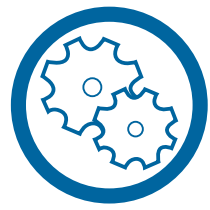




ESCR-Net



Women and ESCR Working Group briefing paper: the intersection between work and women's economic, social and cultural rights¹

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The Women and ESCR Working Group briefing paper series

ESCR-Net's Women and ESCR Working Group briefing paper series focuses on the intersection between women and specific economic, social and cultural rights (ESCR) issues. The papers present specific and systemic challenges to the realisation of women's ESCR in practice and explore progressive approaches to the application of a substantive equality perspective. The papers draw primarily upon ESCR-Net members' work in different areas, and are further informed by and enhanced through dialogue with other experts in this field. This paper was prepared for, and informed by, the Working Group's consultation with members of the CEDAW Committee and CDESCR on 'Women and economic, social and cultural rights: current challenges and opportunities for advancement', held in Geneva on 7 November 2015. For more information and the meeting report, see: <https://www.escr-net.org/node/368261>.

Taking a substantive equality perspective

In foregrounding a substantive equality analysis in its collective projects and activities, the Women and ESCR Working Group encourages a shift from a gender-neutral approach limited to ensuring similarity of treatment, to one that considers the effects of particular (in)action. To start, substantive equality requires consideration of indirect discrimination against women, where an apparently neutral law, policy or practice affects women adversely in a disproportionate way, because of biological difference and/or the ways in which women are situated or perceived in the world through socially and culturally constructed gender differences. More broadly, the achievement of substantive equality in practice requires a multifaceted approach which: **redresses disadvantage** (based on historical and current social structures and power relations that define and influence women's abilities to enjoy their human rights); **addresses stereotypes, stigma, prejudice, and violence** (with underlying change in the ways in which women are regarded and regard themselves, and are treated by others); **transforms institutional structures and practices** (which are often male-oriented and ignorant or dismissive of women's experiences); and **facilitates social inclusion and political participation** (in all formal and informal decision-making processes).²

¹ We would like to acknowledge with appreciation the members of ESCR-Net's Women and ESCR Working Group who took a lead role in drafting and reviewing this paper, including: Asia Pacific Forum on Women, Law and Development (Asia region); National Union of Domestic Employees (Trinidad & Tobago); Bulgarian Gender Research Foundation (Bulgaria); Instituto de Liderazgo Simone de Beauvoir (Mexico); Arab NGO Network for Development (Arab region); and Lisa Pusey, as well as Centro Interdisciplinario de Estudio sobre el Desarrollo (Uruguay) and other members who provided valuable input.

² For more information on this framework, see Sandra Fredman and Beth Goldblatt *Gender Equality and Human Rights* (2015) UN Women Discussion Paper No. 4, <http://www.unwomen.org/en/digital-library/publications/2015/7/dps-gender-equality-and-human-rights>.

Introduction

In 1995, the Beijing Declaration noted that women are concentrated in jobs with low pay and poor working conditions, often with lack of access to maternity protection.³ Twenty years later, women's rights to work and at work, as provided for in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), International Labour Organization (ILO) Conventions,⁴ and other legal frameworks, continue to be systematically violated around the world.

This briefing paper sets out some positive developments at the intersection of work and women's rights and introduces the approaches taken by the Committee on the Elimination of Discrimination against Women (CEDAW Committee) and the Committee on Economic, Social and Cultural Rights (CESCR), and then discusses a number of significant issues in this area, as informed by the experience and work of members of ESCR-Net's Women and ESCR Working Group and related dialogue with various UN and other experts. These key issues cover: a prevailing economic model that impacts on human rights; women's labour and migration; women in trade unions; the gender pay gap and need for a common living wage; gendered, vulnerable employment sectors; unpaid care work; maternity benefits for women and parental leave, and violence against women in the workplace.

Positive developments

Progressive developments at the international level

Despite recognition of continuing issues, there have been a number of constructive developments at the international level, which include among others:

- **Opportunity for effective monitoring through a human rights-based approach**

³ UN Women *Beijing Declaration and Platform for Action* (1995).

⁴ For a list of selected ILO Conventions and Recommendations that promote Gender Equality see: ILO *Gender Equality and Decent Work: Selected ILO Conventions and Recommendations that Promote Gender Equality as of 2012* (2012).

to development: In September 2015, governments around the world adopted the 2030 Agenda for Sustainable Development,⁵ which includes goals on the promotion of full and productive employment and decent work for all (Goal 8) and on the reduction of inequality (Goal 5). Setting and applying associated indicators – whether through government processes⁶ or independently through civil society initiatives – offers opportunities to collect relevant, disaggregated measures of women's work-related issues, and to recognize and value unpaid care and domestic work and the promotion of shared responsibilities within the family.

- **The progressive recognition of unpaid domestic and care work:** by international mechanisms such as the CEDAW Committee and the Commission on the Status of Women.
- **Making and addressing connections between gender violence and violations of work-related rights:** Current efforts exist to develop an ILO Convention on violence against women, to address issues of gender-based violence that occur in connection with work structures and practices.⁷ The CEDAW Committee's General Recommendation No. 19 of 1992 characterises gender-based violence, including sexual harassment in the workplace, as a form of discrimination against women. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem do Para"), defines violence against women as including sexual harassment in the workplace.⁸
- **Increased State recognition of work-related treaties:** In 1995, 126 member States of the ILO ratified the Equal Remuneration

⁵ UN *Transforming Our World: The 2030 Agenda for Sustainable Development* (2015) UN Doc A/Res/70/1.

⁶ The global indicator framework, developed by the Inter Agency and Expert Group on SDG Indicators, will be agreed by the UN Statistical Commission by March 2016 and adopted thereafter by the Economic and Social Council and the General Assembly. Further information available at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

⁷ See, for example, this report on the Equal Times website: http://www.equaltimes.org/will-the-ilo-take-a-stand-against?lang=en#_VrEiOMeMDsE.

⁸ Article 2.

Convention, 1951 (No. 100) and 122 ratified the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In 2015, these numbers increased to 171 and 172 respectively.⁹

- **Facilitating women's participation in the labour market:** At the G20 Meeting in Australia in 2014, the participating governments agreed to “the goal of reducing the gap in participation rates between men and women in our countries by 25% by 2025 ... and to bring more than 100 million women into the labour force”.¹⁰
- **Developing recognition of fair remuneration:** The UN Secretary-General's Synthesis Report on the Post-2015 Agenda endorsed the need for a living wage.¹¹

The approach of CEDAW and CESC

The CEDAW Committee and CESC have released useful guidance to States through the form of general recommendations/comments, with the CEDAW Committee making recommendations about equal remuneration for work of equal value,¹² unpaid women workers in rural and urban family enterprises,¹³ measurement and quantification of the unremunerated domestic activities of women and their recognition in the GNP,¹⁴ and women migrant workers,¹⁵ and CESC commenting on the right to work.¹⁶ They also address relevant issues through Concluding Observations in relation to State reporting. The CEDAW Committee in particular makes specific reference to women's right to work and the working conditions of women more frequently than CESC, while CESC has provided additional commentary on the

right to work and workers' rights generally (not necessarily focused on women).

Key commentary from both committees is set out in the Annex to this paper, and includes statements urging States to:

- Develop and strengthen a clear legal framework to eliminate discrimination against women in relation to the right to work.
- Ensure equality between men and women as regards the right to work, noting the different retirement ages of men and women and the persistent gender wage gap.
- Address the underemployment of women in the labour force in general and the underrepresentation of women in specific key professions.
- Address the negative impact of gender stereotypes and the resulting lack of equal employment opportunities for women.
- Enable working parents to reconcile their professional and family responsibilities by protecting women against discrimination based on their marital status or pregnancy, and addressing the lack of availability of sufficient childcare facilities.
- Ensure increased educational opportunities for women.
- Collect disaggregated data.
- Address the problem of sexual harassment in the workplace, exploitative employment practices, and inadequate or unsafe working conditions.
- Address the issues facing vulnerable groups of women including women migrant workers, women with disabilities, rural women, elderly women and unpaid domestic child labourers.
- Address the impact that the lack of regulations in the informal sector has on women.
- Recognize the right of workers to strike and join, and participate in, trade unions (CESC).

⁹ For current ratifications, see: <http://www.ilo.org/dyn/normlex/en/f?p=1000:12001:0>.

¹⁰ G20 Leaders Communique Brisbane Summit, 15-16 November 2014.

¹¹ UN Secretary General *Synthesis Report of the Secretary-General on the Post-2015 Agenda* (2014), p. 22.

¹² CEDAW *General Recommendation No. 13* (1989).

¹³ CEDAW *General Recommendation No. 16* (1991).

¹⁴ CEDAW *General Recommendation No. 17* (1991).

¹⁵ CEDAW *General Recommendation No. 26* (2008).

¹⁶ CESC *General Comment No. 18*, (2006).

Key issues to consider

Women are not a homogenous group within a specific or normative context, and therefore the experiences of women in relation to work will differ greatly depending on geographical location, time of life, political-legal context, and positioning within communities and society at large. As such, this paper does not attempt to address every situation but instead raises a number of key issues, drawing upon the Working Group members' expertise and experience over recent years, that will be important to consider when seeking to address issues connected with women and work from a substantive equality perspective.

A prevailing economic model that impacts on human rights

Whilst there a number of drivers of inequality in women's work, at the heart of this inequality is the "pervasive neoliberal market-based model of development [that] is simply incapable of supporting gender-equitable sustainable development."¹⁷ Reductions in women's employment and the concentration of women in low-paid, poor-quality jobs can be attributed to a number of features of this development model, including:

- **Reductions in the size of the public sector:** Trends towards privatization as well as austerity measures imposed by international financial institutions have heavily contributed to such reductions in a sector traditionally representing a significant source of employment for women.¹⁸ Assumed to be secondary breadwinners, women are often the first to lose their jobs and the last to be re-hired.¹⁹

¹⁷ UN Women (in collaboration with ECLAC) *Expert Meeting Report: Structural and Policy Constraints in Achieving the MDGs for Women and Girls* (2013) UN Doc EGM/MDG/EP8, p. 2.

¹⁸ See, generally, Juan Jose Diaz 'Public Sector Downsizing' in Aline Coudouel & Stefano Paternostro (eds) *Analyzing the Distributional Impact of Reforms* (2006) Vol 2, pp. 213-254.

¹⁹ OHCHR *Report of the Independent Expert on the Effects of Foreign Debt and Other Related International Financial Obligations of States on the Full Enjoyment of All Human Rights, Particularly Economic, Social, and Cultural Rights* (2012) UN Doc A/67/304, para 58. Layoffs in the public sector were a key condition imposed by the IMF in exchange for the USD \$57 billion aid package to South Korea during the Asian financial crisis. Their compliance resulted in women losing jobs at twice the rate of men despite the fact that their unemployment before the crisis was half that of men. See also Diaz, *ibid*, pp. 238-239.

- **Trade and investment liberalization:** The liberalization of agricultural markets has had a disproportionate impact on women, who make up the overwhelming majority of agricultural workers and are widely employed in small-scale or subsistence production.²⁰ It is particularly difficult for women to compete with the large-scale, commercial, input-intensive farming of multinational producers: first, the structural barriers they face in accessing resources such as credit, technical assistance, and transport significantly constrain the ability of women farmers to compete in open markets and they are frequently the first to lose employment or income; and, second, the expansion of export-oriented crops has led to the decreasing availability of land for subsistence agriculture.²¹ Research confirms that the promotion of cash crops to improve agricultural efficiency exacerbates the marginalization of women agricultural workers, as managing cash crops is considered to be a task for men (while subsistence crops are considered "female" crops).²² The discriminatory impact on women of a liberalized agriculture sector is also fundamentally tied to women's inability to own or access land in many countries due to discriminatory laws, practices, or customary norms.²³ Women who own micro, small and medium-sized enterprises (SMEs) are less likely to be able to compete with foreign competition, because of an inability to quickly adapt operationally and technologically. This is attributable to legal and cultural biases faced specifically by women-run or owned SMEs that impede them from accessing trade and growth, including structural barriers to accessing finance, a lack of access to critical information on key issues such as land titling, and the impact of social support systems for businesswomen including childcare and education.²⁴ This is backed up by research in 141 countries that documents legal

²⁰ Jane Korinek *Trade and Gender: Issues and Interactions* OECD Trade Policy Papers No 24 (2005), pp. 13-15.

²¹ *Ibid*, p. 13.

²² Bharati Sadasivam 'The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda' (1997) 19(3) *Human Rights Quarterly*, pp. 630-665.

²³ ESCR-Net Women and ESCR Working Group *Briefing Paper: The Intersection between Land and Women's Economic, Social and Cultural Rights* (2016).

²⁴ UN Women *Effects of Trade on Gender Equality in Labour Markets and Small-scale Enterprise* (2010).

frameworks that support the capacity of men, but not women, to engage in work and set up their own businesses, often through directly discriminatory laws.²⁵ In the words of one ILO report, women in the informal economy “fail to reap much of the benefits”²⁶ of increasing global economic integration, and often “find that they are the ‘weakest links’ in global value chains”.²⁷

- **Labour market deregulation:** This has diminished the role of national wage setting mechanisms and promotes devolving wage setting to market-based mechanisms. Minimum wages, where they exist, are increasingly seen as a safety net, rather than a process to set living wages. The gender wage gap and poor conditions for women at work are considered a source of competitive advantage in global value chains, thus creating an incentive to maintain poor conditions for work for women in developing countries. This is clearly evident in export-oriented industries across developing regions, including manufacturing. Deregulation also places restrictions on freedoms to associate and to strike, prohibits compulsory unionism, and makes it difficult to unionise un-unionised and informal sectors. Market deregulation has intensified with investment policies and policies aimed at attracting foreign direct investment. As noted by the UN Economic and Social Commission for Western Asia (UN-ESCWA), “...the need to establish an ‘enabling environment’ to attract investment and improve the business climate... often focused on promoting more investment zones where investors are credited with lower regulation and taxation, and on strengthening investor rights, relaxing labour market regulations, and signing on to an increasing number of investment protection and trade liberalization agreements...[has] remained blind to the gender differentiated impacts of investment policies”.²⁸ Although ostensibly

25 Nabila Kabeer *Women’s Economic Empowerment and Inclusive Growth: Labour Markets and Enterprise Development* (2012), p. 13.

26 ILO *Women, Gender and the Informal Economy: An Assessment of ILO Research and Suggested Ways Forward* (2008), p. 13.

27 Ibid, p. 1.

28 UN-ESCWA *Women’s Rights and Gender Equality for Sustainable Development: Discussing the Proposed SDGs within the Context of the Development Problematique in the Arab Region* (2015) UN Doc E/ESCWA/2015/ECW/Technical Paper.3, p. 31.

providing increased employment for women, it is essential to question the kinds of jobs that women are being offered within this context and whether this trend reflects improvements on the equality and justice front, or instead re-enforces discrimination and rights violations as experienced disproportionately by women.²⁹

Gendered, vulnerable employment sectors

Despite increasing levels of education, gender stereotypes and various forms of direct and indirect discrimination have led to consistent occupational segregation whereby women are clustered mostly in vulnerable³⁰ and exploitative forms of employment, where their rights at work – including a right to a living wage, the right to social security protections, and the right to unionize – are routinely violated. Currently, women workers comprise the majority of workers in the garment industry, agricultural subsistence farming and service industries.

Domestic paid work, being work done within an employer’s household such as housekeeping, care work and cleaning, is a common occupation for women around the world; for instance in Asia it accounts for one-third of all waged female employment,³¹ in Latin America there are 19.5 million domestic workers, 90 per cent of which are women,³² and globally, 83 per cent of domestic workers are women.³³ Although domestic work makes a significant contribution to the economic and social development of countries, particularly in the form of remittances, gendered notions of work that link women with the “private” sphere of nurturing and service mean that such work is among the lowest paid, least valued, and least organised forms of work. Further, because of the isolation of domestic workers and the lack of recognition of domestic work as a form of employment, domestic work is largely unregulated and labour laws fail to

29 Ibid.

30 The ILO defines vulnerable employment as the sum of own-account workers and unpaid family workers. ILO *Global Employment Trends: May 2009* (2009), p. 13. The ILO also notes that wage workers and particularly casual wage workers or workers on temporary contract are in potentially vulnerable positions as they are often the first to be dismissed.

31 ILO *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (2013).

32 ILO, News update, (2013), available at http://www.ilo.org/americas/sala-de-prensa/WCMS_201358/lang--es/index.htm

33 Ibid, p. 19.

protect the rights of domestic workers or have set lower standards.³⁴ For example, more than half of these workers are not entitled to earn the minimum wage.³⁵ As a result, domestic workers are regularly exploited and abused.³⁶ Migrant domestic workers are even more vulnerable to exploitation because of their doubly vulnerable status as women and as foreigners.³⁷ These problems persist despite important international instruments providing protection to domestic workers.³⁸

work is undervalued and unremunerated although it contributes greatly to the economy and to the reproduction of life.

For example, in South Africa women form the majority of community health care workers. This form of care work, though recognised as critical in the fight against the HIV/AIDS pandemics, is not adequately compensated. Women are more often than not paid a mere stipend while placing their own health at risk every day in providing for

Case study: a *kafala* system in Lebanon

In most Arab countries, domestic workers are required to have a local sponsor, to whom their legal residency is tied. Lebanon is one of these, in which the *kafala* (sponsorship) system prevails and where over 250,000 migrant domestic women workers reside. Yet, as the ILO notes “[c]ompared to international standards, institutional and legal protection for migrant domestic women workers remains very weak in Lebanon, and efforts to ensure decent working conditions are confined to a limited number of local organisations, international actors and activists”.¹ Indeed, given the lack of supervision of the Ministry of Labour on domestic workers’ employment processes and working conditions, as well as on the practice of employment agencies, the sponsorship system makes exploitation and violation of migrant domestic workers rights more common.

1 Migrant Domestic Workers in Focus: An ILO Newsletter, Issue 2 (Oct 2013 – Feb 2014), p. 5.

Women’s unpaid care work

The failure to recognise women’s unpaid care work and to adequately remunerate such work has been identified as a major barrier to gender equality and to equal enjoyment of many human rights (such as education, work, health, social security, among others), and in many cases condemn women to poverty.³⁹ Unpaid work refers to all the care and domestic work that mostly women undertake at home and in the care of others (children, the elderly, and people with illness or disabilities). This

the health care needs of their communities. In Europe, women across Europe in 2013 spent an average 26 hours per week on care and household activities, compared to 9 hours for men.⁴⁰

Active measures and efforts need to be taken in order to change the demographics and gender roles so as to address the care work responsibilities within society, including the reshaping of social protection policies and priorities. The Beijing Platform for Action highlights the limitations that unequal sharing of unpaid care work place on women’s ability to access paid employment outside of their homes, and to continue to engage in such employment once obtained.

34 Ibid, Part II.

35 UN Women *Progress of the World’s Women* (2015), p. 14.

36 ILO *Domestic Workers Across the World: Global and Regional Statistics and the Extent of Legal Protection* (2013), p. 44.

37 APWLD, CARAM-Asia & UFDWRs *The Right to Unite: A Handbook on Domestic Workers Rights Across Asia* (2010), p. 13.

38 ILO Convention Concerning Decent Work for Domestic Workers, 2011 (Domestic Workers Convention No. 189).

39 UN *Special Rapporteur on Extreme Poverty and Human Rights Report on Unpaid Care Work and Women’s Human Rights* (2013) UN Doc A/68/293, pp. 12-14.

Women’s labour and migration

As women increasingly lose traditional sources of livelihoods, they are also more likely to migrate.

40 European Commission *Report on the Progress on Equality between Woman and Men* (European Commission, 2013), p. 3.

Case study: migration policy in Asia¹

Migration policy in destination countries in Asia is tilted heavily towards short-term placement arrangements and discourages permanent settlement or immigration by migrants and families, creating circular migration and job insecurity. An accompanying migration industry has also developed, involving myriad players: labour recruiters and poachers based in the countries of origin, pre-departure travel organisers and trainers, labour brokers/agents from the destination countries, and peddlers of varied on-site services for migrants. Some of the richest people in Asia are in the migration industry, yet most of them keep a deliberately low profile. Cases of scandalous recruitment and placement fees (equivalent to two or more months of migrants' wages), contract substitution, employer substitution, contract deviations, outright trafficking, non-existent job placements and varied human and migrant rights violations abound. This is aggravated by the inability of governments of origin and destination countries to forge bilateral and multilateral agreements to enforce international conventions protecting migrant workers' rights. In fact, only four countries in the region have ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and only the Philippines has ratified the ILO Convention on Domestic Workers.

¹ APWLD *Beijing+20 Regional Review: Submission on Progress in Asia and the Pacific*, pp. 23-24.

Labour has now become a leading export product in many countries. The types of informal employment in which women migrants tend to be concentrated are characterised by low job security, low incomes, little or no access to social benefits and fewer opportunities to participate in education and training than formal employment, not to mention the risk of exploitation, violence and trafficking.

Inequality is embedded in present-day care regimes, and variables such as gender, class, ethnicity and country of origin imbue global care chains with certain power dynamics.⁴¹ On one hand, the caregiving work performed by women exists within cultural contexts that dictate a gendered division of labour that makes it difficult for women to negotiate a sharing of caregiving tasks in the private sphere. On the other hand, public policy related to care provision is not based on principles of universal access. Therefore, access to care and the quality of the services available are determined by the socioeconomic status of a household, as well as the nationality and migratory status of its members. This combination of gender inequalities and insufficient public policy related to the

provision of care has created diverse 'push' and 'pull' factors that have served as an incentive for female migration. Pronounced gender inequalities in countries of origin, for example gross income disparities, impel women to migrate. Furthermore, given the uneven nature of access to, and quality of, formal care services in recipient countries, there is a demand for female migrant labour, which is facilitated by migration policy. Ultimately, this flow of women caregivers has led to the globalisation of the care economy.⁴²

The large numbers of women who migrate to take on jobs in other countries as domestic workers fill the unmet need for care services in richer destinations, and intensifies the overall care deficit in poorer countries as the extra responsibilities usually fall to older women and girls within the household or community.⁴³ As noted by the former Special Rapporteur on Extreme Poverty and Human Rights, "[t]hese global care chains reflect and, in some ways, exacerbate enormous inequalities in terms of class, gender and ethnicity. The people who make up the chains, from the first to the last link, are almost exclusively female, often belong to an ethnic minority in their destination country,

⁴¹ UN Women *Cadenas globales de cuidados: síntesis de resultados de nueve estudios en América Latina y España* (*Global care chains: synthesis of results from nine studies in Latin America and Spain*) (2012).

⁴² Ibid.

⁴³ UN Special Rapporteur on Extreme Poverty and Human Rights *Report on Unpaid Care Work and Women's Human Rights* (2013) UN Doc A/68/293, p. 66.

and generally cannot rely on State support for their care responsibilities.”⁴⁴

Women in trade unions

The protection of women’s rights at work is also significantly undermined by the lack of women in trade union leadership. For example, in Bangladesh, only 14 per cent of all trade union members are reported to be women,⁴⁵ and one study found that none of the 17 unions had a woman as general secretary and only two had women Presidents.⁴⁶ Researchers have found that barriers to women’s membership and leadership in trade unions included legislative provisions, the structures of trade unions, and the culture of patriarchy within workplaces, the community and family.⁴⁷ In Lebanon, while the women’s affiliation with trade unions is high and ranges between 40 and 75 per cent, female participation in trade union executive boards is far below their percentage of total trade union members.⁴⁸

The gender pay gap and the need for a common living wage

In every country in the world, women are paid less than men for work of equal value, which translates into large income inequalities throughout their lives. On average, women’s earnings are 24 per cent less than men’s earnings.⁴⁹ This is despite the fact that in every region, women work more than men: if paid and unpaid work are combined, women in all countries work longer hours than men each day.⁵⁰ Further, in some countries where gender pay gaps have narrowed, this has occurred in the context of falling real wages for both genders, with the gaps reducing because men’s wages have fallen faster than women’s, with an effective ‘levelling

down’ for all.⁵¹ The ILO has noted that without targeted intervention and action at the current rate, pay equity between women and men will not be achieved before 2086.⁵²

The living wage concept has existed as a wage setting device for more than 100 years in some countries and was recognised by the ILO Constitution in 1919.⁵³ It refers to a wage that allows a family to live in dignity with sufficient food, shelter, resources, energy, health care, education, communication and recreation. A worker receiving a living wage should be able to support a family of four people without going into debt or relying on financial support from other family members. Differences between a living wage and a minimum wage have often come about because of inherent and explicit gender discrimination. Wages set below the living wage assume that the worker does not need to support a family and originated from assumptions that women are dependents, not providers. This sexist assumption has allowed wages to be eroded over decades most notably in industries that employ women – the garment industry being a clear illustration.

Maternity benefits for women and parental leave

The ILO has identified shared parental responsibility as a key intervention strategy in order to address gender equality within the work place, as well as maternity benefits to women which includes access to health care before and after the birth without compromising employment.⁵⁴ A number of ILO Conventions are key to identifying the needs of women during maternity period, and these should be viewed as enabling tools in order to address the equality gap.⁵⁵

Men have a key role in participating in family life and ensuring the equal distribution of care work. This can be achieved by involving men in early

44 Ibid, p. 67.

45 Bangladesh Institute of Labour Studies *Women’s Participation in Trade Unions in Bangladesh: Status, Barriers and Overcoming Strategies* (2009), p. 8.

46 Ibid, p. 12.

47 Ibid.

48 Lebanese Women Democratic Gathering (RDFL) *The Promotion of the Role of Political Parties and Trade Unions in Enhancing Women’s Political Participation* (2014).

49 UN Women *Progress of the World’s Women* (2015), p. 96. See also Doris Weichselbaumer & Rudolf Winter-Ebner ‘A Meta-Analysis of the International Gender Wage Gap’ (2005) 19(3) *Journal of Economic Surveys*, pp. 479-511.

50 UN Women *Progress of the World’s Women* (2015), p. 44.

51 Ibid, p. 12.

52 ILO *Director General Report to the International Labour Conference* (2011).

53 The concept of a living wage is based on the ILO Conventions 95 and 131, ILO Recommendations 131 and 135, and Article 23 of the Universal Declaration of Human Rights

54 ILO *Maternity and Paternity at Work: Law and Practice Across the World* ILO Policy Brief (2015).

55 For example, Convention No. 3 on Maternity Protection (1919); Maternity Protection Convention No. 103 (1952) and No. 183

stages of childcare. Globally, growth has occurred in maternity and paternity protection coverage, flexible working arrangements, sharing of family responsibilities and affordable child care. For example, in 1994, at least 38 per cent of countries surveyed provided at least 14 weeks of maternity leave; by 2013 this had increased to 51 per cent.⁵⁶ These interventions can enable a more equal distribution of care responsibility, by creating a more equitable work environment for women. Although an increased commitment to law reform is welcomed, scrutiny is required to ensure that these measures are implemented to the benefit of women. Among other things, paternity leave should also not be restricted to the period of birth, but should rather take the form of family responsibility leave that is shared between genders over time, to ensure that the responsibility to care for children does not revert to the responsibility of women only shortly following the birth of the child.

Workplace violence against women

Violence against women in the workplace is also pervasive, with many women subjected to sexual harassment, rape and other forms of violence. For example, 30 to 40 per cent of women workers in Asia and the Pacific report some form of verbal, physical or sexual harassment,⁵⁷ and in Mexico, 22.6 per cent of all employed women aged 15 or over have suffered violence from a work colleague or superior.⁵⁸ The ILO views sexual harassment as a barrier towards its primary goal of promoting decent working conditions for all workers around the world, noting that it reduces the quality of working life, jeopardises the wellbeing of women and men, undermines gender equality and imposes costs on firm and organisations.⁵⁹

Conclusion

While a number of important advances have been and continue to be made at the intersection

(2000); Workers with Family Obligations Convention No. 156 (1981).

56 ILO *Maternity and Paternity at Work: Law and Practice Across the World ILO Policy Brief* (2015), p. 3.

57 UN Secretary General *Report of the UN Secretary General: In-depth Study on All Forms of Violence Against Women* (2006) UN Doc A/61/122/Add.1.

58 INEGI, *Encuesta Nacional sobre Dinámicas y Relaciones en los Hogares (ENDIREH)*, 2011.

59 ILO *Sexual Harassment at Work: National and International Responses* (2005), p. 7.

of work and women's economic, social and cultural rights, the issues outlined above reflect continued direct and indirect discrimination in the labour market, as well as inequality in unpaid care work undertaken by women and men within the household and communities. Taking a substantive equality approach to women's enjoyment of the right to work and rights at work requires careful consideration of the issues highlighted above, which reveal the disadvantages experienced by women in connection with a range of overlapping influences, from macro-economic policies and practices, to social and cultural gender constructs.

Selected additional resources

- Asia Floor Wage Alliance, *Stitching a Decent Wage Across Borders: The Asia Floor Wage Proposal* (2009).
- Asia Pacific Forum on Women, Law and Development (APWLD), *Decent Work and Living Wage* APWLD Briefer (2015).
- APWLD, *Beijing+20 Asia Pacific Regional Review: Progress in the Asia Pacific Region* (2014).
- APWLD, *Know Your Rights, Claim Your Rights under the New ILO Convention on Domestic Workers* (2013).
- APWLD, *The Right to Unite: A Handbook on Domestic Worker Rights across Asia* (2010).
- Australian Human Rights Commission, *Fact sheet: Domestic and family violence - a workplace issue, a discrimination issue* (2014).
- Australian Human Rights Commission, *Investing in care: Recognising and valuing those who care* (2013).
- Ethical Trading Initiative, *Homeworker guidelines and information*.
- International Labour Organisation (ILO), *Global Employment Trends for Women* (2012).
- ILO, *Sexual Harassment at Work: National and International Responses* (2005).
- N Kabeer, *Women's economic empowerment and inclusive growth: labour markets and enterprise development* SIG Working Paper 2012/1 (2012).
- S Seguino, *The Global Economic Crisis, Its Gender Implications and Policy Responses*, Paper prepared for Gender Perspectives on the Financial Crisis Panel at the 53rd Session of the Commission on the Status of Women (2009).
- UN Women, *Progress of the World's Women 2015-2016: Transforming Economies, Realizing Rights* (2015).
- UN Women (J Ghosh), *Economic crises and women's work: exploring progressive strategies in a rapidly changing global environment* (2013).

Annex: CEDAW/CESCR references to women and work in concluding observations⁶⁰

CEDAW	CESCR
Ensure equality between men and women as regards the right to work	
<p>Expressed concern about the different retirement ages set for men and women, and the persistent wage gap between women and men, which can be as high as 25% in some States.</p> <p>Called upon States to:⁶¹</p> <ul style="list-style-type: none"> adopt legislation and policy measures to ensure equal pay for women and men for work of equal value and the same retirement age take measures to ensure that labour laws are enforced effectively and to increase the number of, and adequately equip, labour inspectors to enable them to effectively monitor women's working conditions 	<p>Expressed concern about the different retirement ages set for men and women, and the persistent wage gap between women and men, which can be as high as 25% in some States.⁶²</p> <p>Called upon States to:⁶³</p> <ul style="list-style-type: none"> adopt legislation and policy measures to ensure equal pay for women and men for work of equal value and the same retirement age take legislative and other measures to introduce and periodically review a national minimum wage, set at a level sufficient to provide all workers and their families a decent standard of living
Addressing the underemployment of women in the labour force	
<p>Expressed concern about the underemployment of women in all sectors; and concentration of women in informal and agricultural sectors (where labour remains largely unregulated).</p> <p>Called upon States to:⁶⁴</p> <ul style="list-style-type: none"> review the obstacles for women in employment adopt temporary special measures to address obstacles, including but not limited to statutory minimum quota for the appointment, recruitment and promotion of women to promote access of women to all types of employment and occupation 	<p>Expressed concern about the underrepresentation of women in high-ranking posts especially academia and government decision-making posts; the underemployment of women in all sectors; and concentration of women in informal and agricultural sectors (where labour remains largely unregulated).</p> <p>Called upon States to:⁶⁵</p> <ul style="list-style-type: none"> review the obstacles for women in employment adopt temporary special measures to address obstacles, including but not limited to statutory minimum quota for the appointment, recruitment and promotion of women to promote access of women to all types of employment and occupation revise the list of industries, jobs and professions with hazardous and/or dangerous working conditions in which women's labour is prohibited

⁶⁰ This annex is a non-exhaustive list of references to women and work based on the concluding observations of the CESCR and CEDAW Committees between 2011 and 2015.

⁶¹ Chad, Israel, Ivory Coast, Mauritius, Oman, South Africa, Sri Lanka, Tajikistan (2011); Belarus, Cambodia, Moldova, Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, Central African Republic, India, China, Guinea, Lebanon, Lithuania, Poland, Portugal, Solomon Islands (2014); Malawi, Slovenia, Spain, Timor-Leste (2015).

⁶² Belarus (2013). In Kuwait, a 30 per cent gender wage gap prevails (Kuwait (2013)).

⁶³ Albania, Azerbaijan, Bosnia and Herzegovina, Egypt, Gabon,

Japan (2013); Portugal, Vietnam (2014); Guatemala, Guyana, Tajikistan (2015).

⁶⁴ Chad, Israel, Ivory Coast, Mauritius, Oman, South Africa, Sri Lanka, Tajikistan (2011); Belarus, Cambodia, Moldova, Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, Central African Republic, India, China, Guinea, Lebanon, Lithuania, Poland, Portugal, Solomon Islands (2014); Malawi, Slovenia, Spain, Timor-Leste (2015).

⁶⁵ Angola, Austria, Belarus, Bosnia and Herzegovina; Democratic Republic of the Congo (DRC), Denmark, Egypt, Rwanda (2013); Czech Republic, Guatemala, Paraguay, Salvador 92014), Sudan, Greece, Guyana, Italy, Tajikistan (2015).

CEDAW	CESCR
Addressing the negative impact of gender stereotypes	
<p>Expressed concern at the prevalence of gender segregation in the common and the lack of equal employment opportunities for women resulting from stereotypical perception of traditional roles for women.</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • intensify efforts to eliminate the gender role stereotypes and prejudices through awareness-raising campaigns • take appropriate steps to ensure all legislation is gender-sensitive⁶⁶ 	<p>Expressed concern at the prevalence of gender segregation in the common and the lack of equal employment opportunities for women resulting from stereotypical perception of traditional roles for women.</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • intensify efforts to eliminate gender role stereotypes and prejudices through awareness-raising campaigns • take appropriate steps to ensure all legislation is gender-sensitive⁶⁷
Addressing the problem of sexual harassment	
<p>Expressed concern that sexual harassment in the workplace still frequently occurs.⁶⁸</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • take appropriate measures to address the problems of sexual harassment including but not limited to incorporating sexual harassment in the workplace in its criminal legislation⁶⁹ • develop a confidential and safe system for filing complaints related to gender-based discrimination and sexual harassment in the workplace; and ensure that victims have effective access to such means of redress⁷⁰ 	<p>Expressed concern that sexual harassment in the workplace still frequently occurs.⁷¹</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • take appropriate measures to address the problems of sexual harassment including but not limited to incorporating sexual harassment in the workplace in its criminal legislation⁷²
Enable working parents to reconcile their professional and family responsibilities	
<p>Expressed concern about the lack of measures to protect women against discrimination based on their marital status or pregnancy,⁷³ and the lack of availability of sufficient childcare facilities.⁷⁴</p>	<p>Expressed concern about the lack of measures to protect women against discrimination based on their marital status or pregnancy, and the lack of availability of sufficient childcare facilities.</p>

66 Israel, Chad, Paraguay, Sri Lanka, Tajikistan (2011); Belarus, Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, China, Poland (2014); Malawi, Portugal, Slovenia (2015).

67 Albania, Azerbaijan, Bosnia and Herzegovina, Egypt, Gabon, Japan (2013); Portugal, Vietnam (2014); Guatemala, Guyana, Tajikistan (2015).

68 Israel (2011); Belarus, Columbia, Serbia (2013); Bolivarian Republic of Venezuela, China (2014); Lebanon (2015).

69 Israel, Chad, Paraguay, Sri Lanka, Tajikistan (2011); Belarus,

Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, China, Poland (2014); Malawi, Portugal, Slovenia (2015).

70 Israel, Chad, Paraguay, Sri Lanka, Tajikistan (2011); Belarus, Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, China, Poland (2014); Malawi, Portugal, Slovenia (2015).

71 Jamaica, Japan (2013).

72 China (2014).

73 Moldova (2013).

74 Belarus, Seychelles (2013).

CEDAW	CESCR
Enable working parents to reconcile their professional and family responsibilities	
<p>Called upon States to:</p> <ul style="list-style-type: none"> • continue efforts to enable working parents to reconcile their professional and family responsibilities, including extending paternity leave to the private sector, promoting fathers to take paternity leave, and ensuring the availability of high quality, affordable childcare facilities⁷⁵ • consider ratifying ILO Convention No 156 (1981) on Workers with Family Responsibilities⁷⁶ • strengthen labour inspection mechanisms and establish sanctions for companies with more than 50 people that do not comply with the legal obligation to provide childcare services⁷⁷ 	<p>Called upon States to:</p> <ul style="list-style-type: none"> • ensure effective enforcement of the legislation in order to protect women on maternity leave against unjustified dismissal connected with their condition⁷⁸ • continue efforts to enable working parents to reconcile their professional and family responsibilities, including extending paternity leave to the private sector, promoting fathers to take paternity leave, and ensuring the availability of high quality, affordable childcare facilities⁷⁹
Ensuring increased educational opportunities for women	
<p>Expressed concern about the very low participation of women and girls in employment in mathematics and scientific professions; the low number of women and girls enrolled in vocational and industrial training courses; and the implications for employment opportunities.</p> <p>Urged States to:⁸⁰</p> <ul style="list-style-type: none"> • aim to increase the representation of girls in traditionally male-dominated fields of study, such as mathematics, information technology, engineering, natural sciences and technological subjects • take measures to ensure that the better performance of women and girls in mathematics and scientific studies translates into the employment of women in these sectors • adopt policies to encourage women and girls to choose non-traditional fields of education, including technical and vocational training, by taking affirmative action such as introducing quotas for female students in technical and vocational areas of study 	<p>Called upon States to: enhance vocational training, job training and retraining opportunities and ensuring equal conditions of work for unemployed women and women employed in low-paid jobs⁸¹</p>

75 Belarus, Serbia (2013); Poland (2014); Malawi, Portugal, Slovenia (2015).

76 Belarus (2013).

77 Paraguay (2011).

78 Belarus (2013); Finland (2014).

79 Albania, Azerbaijan, Bosnia and Herzegovina, Egypt, Gabon,

Japan (2013); Portugal, Vietnam (2014); Guatemala, Guyana, Tajikistan (2015).

80 Mauritius, Sri Lanka (2011); Seychelles (2013); Bolivarian Republic of Venezuela (2014).

81 Angola, Austria, Belarus, Bosnia and Herzegovina; Democratic Republic of the Congo (DRC), Denmark, Egypt, Rwanda (2013); Czech Republic, Guatemala, Paraguay, Salvador (2014), Sudan, Greece, Guyana, Italy, Tajikistan (2015).

CEDAW	CESCR
Collection of disaggregated data	
<p>Called upon States to: collect and provide sex-disaggregated data on:</p> <ul style="list-style-type: none"> the situation of women in the private and informal sectors and take effective measures to monitor and improve the working conditions of women in those sectors⁸² the number of women migrant workers, their fields of occupation, complaints against respective employers and results of investigation⁸³ 	<p>Called upon States to: collect data and statistics:⁸⁴</p> <ul style="list-style-type: none"> to determine and evaluate the factors that make it difficult for women to enter and remain in the formal labour market to provide data (in further periodic reporting) on the participation of women in the labour market and the average earnings disaggregated by sex, occupation, branch of activity, and level of qualification
Addressing the issues facing vulnerable groups of women	
<p>Expressed concern about the exclusion of, discrimination against and continued inequalities experienced by vulnerable groups of women and girls, including women migrant workers, women with disabilities, elderly women, rural women⁸⁵ and unpaid domestic child labourers.⁸⁶</p> <p>Urged States to:</p> <ul style="list-style-type: none"> insure the equal application of labour laws to migrant and local workers so as to prevent incidents of work exploitation by local employers⁸⁷ employ any necessary statutory measures to ensure the inclusion of women with disabilities into the labour market⁸⁸ strengthen monitoring on unpaid domestic child labour (criadazgo) and implement policies aiming at eradicating this practice, as well as conduct awareness-raising campaigns and public education programmes⁸⁹ ensure that rural women, including older women, enjoy unimpeded access to adequate standards of living and employment⁹⁰ 	<p>Expressed concern about the disproportionate underrepresentation of persons with disabilities in the labour market.</p> <p>Expressed concern about the number of terminations of employment of workers reaching pension law and laws preventing the employment of retirees.⁹¹</p> <p>Expressed concern about the discrimination based offences committed against migrants, the limited choice for asylum seekers to select their profession,⁹² and the violation by employers of their legal obligations towards migrant workers⁹³.</p> <p>Called on States to:</p> <ul style="list-style-type: none"> take steps to promote an inclusive labour market for persons with disabilities⁹⁴ take measures to prevent arbitrary termination of employment of workers, particularly before they reach the pension age⁹⁵ making the proper amendments to the existing discriminatory legislation with a view to allowing the retirees to freely seek employment⁹⁶ raise awareness of the illegal nature of all acts of discrimination and of remedies available to migrants who are victims of discrimination

82 Ivory Coast (2011).

83 Mauritius, Oman (2011); Serbia (2013); Lithuania (2014); Lebanon (2015).

84 Albania, Azerbaijan, Bosnia and Herzegovina, Egypt, Gabon, Japan (2013); Portugal, Vietnam (2014); Guatemala, Guyana, Tajikistan (2015).

85 Serbia (2013).

86 Paraguay, Tajikistan (2011).

87 Mauritius, Oman (2011); Serbia (2013); Lithuania (2014); Lebanon (2015).

88 Mauritius, Oman (2011); Serbia (2013); Lithuania (2014); Lebanon (2015).

89 Paraguay (2011).

90 Mauritius, Oman (2011); Serbia (2013); Lithuania (2014); Lebanon (2015).

91 Albania (2013).

92 Austria (2013); Romania (2014).

93 Bosnia and Herzegovina, Japan (2013); Monaco, Montenegro, Romania, Slovenia, Ukraine, Vietnam (2014).

94 Austria, Belarus, Denmark, Gabon, Japan, Kuwait, Togo, Rwanda (2013); China, Finland, Paraguay, Uzbekistan, Vietnam (2014); Iraq (2015).

95 Azerbaijan (2013).

96 Austria, Belarus, Denmark, Gabon, Japan, Kuwait, Togo, Rwanda (2013); China, Finland, Paraguay, Uzbekistan, Vietnam (2014); Iraq (2015).

CEDAW	CESCR
Addressing the issues facing vulnerable groups of women	
	<ul style="list-style-type: none"> • take effective measures to enforce its anti-discrimination legislation in employment, including by monitoring working conditions in sectors where migrants are vulnerable to violation of their labour rights • take concrete measures to guarantee asylum seekers' right to an adequate standard of living by allowing them full access to the formal labour market⁹⁷ • promote asylum seekers, immigrants and refugees' independence and self-sufficiency, and to facilitate their access to the means-tested minimum income scheme if they are unable to find work
Address exploitative employment practices and inadequate or unsafe working conditions	
	<p>Expressed concern about the use of short-term/ fixed-term employment contract in all sectors of the economy and the resultant job insecurity.⁹⁸ Expressed concern about lack of information about inadequate or unsafe working conditions.⁹⁹</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • review the current regime of fixed-term/short-term employment contracts in order to limit the scale of their use and provide adequate safeguards against arbitrary non-renewal of fixed-term contracts¹⁰⁰ • adopt necessary measures to ensure just and favourable conditions of work, especially for workers in the private sector¹⁰¹
Addressing the impact that the lack of regulations in the informal sector has on women	
<p>Expressed concern about the lack of a clear definition of the informal sector in legislation and the unfavourable and exploitative labour conditions in this sector, which impact disproportionately on women (as women make up a large portion of the work force in this sector)</p> <p>Called on States to take measures to regularize the situation for informal sector workers by progressively improving their work conditions and including them in social security systems¹⁰²</p>	<p>Expressed concern about the lack of a clear definition of the informal sector in legislation and the unfavourable and exploitative labour conditions in this sector, which impact disproportionately on women (as women make up a large portion of the work force in this sector)</p> <p>Called on States to take measures to regularize the situation for informal sector workers by progressively improving their work conditions and including them in social security systems¹⁰³</p>

97 Austria, Bosnia and Herzegovina, Kuwait (2013); Monaco, Montenegro, Romania, Slovenia, Ukraine, Vietnam (2014).

98 Belarus, Japan (2013); Montenegro (2014).

99 China, Finland (2014).

100 Belarus (2013).

101 Belarus, Japan, Rwanda (2013); China, Finland, Montenegro, Vietnam (2014), Greece, Italy (2015).

102 Chad, Israel, Ivory Coast, Mauritius, Oman, South Africa, Sri Lanka, Tajikistan (2011); Belarus, Cambodia, Moldova, Serbia, Seychelles (2013); Bolivarian Republic of Venezuela, Central African Republic, India, China, Guinea, Lebanon, Lithuania, Poland, Portugal, Solomon Islands (2014); Malawi, Slovenia, Spain, Timor-Leste (2015).

103 Angola, Bosnia and Herzegovina, Egypt, Rwanda (2013); Monaco, Morocco, Nepal, Paraguay, Salvador, Ukraine, Uzbekistan (2014); Burundi, Guyana, Sudan, Tajikistan (2015).

CEDAW	CESCR
Recognizing the right of workers to strike and join, and participate in, trade unions	
	<p>Expressed concern about the restrictions on the right of workers to strike, to form, join, and participate in the activities of trade unions,¹⁰⁴ and the killing and repression of trade unionists.¹⁰⁵</p> <p>Called upon States to:</p> <ul style="list-style-type: none"> • take all necessary measures to ensure that workers have the right to form and join trade unions of their choice¹⁰⁶ • take all necessary measures to ensure that workers enjoy trade union rights without undue restriction • to protect human rights and labour activists, as well as their lawyers, against any form of intimidation, threat to life, property or person; or retaliation for taking up cases of violations of economic, social and cultural rights, and to ensure full respect for their own economic, social and cultural rights¹⁰⁷

104 Azerbaijan, Angola, Albania, Belarus, Belgium, Bosnia and Herzegovina, Egypt, Gabon, Jamaica, Kuwait (2013); China, Guatemala, Indonesia, Monaco, Montenegro, Paraguay, Salvador, Serbia, Romania, Uzbekistan, Vietnam (2014); Italy, Iraq, Sudan (2015).

105 China (2014).

106 Azerbaijan, Angola, Albania, Belarus, Belgium, Bosnia and Herzegovina, Egypt, Gabon, Iran (2013); China, Guatemala (2014).

107 China (2014).

ESCR-Net and its Working Group on Women and ESCR

The International Network for Economic, Social and Cultural Rights (ESCR-Net) unites over 270 NGOs, grassroots groups, and advocates across 70 countries, facilitating strategic exchange, building solidarity, and coordinating collective advocacy to secure social and economic justice through human rights. ESCR-Net members define common strategies and advance joint action foremost through international working groups, including the Working Group on Women and ESCR which is made up of about 40 members – NGOs, social movements, and individual advocates – working across regions to advance women’s ESC rights and substantive equality. Through engagement with UN bodies, capacity building, and advocacy at multiple levels, the Working Group works collectively to ensure women’s experiences and analyses are at the center of domestic and international policy-making and legal developments.

To comment on this briefing paper or to find out more about the Women and ESCR Working Group, please contact wescr@escr-net.org or visit <https://www.escr-net.org/women>



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