I. Introduction

Today in the world women are earning around 78% of what men are earning.¹ The ratio is even lower in some part of the world.² Gender pay³ gap ironically is still one major feature of the modern labor market,⁴ despite the fact that the right to equal pay is one of the founding principles recognized by the 1945 ILO constitution amendment.

Since 1919 the right to equal pay was discussed during the preparation for the ILO constitution, scholars have been constantly making efforts to explore the potential solutions to gender pay differentials. Particularly in 1980s it was witnessed an explosion of economic research on wage determination and sociological analysis of the marketplace and occupational structure.⁵ The causes of the gender pay gap has been attributed to differences in productivity characteristics of men and women, the characteristics of enterprises and sectors employing men and women, the jobs held by women and men, the number of hours devoted to paid work, and discrimination in remuneration.⁶ One common solution proposed to close gender pay differentials is “comparable worth” or “pay equity”, which employs some objective criterion for determining wages excluding the use of gender as one of determinants. In the past two decades, with the emerging feminist theory, gendering perspective has perpetuated

² The ILO has documented the gap between women and men’s incomes: the ratio “appears to be especially low in east and Southeast Asian countries as well as in some European countries (with Japan, the Republic of Korea, Malaysia, Singapore, Luxembourg and Cyprus the only countries having a ratio below 0.60). Ratios appear to be relatively high in Scandinavian countries, as well as in some other OECD and Third World countries (with Denmark, Iceland, Norway, Sweden, Australia, Sri Lanka, Turkey and Swaziland the only countries with a ratio clearly above 0.80).” Anker, Richard (1997). “Theories of Occupational Segregation by Sex: An Overview.” International Labor Review 136: 3 (Autumn): 315-339. At p. 330.
³ “Pay” here refers to “include the remuneration, profit or income which women receive for their work (including benefits and pensions) whether from employment or self-employment.” See Mary Cornish (2006). “Closing Global Gender Pay Gap: Securing Justice for Women’s Work”, Comparative Labor Law & Policy 28(2), footnote 1.
⁶ ILO (2007). Equality at Work: Tackling the Challenges: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (Part B), at p. 73.
into workplace policy analysis in the industrialized states.\textsuperscript{7} As a result, both national governments and international organizations have more or less adopted a relatively updated approach to mainstreaming gender into policy-making. This paper is to examine the international instruments on gender pay equity and seek to offer an approach to unify the international standards on this issue.

II. The Sources of International Standards on Gender Pay Equity

As a UN specialized agency, ILO has been dedicated to promote gender pay equity in the workplace worldwide. The concept of gender pay equity is enshrined in the preamble of the ILO Constitution: “And whereas conditions of labor exist 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 imperiled; and an improvement of those conditions is urgently require; as, for example, by recognition of the principle of equal remuneration for work of equal value”.\textsuperscript{8}

The major treaty which specifically aims at the implementation of gender pay equity is the ILO Equal Remuneration Convention, 1951 (No. 100) and its Recommendation, 1951 (No. 90).\textsuperscript{9} Article 2. 1 of the Convention 100 states that “each member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers of work of equal value”. While Article 3. 3 is even more specific: “differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value”.


\textsuperscript{8} The principle “equal remuneration for work of equal value” appeared in the initial text, but it was not included in the final text of the preamble of the 1919 ILO Constitution. It was only in the 1945 amendment, which entered into force in 1946. See \url{http://www.ilo.org/ilolex/english/iloconst.htm} (Accessed on Sep 10, 2007).

\textsuperscript{9} The following preparatory documents can be consulted as to the meaning of the Convention and its accompanying Recommendation No. 90: Equal Remuneration for Men and Women Workers for Work of Equal Value, Reports V(1) and (2), ILC, 33\textsuperscript{rd} Session, 1950, and Reports VII(1) and (2), ILC, 34\textsuperscript{th} Session, 1951: Proceedings, ILC, 34\textsuperscript{th} Session, 1951. See also International Labor Code, vol. 1, arts. 233 and 234, pp. 183-189. The Committee of Experts has carried out three General Surveys of the Convention and Recommendation, in 1956, 1975 and 1986.
As the Convention is drafted in general terms and it has a “promotional” nature, there are various misunderstanding and confusion regarding the meaning and scope of the Convention. Nonetheless, during years of work, the ILO Committee of Experts on the Application of Conventions and Recommendations has gradually enriched the Convention and its Recommendation with precision. It has stressed that economic considerations should not justify exceptions to the right to equal pay and this is a right that should be applied to all women and men workers.

The ILO’s other conventions also mention this important principle, such as ILO Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111), ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), ILO Minimum Age Recommendation, 1973 (No. 146), ILO Night Work Recommendation, 1990 (No. 178).

The right to equal pay is also included as part of equality principle in the ILO’s 1996 Declaration on Fundamental Principles and Rights at Work. It is fair to say the ILO standards concerning gender pay equity have achieved general consistency. Considering the wide ratification of the Convention 100, we can safely draw the conclusion that the principle of “gender pay equity” is a commonly accepted idea throughout the globe.

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11 Hereafter, it is referred to as “the CEACR”.
12 For example, in some national legislations, employees at public sector, or domestic workers, or workers in family undertakings, or agricultural workers are excluded from this principle.
14 See paragraph 2(b)(v): all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of: v. remuneration for work of equal value.
15 See article 14. 1(i) and 14.2: It shall be an aim of policy to abolish all discrimination among workers on grounds of race, color, sex, belief, tribal association or trade union affiliation in respect of: 1. wage rates, which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking. 2. All practicable measures shall be taken to lessen, by raising the rates applicable to the lower-paid workers, any existing differences in wage rates due to discrimination by reason of race, color, sex, belief, tribal association or trade union affiliation.
16 See paragraph 13(1)(a): In connection with the application of the preceding Paragraph, as well as in giving effect to Article 7, paragraph 3, of the Minimum Age Convention, 1973, special attention should be given to: a. the provision of fair remuneration and its protection, bearing in mind the principle of equal pay for equal work.
17 See paragraph 8. (1) (a). Night work should generally give rise to appropriate financial compensation. Such compensation should be additional to the remuneration paid for the same work performed to the same requirements during the day and a. should respect the principle of equal pay for men and women for the same work, or for work of equal value.
In addition to the ILO conventions on the principle of gender pay equity, there are other UN instruments which prescribe it or a similar concept.\(^{19}\)

**Critique**

It should be noted that these international instruments on gender pay equity have some remarkable and even direct impact on domestic legislations. For example, in Costa Rica, the Act respecting promotion of social equality for women, adopted on 1 March 1990, in sections 1 and 2 lays down general principles of equality for men and women in all areas of political, economic, social and cultural life and that section 2 refers to the United Nations Convention on the Elimination of all Forms of Discrimination against Women which provides for "the right to equal remuneration, including benefits, and equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the equality of work" (Article 11(1)(d)).\(^{20}\) However, the existing international law on gender pay equity is problematic in many ways. Foremost, the international law particularly the ILO conventions on equal pay are ahead of reality and actual practice. Whether this is advancing the ultimate goal of promoting gender equality is still up to debate.\(^{21}\)

**A. the vagueness and inconsistency of the concept**

It appears that only the Convention 100 and ICESCR uses the term of “equal pay for work of equal value” which was intended to be a better defined and advanced idea for gender pay equity,\(^{22}\) by choosing the value of the work rather than “equal work”, “the same work” or “similar work” as point of reference. However, other international treaties employ different words such as UDHR. Therefore, the general international labor standards on gender pay equity are still vague and incomprehensible to the public. This inconsistency could be easily employed to advance the argument that only the right to equal pay for equal work should be considered as the fundamental human

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rights. Nevertheless, for those 163 ratifying countries, it is their obligation to implement “equal pay for work of equal value”. It should be noted that the CEACR has concluded that the Convention 100 does not require the abolition of differences in the general level of wages between regions, sectors or even undertakings, so long as these differences apply equally to men and women. The CEACR has also pointed out that “work of equal value” should also consider work performed in the different establishment, and jobs performed by single sex. That is to say, some work traditionally occupied by women should not be undervalued.

Moreover, although the Convention 100 stresses that the ratifying countries should promote and, in so far as consistent with the methods in operation in its country for determining rates of remuneration, the scope and implications of the concept of “work of equal value” still demand a further interpretation and consistent construction.

1. Comparison of different types of work.

According to the Convention 100 and the Recommendation 90, an objective appraisal of the work to be performed should be implemented. The major requirement is that the sex of the worker who is doing or might do a certain work should not be taken into consideration in wage determination. However, there constantly raises a question of what constitutes being “objective”. Besides, the CEACR has repeatedly stressed the comparison should be extended to different establishments, which may cause more technical difficulties.

2. public v. private

One main difficulty regarding the application of the principle is how to ensure its implementation in private sectors, as some states do not interfere directly in the wage determination in private sectors and some states employ a federal political system. Because of this reason, the Convention 100 adopted a more realistic yet soft approach, and imposed ratifying governments to implement this principle when it is compatible with its domestic wage-determination method and where the wage-determination method is under the control of public authority.

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25 The term “remuneration” includes the ordinary basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, in cash or in kind, by the employer to the worker and arising out of the worker’s employment.
27 See Convention 100, art 3; Recommendation 90, para 7.
28 It obliges states to ensure its application of the principle in various levels of government employees and employees in public sector.29 Starting from public sector, then gradually implemented in private sector, this principle is intended by the Convention for “the progressive application”.30 Nonetheless, the question still remains that how long should this “progress”, which augments the vagueness of this principle and leaves the possibility of being used as an excuse for non-compliance.

B. Non-enforceability of gender pay equity

One major criticism is that there lacks compulsory enforcement mechanism to ensure that countries respect and implement the labor standards included in the ILO conventions. However, after reviewing the ILO’s supervisory system, it is fair to say that the ILO has achieved a certain level of success by combining its precise standard setting practice and flexible enforcement machinery.31 At the very least, the supervisory system of the ILO has accomplished a limited success. Even though the enforceability of this mechanism may still be questioned, its symbolic and moral constraints are nonetheless very powerful.

IV. Human Rights, Trade and Labor Issues

The embodiment of equal pay principle in various international legal documents is intriguing. At the very least, it indicates the extremely complex nature of this issue. It is an issue that is closely intertwined with human dignity as well as economic aspect of a country. Whether it should be referred to as “guiding principle”, “right”, or “standards” is not only a matter of word choice, but a matter of how we fundamentally view this issue.

The ILO has long considered equal pay as part of its four “core labor standards”, which to my understanding, in agreement with the ILO official interpretation, should be regarded as part of fundamental human rights as well.32 If so, it appears that the word “standards” here may be confusing. I will propose “core labor rights” as a better choice. As part of this “core labor rights”, gender pay equity however, is argued as not worth to be implemented,

28 See Convention 100, art 2.
29 Equal Remuneration Recommendation 1951. paras.1, 2.
30 Equal Remuneration Recommendation 1951, preamble.
considering its high costs, complexity and practical difficulty and delay in application as well as its narrow
impact.\textsuperscript{33} Other scholars, on the other hand, believe that gender pay equity is a fundamental human right and is
essential to achieve the general equality in the whole world.\textsuperscript{34}

At the same time, because of its intimate connection to market, gender pay equity too has to be part of trade and
globalization conversation. In this regard, there raised a question of whether the WTO should include a “social
clause” which specifies the labor standards to follow. Within the WTO, the concern is whether it is appropriate
for the WTO to enforce labor standards and whether and how these labor standards would impact the comparative
advantages of those countries that depend on labor-intensive industries. The 1996 Ministerial Declaration stated
that the WTO would work with the ILO to establish and enforce core labor standards to be applied to WTO
member nations. But it would generally leave labor issues to the ILO.\textsuperscript{35}

This interesting phenomenon of the exclusion of the ILO out of the world trade system is a double-sword, as
argued by Rorden Wilkinson.\textsuperscript{36} The independence of the ILO provides it an opportunity to focus on workers’
rights. But the downfall of this lack of inclusion is also obvious, since the voice of workers is mainly unheard in
the globalization and trade conversation.

\textsuperscript{33} See Judy Fudge & Patricia MdDermott (eds.) (1991). \textit{Just Wages: A Feminist Assessment of Pay Equity}. Toronto:
on Sep 10, 2007).
\textsuperscript{34} See Mary Cornish (2007). “Closing the Global Gender Pay Gap: Securing Justice for Women’s Work”, \textit{Comparative Labor
contradiction in Legal Rights and Social Processes”, in \textit{Changing Canada: Political Economy as Transformation}, ch. 7
(Wallace Clement \& Leah F. Vosko ed.). Canada: McGill-Queen's University Press; \textit{Pay equity, A New Approach to a
on Sep 10, 2007); Jill Rubery, Damian Grimshaw \& Hugo Figueiredo (2005). “How to close the Gender Pay Gap in Europe:
Towards the Gender Mainstreaming of Pay Policy”, 36 \textit{Industrial Relation Journal} 184; ILO, Director-General (2003). \textit{Time
For Equality at Work: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at
Work} (International Labor Conference, 91\textsuperscript{st} Sess., Report I(b)). ILO, Director-General (2007). \textit{Equality at Work: tackling the
Challenge: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work
(International Labor Conference, 96\textsuperscript{th} Sess., Report I(b)).}
\textsuperscript{36} Rorden Wilkinson (2002). “Peripheralizing Labor: The ILO, WTO and the Completion of the Bretton Woods Project”, in
Economy}. New York: Routledge. At pp. 204-220.
The close relation between workers’ rights, human rights and trade suggest there ought to be collaboration between ILO and other UN organizations in an adequate scale.