



FOR INFORMATION

SECOND ITEM ON THE AGENDA

Other legal issues

Constitution of the International Labour Organization: Preparation of proposals to introduce inclusive language for the purpose of promoting gender equality

Context

1. At its 306th Session, the Governing Body requested the Office to prepare a document on possible amendments to the Constitution of the International Labour Organization for the purpose of introducing gender-inclusive language, with a view to its submission to the 309th Session of the Governing Body (November 2010).¹ The present document informs the Governing Body on matters relevant to preparing the proposals.
2. The Governing Body's request aims to bring the wording of the Constitution into line with the Organization's commitment reflected in the ILO Action Plan for Gender Equality.² As noted at the Committee's last meeting, the Action Plan calls for the use of gender-sensitive language in ILO governance documents as part of a broad programme of action inspired by the ILO's policy of mainstreaming gender equality into all aspects of ILO action.³ The ILO policy contributes to the leadership on gender equality within the UN as a whole.⁴ The policy reflects that gender equality is a central principle to the ILO's mandate of social justice and part of the broader international legal principle of equality enshrined in the ILO

¹ GB.306/10/1, para. 29.

² GB.306/10/1, paras 22–26, GB.300/5, appendix and GB.304/17/2. For the outline of the proposed Action Plan for Gender Equality 2010–15, see GB.307/16/1.

³ GB.300/5, appendix, p. 18.

⁴ United Nations: Coordination of the policies and activities of the specialized agencies and other bodies of the United Nations system: Mainstreaming a gender perspective into all policies and programmes of the United Nations system, 1997 (A/52/3, Chapter IV).

Constitution, including the Declaration of Philadelphia.⁵ Gender equality and non-discrimination operate as cross-cutting issues in the ILO's four strategic objectives, as reaffirmed recently in the ILO Declaration on Social Justice for a Fair Globalization.⁶ A number of international labour standards and Conference resolutions seek to promote gender equality through the work of the Organization and the commitments of its Members.⁷

Process

3. The proposed review of the Constitution from a gender perspective aims at ensuring that its wording reflects the ILO's commitment to gender equality, as done in similar revisions recently approved for the Standing Orders of the Conference and the Standing Orders of the Governing Body. While those texts were amended by Conference and Governing Body decisions respectively, amendments to the Constitution are adopted by a two-thirds majority at the Conference and take effect only when ratified or accepted by two-thirds of the Members of the Organization.⁸
4. As with those exercises, the current goal is to ensure that the wording of the text is non-sexist and non-discriminatory. The exercise will thus identify references in the text that are gender specific (that is, exclusive to either men or women), in order to examine whether they are consistent with the principle of gender equality. The promotion of equality between women and men at all levels of the Organization's institutional functioning includes ensuring, from a gender perspective, that the text permits the reader to envision women as well as men serving in the Organization and avoiding a perception of invisibility for women. In considering these issues, account could be taken of the current policy and practice of the Organization reflected in Conference resolutions on gender equality, which could be documented in an editor's note⁹ in the Constitution to highlight the modern practice of the Organization on gender equality. Other sources for developing proposals could draw from the Office's Plan of Action for Gender Equality, specific international labour standards, and international legal principles.

⁵ In its Preamble, the Constitution recognizes the principle of equal remuneration for work of equal value. The Declaration of Philadelphia affirms the right of all human beings, irrespective of race, creed or sex, to pursue their material well-being and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity (Part II(A)) and that international policies are central to enabling the conditions for such pursuit (Part II(B)).

⁶ ILO Declaration on Social Justice for a Fair Globalization, Geneva, 2008, Part I(B).

⁷ The key equality Conventions consist of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Equal Remuneration Convention, 1951 (No. 100), the Workers with Family Responsibilities Convention, 1981 (No. 156) and the Maternity Protection Convention, 2000 (No. 183). Since the 1975 Declaration of Equality of Opportunity and Treatment for Women Workers, the International Labour Conference has adopted further resolutions calling for gender equality in 1985, 1991, 2004 and 2009.

⁸ See article 36 of the Constitution. The most recent Instrument of Amendment of the Constitution, adopted in 1997, has yet to enter into force, having received 115 ratifications (seven more are needed).

⁹ Such "editor's notes" are limited strictly to matters of record, such as practice of the Organization, like that found at the start of the Constitution recording the amendments adopted on the Constitution. Such editorial notes are not subject to the process involved in a constitutional amendment.

Method

5. Different drafting techniques and practices are used for gender-sensitive approaches in the ILO official languages, English, French and Spanish. The Office proposals concerning persons, functions and roles will likely draw on a combination of appropriate techniques and practices in addressing gender considerations. Assessing which approach is most effective at any time is a question of informed judgement. One technique used in the French and Spanish texts of the Standing Orders of the Conference and the Standing Orders of the Governing Body involved what amounts to, in drafting terms, an interpretation clause. In those cases, a footnote was inserted in the French and Spanish texts indicating that masculine pronouns, whether singular or plural, refer equally to both sexes. This technique has the advantage of permitting most of the text to remain unaltered; however, it has the disadvantage that the reader of the literal text will still see only the male gender, even though the interpretation clause states “he” is to include “she”. Even with such a clause, the text could be read to marginalize women or even make them invisible. For this reason, other techniques may be preferred to visualize both women and men in the role or function provided. The techniques and practices are described separately for the English, French and Spanish languages in the appendix.

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Submitted for information.

Appendix

Possible drafting techniques

1. The drafting proposals to address gender-specific references in the Constitution will include suggestions on how to deal with designations of participants and roles in the Conference, Governing Body, and Office. The proposals for the English text will draw upon a combination of techniques and practices, depending on the context of each provision concerned and keeping in mind the drafter's fundamental objective of clarity. Most of these techniques were used in the recent revision exercises for gender equality in the Standing Orders of the Conference and the Standing Orders of the Governing Body. The primary techniques consist of repetition, omission, reorganization, alternative pronouns, and tagging.¹
2. Repetition involves repeating the noun instead of using a pronoun referent: for example, repeating *Director-General* instead of referring to *he* or *him* such as: "The Director-General or the *deputy of the Director-General* shall attend all meetings of the Governing Body." (instead of his deputy in article 8, paragraph 2). This technique avoids the use of the masculine pronoun but lengthens the text and may be awkward, depending on the phrase involved.
3. Omission of the pronoun *he* or *him* by excluding superfluous words is an alternative to repetition and is often combined with reorganizing the text to omit the gender specific reference, for example: "There shall be a Director-General of the International Labour Office, who ... shall be responsible for the efficient conduct of the International Labour Office and *for any other assigned duties*" (instead of "for such other duties as may be assigned to him"). One method of reorganization, which changes the active voice to the passive voice, may work successfully but only where the sentence or clause is short; otherwise there is a lack of clarity in a longer text with many qualifications.
4. The use of alternative pronouns is another method in which an exclusive masculine pronoun is replaced by both masculine and feminine pronouns *he* or *she*,² or the neutral *one*, or the plural *they*. However, alternative pronouns like *one* or the plural are not widely used because such terms are thought to lack clarity and to sometimes lead to ambiguity of meaning. In particular, the use of the plural *they* or *their*, although it has been used in certain national legislative texts, must be used with care in order to ensure effectiveness in expressing the objective intended.
5. Finally, to avoid repetition, tagging may be employed, depending on the context. The *tag* is a word or short form, for example, that follows the person, function or role being described, such as: "There shall be a Director-General (*DG*) of the International Labour Office ...". The use of this technique, however, depends very much on the context and, in the case of the Constitution, tagging may not be appropriate to the style of the text.
6. Overall, taking into account the various effects of each method, a combination of techniques will be applied in preparing the proposals, depending on the context of each provision concerned.

¹ See, for example, ILO: *Manual for drafting international labour standards*; see also Daniel Greenberg: "The techniques of gender-neutral drafting", in Constantin Stefanou and Helen Xanthaki (eds): *Drafting legislation: A modern approach*, 2008, p. 67.

² Technically, using *he* or *she* raises the question whether the term should be *he* or *she* or *she* or *he* or whether the terms should alternate.