

Convention No. 111[89] exhorts member countries to undertake "to declare and pursue a national policy designed to promote by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof." "Discrimination" includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction, social origin, etc., which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. The terms "employment" and "occupation" include access to vocational training, to employment and particular occupations, and terms and conditions of employment.[90]

Some of the methods indicated were:

1. To enact legislation, promote educational programs, and seek the cooperation of employers' and workers' organizations and other appropriate bodies to promote and secure the acceptance of the policy of nondiscrimination;

2. To repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

3. To ensure observance of the policy in vocational guidance, vocational training and placement services under the direction of a national authority.[91]

The following are not considered discriminatory:[92]

1. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof;

2. Special measures of protection or assistance provided for in other Conventions or Recommendations such as 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 to require special protection or assistance;

3. Measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State.

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[89]Entitled "Convention Concerning Discrimination in Respect of Employment and Occupation, it came into force on June 15, 1960.

[90]Convention No. 111, Art. 2; Art. 1(1)(a, b) and 1(3).

[91]*Ibid.*, Art 3.

[92]*Ibid.*, Art. 1(2), Art. 5(1, 2) and Art. 4.

The accompanying Recommendations suggested that the national policy for the prevention of employment and occupation be applied by means of legislative measures, collective agreements between representative employers' and workers' organizations or in any manner consistent with national conditions and practice, with due regard to the following principles:

> (a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;
>
> (b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of —
>
> (i) access to vocational guidance and placement services;
> (ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
> (iii) advancement in accordance with their individual character, experience, ability and diligence;
> (iv) security of tenure of employment;
> (v) remuneration for work of equal value;
> (vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
>
> (c) government agencies should apply non-discriminatory employment policies in all their activities;
>
> (d) employers should not practice or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organization obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;
>
> (e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of, access to, training for, advancement in, or retention of employment or in respect of the terms and conditions of employment;
>
> (f) employers' and workers' organizations should not practice or countenance discrimination in respect of admission, retention of membership or participation in their affairs.[93]

To ensure the application of the principles of non-discrimination, the following methods are recommended:[94]

1. encourage state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principle;

2. make eligibility for contracts involving the expenditure of public funds and for grant to training establishments and for a license to operate a private employment agency or a private vocational guidance office dependent on observance of the principle;

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[93]Recommendation No. 111, Part II, No. 2(a-f).
[94]*Ibid.*, Part II, No. 3(b), No. 4 and No. 9.

3. establish appropriate agencies for the purpose of promoting the application of the policy in all fields of public and private employment;

4. consider further positive measures as may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

After World War II, the Employment (Transition from War to Peace) Recommendation[95] saw to it that women will have equal opportunities with men. It provided in Part IX, nos. 36 and 38, thereof:

"36. The redistribution of women workers in economy should be organized on the principle of complete equality of opportunity for men and women on the basis of their individual merit, skill and experience, without prejudice to the provisions of the International Labour Conventions and Recommendations concerning the employment of women."

"38. The employment of women in industries and occupations in which large numbers of women have traditionally been employed should be facilitated by action to raise the relative status of these industries and occupations and to improve conditions of work and methods of placement therein."

Vocational Guidance and Training

The instruments on discrimination in employment and occupation emphasized the need for equality in access to vocational guidance and training services. Understandably, women cannot have equal opportunities with men in employment unless they are prepared and equipped with the skills necessary for the jobs available.

The Recommendation on Vocational Guidance[96] urged that appropriate arrangements be made within the framework of the public vocational guidance services to assist any person requiring aid in choosing an occupation or in changing his occupation.

The Vocational Training Recommendation (1962)[97] provided among others that "training should be free from any form of discrimination on the basis of race, color, sex, religion, political opinion, national extraction or social origin."

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[95]Recommendation No. 71, *supra*, note 88. See also Arts. 172 and 176, THE INTERNATIONAL LABOUR CODE, 139-140.

[96]Recommendation No. 87, adopted during the Thirty-second Session on June 8, 1949. See particularly Part IV, No. 21. See also Art. 55, THE INTERNATIONAL LABOUR CODE, 72.

[97]Recommendation No. 117 adopted during the Forty-sixth Session on June 6, 1962. [See particularly Part I, No. 2(4)]. This superseded Recommendation No. 57 (1939) and Recommendation No. 88 (1950).

The Panel of Consultants on the Problems of Women Workers made a number of suggestions as to action which should be taken to improve the vocational preparation of girls and women. It emphasized the importance of a good general education and of good guidance facilities for girls and drew attention to the need for more adequate and varied training facilities for girls, for better opportunities for continued on-the-job training and supplementary education and training, of adapting training opportunities and facilities for girls to new needs and of enlisting the whole community (including non-governmental organizations) in the search for constant improvement in vocational education and training. It urged the ILO to give top priority to the question of the vocational guidance and preparation of girls and women for work life.

In compliance with this recommendation, the ILO made a comprehensive study of the problem, which was considered by a small meeting of consultants held in Geneva in 1965. Emphasis was placed on the need to adapt training facilities for girls to the pattern of changing employment opportunity. Expansion of training opportunities for women and realistic vocational guidance were both considered essential if women were to be enabled to make their full contribution to economic and social development.

In 1968, the International Labor Conference itself adopted a resolution in the vocational preparation of girls and women which asks the Governing Body to include this question in the agenda of an early session of the Conference, with a view to supplementing the Vocational Training Recommendation (1962) in order to promote equal treatment between male and female workers.[98]

Employment of Women with Family Responsibilities

Much has been said earlier about maternity protection for women. Supplementing all these is a Recommendation concerning the employment of women with family responsibilties[99] which was adopted for the following reasons:

1. In many countries, women are working outside their homes in increasing numbers as an integral and essential part of the labor force.

2. Such women have special problems arising out of the need to reconcile their dual family and work responsibilities.

3. These special problems are not peculiar to woman workers only

[98]THE I.L.O. AND WOMEN, *supra*, note 3 at 28-29.

[99]Recommendation No. 123, adopted during the Forty-ninth Session on June 2, 1965.

but are problems of the family and of society as a whole.[100]

The Recommendation seeks to ensure that women with family responsibilities who work outside their homes shall be able to exercise their right to do so without discrimination and that services shall be developed to enable women to fulfill their various responsibilities at home and at work harmoniously.[101]

These twin aims are to be accomplished principally in three areas: public information and education, child-care services and facilities, and entry and re-entry into employment.

Appropriate steps are urged to be taken to encourage consideration of the problems of women workers with family responsibilities to help them become effectively integrated in the labor force based on equal rights; to undertake research that will aid in the presentation of objective information on which sound policies and measures can be based; and to engender broader public understanding of the problems of these workers with a view to developing community policies and a climate of opinion conducive to helping them to meet their family and employment responsibilities.[102]

In the area of child-care services, the competent authorities are urged to determine the scope and character of the child-care services and facilities needed to assist women workers to meet their employment and family responsibilities and to take appropriate steps to ensure that child-care services and facilities are established to meet the needs and preferences revealed. Such child care services shall comply with adequate standards in order to safeguard the health and welfare of the child.[103]

To enable women with family responsibilities to become integrated into the labor force on a footing of equality and to facilitate their entry or re-entry into employment, the following measures are suggested:[104]

1. ensure the provision for girls of general education, vocational guidance and vocational training free from any form of discrimination on the ground of sex;

2. encourage girls to obtain a sound vocational preparation as a basis for their future work lives;

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[100]Recommendation No. 123, Preamble.
[101]*Ibid.*, Part I, No. 1(a, b).
[102]*Ibid.*, Part II, No. 2.
[103]*Ibid.*, Part III, Nos. 3-5. See also Recommendation No. 112 (1959) concerning Occupational Health Services in Places of Employment wherein the surveillance of the hygiene of day nurseries was sought to be included among the functions of occupational health services — Part IV, No. 8(d) thereof.
[104]*Ibid.*, Part IV, No. 8(a to c) and 9(2)(3).

3. convince parents and educators of the need to give girls a sound vocational preparation;

4. provide adequate counselling, information and placement services; and

5. keep the services and facilities under review in order to insure that they are properly adapted to the special needs of these women workers and o the changing needs and tendencies of economic and technological development.

In the case of women who, on account of their family responsibilities arising out of maternity, are not in a position to return to work immediately after exhaustion of their maternity leave, appropriate measures should be taken, whenever possible, to allow them an extension of leave without relinquishing their employment. In case of termination of employment after maternity, their re-employment should be considered in accordance with the applicable provisions of the Termination of Employment Recommendation (1963) regarding workers whose employment has been terminated due to reduction of work force.[105]

Attention should also be given to such matters as organization of public transport, harmonization of working hours and hours of school and child-care services, provision at low cost of the facilities required to simplify and lighten household tasks, and development of home aid services at reasonable charge.[106]

Income and Social Security

The Social Security (Minimum Standards) Convention in 1952[107] prescribed the grant of maternity benefits, as part of social security benefits, to women in the prescribed classes of employees and to the wives of men in these classes.

The medical care called for shall be afforded with a view to maintaining, restoring or improving the health of the women protected and her ability to work and to attend to her personal needs. Such medical care shall include, at least, (a) pre-natal, confinement and post-natal care either by medical practioners or by qualified midwives; and (b) hospitalization, where necessary.

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[105]*Ibid.*, Part IV, No. 10(1, 2).
[106]*Ibid.*, Part V, Nos. 11(2) and 12.
[107]Convention No. 102, adopted during the Thirty-fifth Session on June 4, 1952 and came into force on April 27, 1955. See particularly Part VIII, Arts. 46, 48, 49 (2 and 3) thereof.

The Income Security Recommendation in 1944[108] provided for income benefits arising from maternity. The contingency for which maternity benefit should be paid is loss of earnings due to abstention for work during prescribed periods before and after childbirth. To apply this guiding principle, the following are suggested:

> (1) a woman should have the right to leave her work if she produces a medical certificate stating that her confinement will probably take place within six weeks, and no woman should be permitted to work during the six weeks following her confinement;
>
> (2) during these periods maternity benefit should be payable;
>
> (3) absence from work for longer periods or on other occasions may be desirable on medical grounds, having regard to the physical condition of the beneficiary and the exigencies of her work; during any such periods sickness benefits should be payable;
>
> (4) the payment of maternity benefit may be made conditional on the utilization by the beneficiary of health services provided for her and her child.

The Recommendation likewise suggested that the minimum age at which old-age benefits may be claimed should be fixed at not more than sixty-five in the case of men and sixty in the case of women.

Impact of ILO Standards

The extent to which ILO standards may have some concrete influence on the national laws and practice of a given country depends on its economic and constitutional structure, on the degree and the timing of its social development and on several related factors. Since ILO Conventions and Recommendations contain what may be described as minimum provisions intended to serve as a common denominator for the circumstances prevailing in many different countries, and since conformity of international law and practice to these ILO standards may involve a raising of national levels of labor protection to meet international norms, it must be expected that the potential impact of ILO standards is greater in countries in an early stage of economic and social advancement than in the more highly industrialized countries.

Even while standards are still in the discussion stage, these already influence the thinking of law-makers around the world. The impact becomes more clearly apparent, however, when a government adopts specific measures to bring its national statutes and conditions in line with a Convention that it intends to ratify or has ratified.

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[108] Recommendation No. 67, adopted during the Twenty-sixth Session on April 20, 1944. See particularly Nos. 10 and 12 thereof.

Recommendations and unratified Conventions also exert significant influence in the development of law and practice and in social policies of different countries.

The permanent value of Conventions and Recommendations lies in their effective implementation and impact on the working and living conditions of the people in member countries.[109]

Conclusion

The ILO's approach to the problems of women workers has been broadened over the years in reflection of the changing trends in economic and social development throughout the world and the spectacular improvement that has taken place in the status of women in all fields and in the conditions of all workers, men and women. In its early days, the ILO laid stress on protecting women against exploitation. In recent years the program has been broadened and aimed more directly at helping women attain better training and equal opportunities and treatment in employment and so to prevent them from being a special category of workers particularly liable to abuse.

The fundamental objectives have not changed, however: to safeguard the role, maternity and motherhood functions of women and to promote practical equality of opportunity and treatment for women workers in the light of the changing needs, problems and responsibilities of women in industrial and industrializing societies alike.[110] These objectives were reaffirmed during the Sixtieth Session in 1975 when the General Conference issued a Solenmn Declaration on equality of opportunity and treatment for women workers.

The Philippines has adopted a good number of the international standards discussed earlier and they have been embodied in Commonwealth Act No. 647, Republic Act No. 679, Republic Act No. 1564, Presidential Decree No. 148 and Presidential Decree 442 as amended. This paper will not go into a more detailed exposition of the extent of Philippine compliance with international standards for working women as this is the subject of another paper by a different author. Suffice it to say that the law as it stands now in the Philippines has less protective measures than earlier laws. The Secretary of Labor in endorsing the amendments to Republic Act No. 679 said that they would make the law "more employment-oriented and enforceable without doing violence to ILO-established standards in so far as they are adaptable to Philippine conditons."[111]

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[109]INTERNATIONAL LABOUR STANDARDS, *supra*, note 1 at 9; 26-31.

[110]THE I.L.O. AND WOMEN, *supra*, note 3 at 15.

[111]Letter of Transmittal of draft of Pres. Decree No. 148 to the President of the Philippines, dated February 21, 1973, signed by Secretary of Labor Blas F. Ople.

The decision to "sacrifice" some protective measures for women resulted from the realization that these were deterring, instead of promoting, the absorption of women in jobs. Thus, while working women must be afforded some protection so they can fulfill their multiple responsibilities as home-makers, wives, mothers and workers successfully and harmoniously, these must be practical and realistic, so that the added costs that they entail will be within tolerable limits and will not result in "pricing women out of the job market."