

## ILO : new Maternity Protection Convention

The International Labour Organization adopted a new Convention on maternity protection at its International Labour Conference in Geneva on 15 June 2000. The Convention was a litmus test of the ILO's credibility (see *TUTB Newsletter*, No 13), because the employers' delegations, with the backing of some governments, had gone all out to roll back established social gains. The employers had tried to stave off minimum rules on the length of maternity leave, level of maternity pay, protection against dismissal of pregnant workers, etc., with a call for "flexible standards".

Vigorous campaigning by trade unions and a range of women's groups helped keep most of the gains made by Convention No 103 (1952) intact and improve on it. Even so, the new Convention is a step back by allowing exclusions to what are admitted to be a minimum set of fundamental rights. These exclusions normally have to be agreed by the government and "social partners"; but will that be a good enough guarantee? In many countries, trade unions are not at arm's length from the government or pro-employer political groups. Also, women are often still very marginalised from the decision-making end of collective bargaining.

### Britain backs employers' blocking tactics

The failure of their plans to roll back social standards led the employers' delegations to resort to procedural blocking tactics. A quorum of 267 votes and a majority of 221 in favour were needed to adopt the Convention. Despite 116 abstentions, a quorum was found and the Convention was adopted by a massive majority (304 for, 22 against). The Recommendation on Maternity Protection won a bigger majority still.

The tactics to scupper the quorum were supported by just one EU Member State: the United Kingdom. The British government's delegate broadly backed the attacks on the social and employment rights of pregnant workers in the name of "business development" (i.e., owners' profits). The British government was the one EU government to take the hardest pro-business line in the debate. In particular, it opposed an amendment by Denmark, Italy, Portugal and Sweden which would have allowed a father to take the unused portion of maternity leave in the event of the mother's death, sickness or hospitalization. The amendment was narrowly defeated by an alliance of employer and some government representatives (United Kingdom, Papua New Guinea, Morocco, Tunisia, Ivory Coast, etc.). The British government also stood out against an amendment tabled by

Croatia, Finland, Norway, Portugal and Sweden giving parental leave rights to the mother or father. The United Kingdom - in league with the Islamic Republic of Iran and the USA amongst others - argued for certain categories of workers to be excluded from the scope of the Convention, in the face of opposition from the governments of countries like Guatemala and Croatia.

The other EU States voted for the new Convention, despite divisions on specific provisions<sup>1</sup>. Japan and Switzerland also abstained in support of employers' demands for enforced flexibility of rights.

### The contents of the new Convention

Granted, the new Convention does contain a string of new rights. But how far they go may depend in part on provisions which allow exclusions or leave Member States the discretion to fill out the precise content of a right. So national developments will have to be monitored closely to see whether these provisions put question marks over the Convention's breakthroughs.

Areas of progress include :

- the scope of the Convention in principle covers all employed women;
- maternity leave is raised from 12 to 14 weeks<sup>2</sup>;
- the minimum level of cash benefits on maternity-related leave (set, as in 1952, at not less than two thirds of previous earnings) applies to a wider range of medical benefits than before (when only basic social security benefits were covered);
- the period of protection against dismissal has been extended (Convention No 103 restricted it to the period of maternity leave; the new Convention extends it throughout pregnancy, maternity leave, pregnancy-related sick leave or complications, and a period following her return to work, set by the individual State). On the other hand, there is no longer absolute protection against dismissal: the worker can be sacked on grounds unrelated to the pregnancy.

On the downside, the failings include :

- no maternity leave for adoptions. The Latin American amendment providing for maternity leave for the adoption of a child under two was defeated. The EU governments were divided on this: Finland, Greece, Italy, Portugal and Sweden were for it; Belgium, Ireland, Luxembourg, the Netherlands and

<sup>1</sup> European government delegations took deeply reactionary stances on some issues. So, an amendment backed by a majority of African and Latin American countries requiring breast-feeding workers to be provided with high standards of hygiene was roundly voted down by most of the EU countries.

<sup>2</sup> The amendment upping maternity leave from twelve to fourteen weeks was tabled by six EU States (Germany, Austria, Greece, Italy, Luxembourg and Portugal), and supported by the workers' representatives plus the French, Spanish and Dutch governments.

the United Kingdom were against; Austria, Denmark, Spain and France abstained. The German delegation was out of the room when voting took place;

- the Convention makes no provision for better working conditions or prevention policies to ensure healthy working conditions for pregnant workers. These measures are dealt with only in the Recommendation, and so are not mandatory. All there is, is a ban on forcing pregnant workers to perform work "which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child". This "prohibition on obliging" individuals is inconsistent with the overarching importance of collective prevention policies through which to create working conditions compatible with reproductive health.

### Wanted : extensive ratification

Trade unions must lobby to get the new Convention ratified, taking care that its teeth are not pulled by the ratifying rules, and that more advantageous national provisions are kept. In the European Union, it could improve on the 1992 Community Directive on a number of counts, including :

- a wider scope (unlike the Community directive, the Convention does not exclude domestic staff);
- a longer period of compulsory leave: six weeks instead of two (although the Convention allows negotiated exclusions, which the directive does not);
- the prenatal portion of maternity leave has to be extended by any period elapsing between the presumed date of childbirth and the actual date of childbirth, without reducing the compulsory period of postnatal leave;
- if a worker is dismissed for reasons unrelated to pregnancy or childbirth and its consequences or nursing, the burden of proof shifts to the employer (the United Kingdom attempted to block this provision). The Community directive is less clear-cut; it lets Member States lay down permissible grounds for dismissal, and require notice of dismissal to be given in writing;
- the Convention confers a right to breast-feed (the right to one or more paid daily breaks or a paid daily reduction of hours of work to breastfeed). The Community directive makes no such provision.

Those provisions of the Convention which improve on Community law should be incorporated into the revision of the directive, because 14 of the 15 EU States supported them. The Commission now needs to be persuaded to honour its political undertakings and put forward a proposal for a revised directive in short order. So said the European Parliament by a hefty majority vote on a resolution on 6 July 2000 after discussion of Ms Elisa Damião's report on the 1992 directive (see box p.11).

### The argument of poverty or the poverty of an argument

Significantly, the employers' delegations and their government allies played the poverty card at every end and turn in the debates on the Convention to push through antisocial proposals. But their reasoning was deeply flawed. Basically, it boils down to saying that women have to be made worse off (financially or in health terms) for Asian, African and Latin American countries to be better off. This argument is full of holes. Most of the countries concerned have sufficient output to provide a level of maternity protection far beyond the Convention's provisions. At best, it would only effect a limited redistribution of wealth towards women workers (e.g., going from benefits of two thirds of previous earnings to full pay for fourteen or more weeks' leave). Arguably, not only do low-grade labour standards not help wipe out poverty, they actually make it worse. Basically, poverty is a reflection of political, social and economic domination. Cutting back working women's rights can only reinforce the present situation where the material wealth of dependent countries is routinely siphoned off to dominant countries in a range of ways (profits of multinational corporations, capital salted away by national elites, debt servicing, worsening terms of trade for many tropical products, etc.). Asking women to give up basic rights to fund capital accumulation on the promise of "jam tomorrow" in the form of economic growth is a cynical nonsense. But it is an argument that could well pass muster in the International Labour Organization debates. ■

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## European Parliament backs revision of the Maternity Directive

On 6 July 2000, the European Parliament discussed how the 1992 directive on the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding was being applied (see also the special report on application in *TUTB Newsletter* Nos 6 and 7). The debate centred around a report tabled by Ms Elisa Damião (socialist group, Portugal) which had previously been taken as evidence in a Social Affairs Committee hearing also attended by the TUTB and ETUC.

The European Parliament adopted the report by 200 votes to 27 with 4 abstentions. The main opposition came from British conservatives, isolated within their own parliamentary group (the EPP) on this. They wanted a greater focus on improving women's "employability" instead of rules to protect their health at work.

The European Parliament described the Commission report on the application of the directive as insufficient, dealing only with a technical summary of legal transposition. It called on the Commission to submit a proposal for a revision of the directive by the end of 2000, given the many shortcomings in its practical implementation. That new proposal should include the following improvements:

- an increase in maternity leave entitlement to 20 weeks, with a mandatory 8 week post-natal recovery period;
- a clearer definition of adequate allowance during maternity leave which should be at least 80% of the previous salary;
- a strict prohibition on dismissal during pregnancy and maternity leave and the requirement to reinstate a woman in her job or an equivalent job at the end of the maternity leave period;

- a prohibition on discriminating against women who are pregnant or on maternity leave as regards career advancement and improvement of working conditions.

The European Parliament wants the revised directive to include specific, binding provisions on work interruptions for breastfeeding, night work for pregnant women, and an entitlement to paid maternity leave for self-employed women workers. The Commission and social partners should pay special attention to the risks faced by pregnant workers and those who have recently given birth who are in non-standard employment.

Parliament also calls on the Commission to publish without further delay, and to make immediately available to Member States, the guidelines on risk assessment for workers covered by the directive. These guidelines, provided for in the 1992 directive, are an essential tool to supplement the general preventive measures laid down by the directive.

Parliament regrets that Member States have not spoken with a common EU voice in discussions and votes in the ILO on a revision of Convention No. 103, and also regrets that not all Member States voted at the recent session of the ILO Annual Conference to maintain at least the level of protection afforded under Directive 92/85/EEC.

Ms Damião's report, the minutes of proceedings and the European Parliament's resolution can be found on the EP's web site : [www.europarl.eu.int/](http://www.europarl.eu.int/)

Report from the Commission on the implementation of the Maternity Directive : COM (1999) 100.