REPORT III
(PART 4B)

International Labour Conference

FIFTY-SIXTH SESSION
GENEVA 1971

Third Item on the Agenda

REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

VOLUME B

General Survey on the Reports relating to the Discrimination (Employment and Occupation) Convention and Recommendation, 1958

International Year for Action to Combat Racism and Racial Discrimination

INTERNATIONAL LABOUR OFFICE
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Information and Reports on the Application of Conventions and Recommendations

REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

(Articles 19, 22 and 35 of the Constitution)

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INTERNATIONAL LABOUR OFFICE
GENEVA 1971

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INTRODUCTION

1. For the second time since the adoption in 1958 of the instruments concerning the elimination of discrimination in respect of employment and occupation, the Governing Body has requested reports on the Convention from the States Members which have not ratified it, as well as reports on the Recommendation, in pursuance of article 19 of the Constitution of the ILO. The Committee is thus once again afforded an opportunity to prepare on this subject, as it did in 1963 [1], a general survey taking into account not only these reports but also those regularly supplied under article 22 of the Constitution by countries which have ratified the Convention.

Development of International Action

2. With the proclaiming of 1971 as "International Year for Action to Combat Racism and Racial Discrimination" by the United Nations General Assembly [2], this opportunity comes at a particularly timely moment. Even though this form of discrimination is not the only one covered by the ILO instruments of 1958, it is in the forefront of the preoccupations which brought them into being. Undertaken at a time when the organisations of the United Nations family and their member States are called upon to mark the importance of this International Year in a variety of ways, the present survey is accordingly one of the ways in which the ILO can contribute to this action. The Committee hopes that, in particular, this survey may help to stimulate the thought that needs to be given to the extent of the measures to be taken to make equality of opportunity and treatment for persons of all races and of all origins, in the field of employment, a reality.

3. The fundamental objective of the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958, is the existence and application in every State of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. The Convention leaves it to the discretion of each State to use for this purpose such methods as are appropriate to national conditions and practice. It states in general and flexible terms that the national policy in question should provide for measures appropriate to these conditions in different spheres: co-operation of employers' and workers' organisations and other appropriate bodies; legislation; education of the public; employment practices in sectors under the direct control of a national authority; activities of vocational guidance, vocational

[1] Report of the Committee of Experts, 1963, Part Three: "Discrimination in Respect of Employment and Occupation: General Conclusions on the Reports relating to the Convention (No. 111) and Recommendation (No. 111) concerning Discrimination in respect of Employment and Occupation, 1958".

[2] Resolution 2544 (XXIV) of the General Assembly (11 December 1969).

training and placement services under the direction of a national authority. Recommendation No. 111, for its part, describes in greater detail the areas in which there should be no discrimination in respect of employment, together with certain types of measures for the application of a national policy, in particular through the establishment of appropriate agencies for the purpose. [1]

4. Since the previous general survey in 1963 there has been substantial progress in relation to standards and international action on the subject. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which in 1963 had been ratified by 39 countries, has now been ratified by 75. [2] Among the countries which have not ratified it [3], several governments indicate in their reports, or in information supplied by them earlier, that there are early or more long-term prospects of ratification. Thus, in one country [4] ratification of the Convention was approved in 1963, but has not yet been communicated to the ILO. Three governments [5] proposed ratification to the competent legislative authority some years ago. In another country [6] a Bill of ratification is in preparation. Several other governments state that they are considering the possibility of ratifying the Convention in the more or less immediate future [7], in some cases combined with amending legislation, or indicate that there are no difficulties in the way of ratification. [8] It thus appears that there are prospects—in some cases specific—for positive action in some 15 countries. Further appeals have also been made by the International Labour Conference as well as by the General Assembly of the United Nations in order to encourage the ratification of the Convention by countries which have not yet done so, particularly during the course of the present International Year dedicated to action against racial discrimination.

5. When adopting new Conventions and Recommendations, the International Labour Conference has specifically referred, as in the past and in even stronger terms, to the need to ensure equality of opportunity and treatment without distinction on the basis of race, colour, sex, religion, political opinion, national extraction or social origin. This has been done in particular in the important Convention on employment

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[1] The full text of the substantive provisions of the Convention and the Recommendation is reproduced in an appendix to the present survey.

[2] Afghanistan, Algeria, Argentina, Brazil, Bulgaria, Byelorussia, Canada, Central African Republic, Chad, China, Colombia, Costa Rica, Cuba, Cyprus, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, Gabon, Federal Republic of Germany, Ghana, Guatemala, Guinea, Honduras, Hungary, Iceland, India, Iran, Iraq, Israel, Italy, Ivory Coast, Jordan, Kuwait, Liberia, Libya, Malagasy Republic, Malawi, Mali, Malta, Mauritania, Mexico, Mongolia, Morocco, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Sierra Leone, Somalia, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Tunisia, Turkey, Ukraine, USSR, United Arab Republic, Upper Volta, Viet-Nam, Yemen Arab Republic, Yugoslavia.

[3] Australia, Austria, Barbados, Belgium, Bolivia, Burma, Burundi, Cameroon, Ceylon, Chile, Congo (Brazzaville), Congo (Kinshasa), El Salvador, France, Greece, Guyana, Haiti, Indonesia, Ireland, Jamaica, Japan, Kenya, Khmer Republic, Laos, Lebanon, Lesotho, Luxembourg, Malaysia, Mauritius, Nepal, Netherlands, New Zealand, Nigeria, Rumania, Rwanda, Singapore, Tanzania, Thailand, Togo, Uganda, United Kingdom, United States, Uruguay, Venezuela, People's Democratic Republic of Yemen, Zambia.

[4] Haiti.

[5] Chile, Uruguay, Venezuela.

[6] Belgium.

[7] Barbados, Burma, France, Greece, Luxembourg, Netherlands, Rumania, United Kingdom.

[8] Cameroon and Lebanon (which also refers to the religious considerations which are dealt with below in Chapter 1, paragraph 20).

policy, adopted in 1964 [1], and in the Recommendation concerning special youth employment and training schemes adopted in 1970. [2]

6. The ILO has also developed its activities in other ways. As a result of decisions taken by the Governing Body in 1963, a promotional and educational programme to combat discrimination in respect of employment has been carried out in various spheres of activity of the International Labour Office: research, the publication of studies, public information, meetings of experts at the world-wide and regional levels, etc. [3] Moreover, the present general survey itself represents a contribution to the programme (as did that of 1963), while at the same time it has been able to draw upon certain aspects of the more thorough exploration of the problems that has resulted from this programme.

7. As concerns the policy of *apartheid* of the Republic of South Africa, the grave implications of which were stressed by the Committee in its previous general survey when it examined upon the report supplied by the Government at that time under article 19 of the Constitution of the ILO, here too the ILO's action has taken special forms. As is known, the Republic of South Africa announced its decision to withdraw from the Organisation in March 1964, and the International Labour Conference adopted at its 48th Session in June 1964 a Declaration concerning the *apartheid* policy of that country in which it condemned the policy and instructed the Director-General to submit a special report to it on the subject every year. Accordingly, since 1965, special reports have been submitted [4] analysing and commenting upon developments in the international situation and in the situation within the country resulting from the policy of *apartheid* in the labour field, with the objective of demonstrating the necessity to abandon this policy. The Committee, for its part, has received no report from the Republic of South Africa itself, which is no longer a Member of the ILO, for examination for the purposes of this survey. Nor has it received any report in respect of Southern Rhodesia, whose policy has likewise been condemned as being illegal by the Governing Body of the International Labour Office. [5]

8. The activities of the United Nations, the specialised agencies and regional organisations have also been developed in these various respects, and the ILO has been associated with these activities. The elimination of *apartheid* in particular and of discrimination in general has continued to claim growing attention from various organs of the United Nations, particularly as a result of the work done by the Commission on Human Rights, its Sub-Commission on the Prevention of Discrimination and Protection of Minorities and other special committees, as well as by the Commis-

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[1] Employment Policy Convention (No. 122), Article 1.

[2] Recommendation (No. 136) concerning special youth employment and training schemes for development purposes, Paragraph 5.

[3] See: *ILO's Action against Discrimination in Employment*, brochure (Geneva, 1968); *Discrimination in Employment and Occupation : Standards and Policy Statements Adopted under the Auspices of the ILO* (Geneva, 1967); *Equality in respect of Employment under Legislation and Other National Standards* (Geneva, 1967); *Fighting Discrimination in Employment and Occupation*, a Workers' Education Manual (Geneva, 1968); *Equality of Opportunity in Employment in Asia : Problems and Policies*, Report and Documents of a Regional Seminar (Manila, 2–11 December 1969) (Geneva, 1970).

[4] Reports submitted every year to the Conference under the title of *Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa.*

[5] Resolution adopted by the Governing Body at its 163rd Session (November 1965) and follow-up decisions taken at its 164th Session (February–March 1966).

sion on the Status of Women. The proclaiming of 1971 as International Year for Action to Combat Racism and Racial Discrimination, of which mention has already been made, is evidence of the importance specifically attached to this issue by the United Nations General Assembly.

9. As regards standard-setting, in December 1965 the United Nations General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination, which came into force on 4 January 1969; a Committee of 18 experts appointed to examine its application on the basis of reports from the States Parties, as provided for in the Convention, began its work in January 1970. In a broader field, the two Covenants relating, respectively, to economic, social and cultural rights and to civil and political rights, adopted by the General Assembly in December 1966, contain important provisions specifically designed to combat discrimination, and the States Parties will likewise be required to submit reports on them once they come into force. Other instruments dealing specifically with discrimination on the ground of religion and on the ground of sex have been prepared.

10. As far as UNESCO is concerned, reports from member States on the Convention and Recommendation against Discrimination in Education began to be submitted in 1966; these reports are examined by a special committee of the Executive Board, now known as the Committee on Conventions and Recommendations in Education. The ILO and UNESCO have made arrangements to co-operate in respect of the application of their respective instruments against discrimination, in particular through the sending by each organisation of representatives to attend the meetings of the body set up by the other organisation to examine the reports of member States on its instruments.

Objectives and Form of the Survey

11. The first general survey in 1963 set out to analyse the terms of the Convention and Recommendation concerning discrimination in respect of employment and occupation, as well as to review the general problems arising out of the bearing of these instruments upon the formulation of the national policies provided for therein and the various methods of implementing these policies which they advocate. The observations made in that survey are, on the whole, equally valid today, and the purpose of the present survey is not to repeat them but to complement them in a practical manner in the light of the information and more specific questions which have been examined since then, and to attempt, in conclusion, to bring out the broad trends that are emerging both as to the measures taken and as to the progress to be expected in this field.

12. In preparation for this survey in 1969 [1], the Committee stressed the importance it attached to receiving information relating to practical expressions of national policy with regard to five major fields in which the different types of measures envisaged by the instruments in question are applicable. Accordingly, the form of report adopted by the Governing Body under article 19 requested governments to indicate to what extent effect had been given to the provisions of the Convention and the Recommendation, and to reply in particular to the following questions:

(a) *Absence of discrimination in law.* What studies have been undertaken to determine whether national legislation and administrative measures may have discriminatory

[1] RCE, 1969, General Observation, pp. 126–127.

effects within the meaning of the Convention? Have any repeals or amendments been made in this respect?

(b) *Legal protection against discriminatory acts.* Please give information on the practical application of any national provisions to ensure—in respect to access to vocational training, employment and the various occupations, as well as in respect of employment conditions—protection from possible discriminatory acts: (i) by an administrative authority or a public service; (ii) by private individuals or bodies.

(c) *Equality in the actual use of facilities connected with training, employment or occupation.* What policy is applied to ensure that the development, allocation and functioning of practical facilities connected with training, employment and occupational possibilities offer real equality of opportunity and treatment to the various categories of persons dealt with by the Convention? What are the measures taken to correct inequalities that may exist in practice in this respect between different ethnic or social groups, the sexes, etc.? What are the results achieved and aims set?

(d) *Educating public opinion.* What means are used for the information and education of the public (in particular administrative officials, employers and workers) for the purpose of creating a climate of opinion favourable to the observance of the principles of non-discrimination and equality of opportunity, within the meaning of the Convention?

(e) *Institutional aspects.* What are the methods used to secure the collaboration of employers' and workers' organisations and other appropriate bodies (such as bodies representative of particular categories of the population) in the application of the policy laid down in the Convention?

13. A chapter of this survey will be devoted to each of these five major aspects. To begin with, however, Chapter I will deal with certain general problems arising in connection with the nature and scope of national policies, viewed in the light of the definitions and objectives laid down by the 1958 instruments.

Information Available

14. Taking into account both the reports submitted under article 22 of the ILO Constitution in respect of the Convention by countries which have ratified it and the reports submitted under article 19 on the Convention (by countries which have not ratified it) and on the Recommendation, reports have been received from 130 countries (107 member States and 23 non-metropolitan territories). Appended is a table showing the reports received on these instruments. [1] The Committee regrets in particular that no reports under article 19 for the period in question had been received up to the time of its meeting from the following countries which have not ratified the Convention: Bolivia, Burundi, Congo (Brazzaville), Congo (Kinshasa), Haiti, Jamaica, Laos, Lesotho, Mauritius, Nepal, Tanzania, Thailand, People's Democratic Republic of Yemen; no reports were received either from Finland, Mongolia, Trinidad and Tobago, and the Yemen Arab Republic [2], and the report of

[1] In the case of the countries which have ratified the Convention, account has of course been taken of the reports and replies to requests by the Committee for additional information which have been sent on earlier occasions. Account has also been taken, where appropriate, of information made available at the time when reports were last requested on these instruments under article 19, in so far as that information is still relevant.

[2] Which recently ratified the Convention but were not yet required to submit reports under article 22.

Peru merely recalled that the Convention was recently ratified. The Committee regrets also in particular that no answer was received to its previous requests for additional information from the following countries which have ratified the Convention, either because they have not sent reports, or because the reports did not contain the answers: Chad, Ecuador, Libya, Liberia, Nicaragua, Panama, Senegal, Somali Republic, Syrian Arab Republic, Ukraine; furthermore, the reports received this year from the following countries which have ratified the Convention did not contain answers to several points of the previous direct request: Brazil, Central African Republic, Costa Rica, Philippines, Upper Volta. In addition, the reports of Italy, Jordan and the United Arab Republic arrived too late to be examined usefully at the present sessions, and their examination therefore had to be postponed to the next session. For these reasons, the Committee refers to these different cases in the observations contained in Volume A of the present report concerning Convention No. 111. [1]

15. The value of the information available obviously varies greatly according to whether or not the Convention has been ratified, and to how long—in cases where it has been ratified—regular reports and replies to requests for additional information have been due, as well as according to national circumstances, since the nature and scope of the measures taken may themselves vary in the light of the problems which arise in each case. Broadly speaking, the Committee has already made comments on a number of occasions indicating the type of information that should be supplied to permit as full an evaluation as possible of national policies from the standpoint of the promotion of equality of opportunity and the elimination of discrimination in respect of employment and occupation. For instance, the range to be covered by the information needed has already been indicated in the previous general survey in 1963. [2] As a result of suggestions made by the supervisory bodies, a new and more detailed form of report has been adopted by the Governing Body for the submission of reports on the Convention by countries which have ratified it. [3] In 1969, with the present general survey in mind, the Committee drew the attention of governments to the fact "that the supply of appropriate information involves in many cases inquiries with departments and services other than those dealing with labour affairs, e.g. those concerned with economic affairs, planning, education, information, the civil service, with matters affecting particular categories of the population or with the judicial services, etc., and it requests the governments to pay special attention to this requirement". [4]

16. However, the information supplied is very often incomplete. In accordance with the usual practice, it has been supplemented as far as possible by drawing on legislation and other official documents. [5] The Committee nevertheless wishes to draw attention to the special considerations involved in assessing, from a practical standpoint, the effect given to standards of this kind which imply the existence of a national

[1] The Committee also refers in these observations to other cases for which it had to note developments of particular interest or which call also for additional information (Byelorussia, Cyprus, Czechoslovakia, Guatemala, India, Israel, Pakistan, Portugal, Spain, Switzerland, USSR).

[2] Paragraphs 17–19.

[3] RCE, 1965, general observation, p. 124.

[4] RCE, 1969, general observation, p. 127.

[5] Appropriate references to all the legislative or other sources quoted, whether or not they were mentioned in the reports, are given in the footnotes which accompany the information given in the body of the text of the survey. It has not been considered useful nor feasible to append to the survey a list of all the texts examined, since such a list would have to include all the legislation in respect of labour and a number of other related subjects, and these texts do not necessarily contain special provisions on the matter.

policy designed to achieve certain objectives by methods appropriate to national conditions and practice. In particular, the fact that the Committee does not make any observations or does not specifically ask for additional information, especially in cases where the Convention has been ratified, should not be taken as meaning that it considers that no further action is necessary to ensure that these objectives are achieved in a fully satisfactory manner, but implies at most that the Committee has no special reason to believe that the national policy would in the long run have negative consequences under the national conditions in question. The creation of conditions favourable to the promotion of equality of opportunity and treatment in respect of employment and occupation is a permanent task, and it is incumbent upon every government to continue, whatever the circumstances, to supply, in its successive reports, information upon developments in its policy. The possibility which national workers' and employers' organisations have of submitting comments on government reports, of which they receive a copy in accordance with article 23 of the ILO Constitution (both as regards reports under article 22 and reports under article 19), has been made use of in one case. [1] In another case a government has supplied with its report the replies of workers' and employers' organisations to a questionnaire concerning the practical application of the Convention. [2]

[1] See below, Chapter 1, paragraph 20.

[2] See below, Chapter 6, paragraph 94.

CHAPTER I

GENERAL PROBLEMS RELATING TO NATIONAL POLICIES AS PROVIDED FOR IN THE CONVENTION AND RECOMMENDATION

17. As stated earlier, the general survey of 1963 contained detailed indications as to the meaning and scope of the standards laid down in the instruments under consideration. It may nevertheless be useful to recall their broad outlines in so far as certain general problems have arisen in relation to a number of countries concerning the implementation of the Convention or the effect given to the Recommendation.

Types of Distinction

18. As regards distinctions on the basis of race and other ethnic classifications (whether they are defined in terms of race, national extraction or even religion or other characteristics), some countries have stated that, while the aim of their national policy is equality of opportunity and treatment in this respect, it provides for measures in respect of employment which take account of the existence of different groups or communities among the national population. These measures are of various kinds.

19. In some cases they consist in allowing preference to be given to persons of certain races or origins in matters relating to training, employment and the exercise of occupations. This is declared to be so in the report from Malaysia, where such measures are provided for in the Constitution [1] for the benefit of persons of Malay extraction (who make up nearly half the population, the rest consisting mainly of persons of Chinese and, to a lesser extent, Indian origin). According to the report, these measures are intended solely to take account of the fact that this section of the population has been economically less advanced than the others, and to compensate for racial imbalances. The Government considers it necessary, however, to study further the question as to whether ratification of the Convention would be possible notwithstanding these preferential measures, which it distinguishes from measures of protection and assistance. [2] The Committee has already stated, in the 1963 survey [3], that it is only possible to make a precise evaluation of measures of this type, in each individual case, on the basis of detailed information on the actual situation giving

[1] Article 153.

[2] Article 5, paragraph 2, of the Convention provides as follows: "Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination." A similar provision is embodied in Paragraph 6 of the Recommendation.

[3] 1963 survey, paragraph 39.

rise to them and their application in practice. [1] The comment may be made in this connection that, broadly speaking and from a strictly legal standpoint, there appears to be no reason why "special measures designed to meet the particular requirements of persons who, for reasons such as ... social or cultural status, are ... recognised to require special protection or assistance", within the meaning of Article 5, paragraph 2, of the Convention, should not comprise certain preferential measures designed to further the economic advancement of these persons to compensate for existing inequalities. [2] On the other hand, it is equally true that, from the viewpoint of the Convention, the most appropriate policy for eliminating discrimination and promoting equality of opportunity in cases of imbalance of this kind should consist in developing the means which will make it possible to create the right conditions for such equality, paying special attention to the needs of the underprivileged groups as part of a general plan of economic and social action whereby the desired effect can be achieved through vocational training, guidance and motivation, rather than in formal and systematic measures of preference which, although they may be justifiable in certain circumstances in order to redress existing inequalities, can only partly be of value in this respect.

20. In other cases, account is taken of the existence of different groups or communities among the population of the country by arranging for these communities to be allocated a certain number of posts in government service. Provision to this effect was made in the Constitution of Cyprus (now undergoing revision) [3], which fixed the proportion of posts which might be held by members of each of the country's two communities. Since divergent views have been expressed on the subject of this provision and its application by the Government of this country (which has ratified the Convention) in its report, and by a Cypriot workers' organisation, the Committee refers to this matter in an observation. [4] In another country (which has not ratified the Convention), the national Constitution provides for the equitable representation of the different communities of which the population is composed in public employment (without specifying any fixed proportions in this respect). [5] Broadly speaking, as has already been stated, arrangements of this kind may be considered as not constituting discrimination in the sense of the 1958 instruments if their effect is, on the contrary, to secure an equilibrium between different communities and ensure protection of minorities. [6] This being so, the main purpose of a national policy within the meaning of the 1958 instruments should in any case be to ensure that the basic conditions for equality of opportunity are developed to the benefit of all sections of the population, in such a way as to lead to a balanced representation of the different groups in employment, as part of the natural course of events, while at the same time reducing the barriers between these groups. In that event, it may continue to be desirable to pay attention to this balance when making appointments, particularly to posts at certain levels of responsibility, but this should be done with greater flexibility. Broadly speaking, such arrangements should be operated with circumspection, bearing in mind the objective

[1] The reports of some countries (Kenya, Uganda) where there are smaller minorities of foreign origin, have also indicated that preference is allowed to be given to citizens of local origin as regards access to certain types of employment and occupations in which they had formerly rarely been represented.

[2] See below, Chapter IV.

[3] Article 123.

[4] Which will be found in Volume A of the present report (Convention No. 111).

[5] Lebanon (article 95 of the Constitution). The communities are defined on the basis of religion (cf. 1963 survey, paragraph 90).

[6] 1963 survey, paragraph 39.

of abolishing all distinctions between groups in employment, and without prejudice to the need to respect such distinctions in other fields, such as the cultural field.

21. Another kind of situation involving the filling by members of different ethnic communities of categories of employment involving a certain level of skill and responsibility is reflected in the information furnished by a country which has ratified the Convention. [1] A study on the subject supplied by the Government reveals that, while the difference in participation derives largely from differences in training and in economic and social conditions—with regard to which measures have been taken to promote equality of opportunity—other factors which have influenced this participation in the case of certain types of employment may be ascribed to the concern for security at a time of crisis. Under the terms of the 1958 instruments, measures affecting individuals which are justified by the need to protect the security of the State are not deemed to be discrimination, subject to certain conditions (Article 4 of the Convention), nor are distinctions based on the inherent requirements of a particular job (Article 1, paragraph 2). [2] As a general rule, the requirements to be met from the point of view of security or of the reliability required for certain jobs of this kind should be evaluated in the light of the characteristics of each individual and of each job, on the understanding that national policies should set out to eliminate in practice any tendency for membership of an ethnic group in itself to be taken as a criterion in this respect. It is therefore important that detailed information should always be sought and furnished by governments concerning measures not deemed to constitute discrimination within the meaning of the Convention, as will be recalled later in connection with the application of certain legislative provisions in relation to other distinctions (such as those based on political opinion). [3]

22. As concerns distinctions based on national extraction, it has already been pointed out [4] that reference to national extraction in the 1958 instruments is intended to apply not to distinctions made between nationals and aliens in general but to those made between nationals of a country on the ground, for instance, of foreign birth or foreign ancestry. Reference has been made to special problems arising out of the economic and social position of communities of foreign origin established in a country, in some cases for generations, but without having acquired the nationality of the country. [5] These problems should be solved in a manner which is at least consistent, reflects the spirit of Convention No. 111 by means of measures governing the granting of nationality and, in any case, the treatment of aliens who contribute towards the national economy. Recommendation No. 111 (Paragraph 8), recalls, moreover, that with respect to workers of foreign nationality and their families the standards laid down by the ILO demand equality of treatment (Convention No. 97) and the lifting of restrictions on access to employment after a specified period of residence (Recommendation No. 86). Lastly, it is important to emphasise that the elimination of discrimination in respect of employment made on the basis of race, colour, religion or other ethnic, social or cultural factors of the type covered by the 1958 instruments

[1] Israel (see the summary of the report under article 19 and the observation contained in Volume A of the present Report (Convention No. 111)).

[2] 1963 survey, paragraphs 42 and 44.

[3] See below, Chapter II.

[4] 1963 survey, paragraphs 27–28.

[5] For instance, in Ceylon (which has not ratified the Convention). See the summary of the Government's report; see also: *Report of the Conference Committee*, 1963, Appendix IV; *Equality of Opportunity in Employment in Asia*, op. cit., ILO, Geneva, 1970.

must in all cases be one of the aims of the national policy called for by these instruments, in regard to workers who are not nationals as well as those who are.

23. Several countries state that it has not been possible for them to ratify the Convention or to give full effect to the Recommendation up to now because of the position of their national policy as regards distinctions based on sex in respect of employment. Some of these countries, however, indicate that significant improvements are in prospect. The Government of Ireland, after referring to the constitutional provisions and national traditions which have had a restrictive effect upon the economic status of women, and in particular upon the employment of married women, states that a commission has been appointed to review the matter and make recommendations as to the steps necessary to ensure the participation of women on equal terms and conditions with men in the country's economic and social life, etc.; the question of equal remuneration is also under review. [1] In Luxembourg, proposals are now before the legislature with a view to eliminating certain restrictions applying to married women in respect of employment and social security benefits. In New Zealand, whose Government recalls that inequalities in remuneration as between the sexes are expressly permitted by legislation for the private sector, discussions now going on give grounds for hope that this legislation will be amended. Other countries also refer to disparities due to discrimination on the basis of sex, either in general [2] or in respect of remuneration [3], but do not state what the intentions of their governments are in this respect. It should be recalled in this connection that the application of the 1958 instruments requires not that all these forms of discrimination should have already disappeared in the private sector, but that their elimination should be one of the objectives of a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment. [4]

24. Lastly, it is stated in the report of one country [5] that the absence from the Convention of any reference to discrimination based on membership or non-membership of a trade union is one of the reasons why objections to ratification have been raised in certain circles (employers), where the view is taken that the effect of this omission would be to weaken the national legislation in this respect. It should be pointed out, however, that apart from the grounds for discrimination that are specifically mentioned (race, colour, sex, religion, political opinion, national extraction, social origin), the 1958 instruments leave it to the discretion of each country to extend its national policy to cover the elimination of discrimination on other grounds, as may be determined after consultation with employers' and workers' organisations and other appropriate bodies (Article 1 *(b)* of the Convention and the corresponding clause of the Recommendation). Notwithstanding the absence of any formal specifications to that effect by member States in relation to the application of the 1958 instruments, there are provisions in a number of countries referring to other grounds of discrimination which in some cases are along the same lines as those specifically enumerated in the 1958 instruments (such as discrimination between groups speaking

[1] Bearing in mind this country's application for membership of the European Economic Community.

[2] Singapore.

[3] Kenya.

[4] See also the 1963 survey, paragraph 34, as concerns, in particular, the respective scope of Convention No. 111 and the Equal Remuneration Convention, 1951 (No. 100).

[5] Austria.

different languages) [1] while in others the cause lies elsewhere (as with discrimination on the basis of age). [2]

The Positive Nature of the Measures to Be Taken in Pursuance of the National Policy

25. In providing that national policy must be designed to "promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation", and in indicating various types of measures to be taken to this effect, Articles 2 and 3 of the Convention and the various Paragraphs of the Recommendation show that the elimination of discrimination within the meaning of these instruments presupposes the positive fulfilment of certain requirements, and not merely the absence of laws and administrative measures expressly introducing inequalities. The Committee has already recalled the nature of the information which governments are expected to supply on the various aspects of national policy as understood in this sense, and the fact that it has needed to make requests for additional information on numerous points in this respect.

26. It should be mentioned that one of the countries which has ratified the Convention (Portugal), following requests of this kind and discussions arising out of the application of its policy in its "overseas provinces" [3], has declared—while supplying a certain amount of information in its reports—that the most appropriate method of compiling all the desired information would be to set up a "commission of inquiry" with the task of examining the application of the Convention. The Committee made observations on this application, taking account of the discussions mentioned above, in its reports for 1964 and 1965. [4] While noting that, as far as it was aware, the legislation in force in the territories in question did not provide for discrimination in respect of employment and occupation on the ground of race, the Committee drew the Government's attention to the need for a policy designed to promote effective equality in this respect between persons of different ethnic origin, and requested detailed information on the action taken to this end. Subsequently the Government referred to the fact that it had requested the setting up of a commission of inquiry to examine in full freedom the application of the Convention. [5] For its part, the Committee of Experts, in accordance with its normal procedure, once again asked the Government for additional information on its policy by means of a direct request.[6] It should be noted that the special problems relating to the promotion of freedom of

[1] As in the Constitutions of Austria, Iraq, Italy and Libya, and in the Labour Code of Somalia (Decree of 10 August 1969, section 3).

[2] As under laws passed in Colombia (Act No. 15 of 14 November 1958, *LS* 1960—Col. 1 B) and the United States (see below, paragraph 43).

[3] See, *inter alia*, the reports of the Conference Committee, 48th Session, 1963; 49th Session, 1964. This matter has also been discussed by United Nations bodies, mainly in connection with the reports of the "Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples" and the "Special Committee on Territories under Portuguese Administration". As far as the aspects within its terms of reference are concerned, the Committee of Experts is obviously not in a position to comment upon statements of fact which it has not been possible to verify in a manner consistent with the requirements that should be met in an examination of the application of ILO standards.

[4] RCE, 1964, pp. 155–156; 1965, pp. 125–126.

[5] A request to this effect was submitted to the Governing Body of the International Labour Office at its 160th Session (November 1964); examination of this request was adjourned by the Governing Body.

[6] RCE, 1967, Part One, "General Report", paragraph 18.

choice of work and appropriate employment policies to that end, which also have a bearing upon equality of opportunity and treatment, have continued to be the subject of discussion by the Conference Committee and of observations by the Committee of Experts, year after year, in relation to the application of the Abolition of Forced Labour Convention, 1957 (No. 105), and the implementation of the recommendations made in 1962 by the Commission of Inquiry set up under article 26 of the ILO Constitution to examine the complaint which had been made concerning the observance of the latter Convention by Portugal. This matter is referred to in an observation to be found in Volume A (Convention No. 105) of the present report, more particularly in the light of direct contacts through which it has been possible to secure fuller information on the situation in the territories concerned in these fields. The remarks made on this point relate to certain matters which are also relevant to the application of Convention No. 111. As for the remaining aspects of the Convention, the Committee notes that the Government—even though it has supplied information citing examples of improvements in the situation in regard to training, employment and social policy—has once again stated in its latest report that, broadly speaking, it would be easier for any further information to be submitted to a commission of inquiry. The Committee of Experts can only repeat that it is not within its competence to express any opinion with regard to the setting up of such a commission of inquiry. Accordingly, while noting that information has been furnished indicating that some positive measures have been taken (especially as concerns Angola), the Committee is asking the Government to supply still more information to which it refers in an observation. [1]

Adaptation of Methods to National Conditions and Practice

27. Some countries have indicated that the possibility of their giving effect to the standards laid down in the 1958 instruments, or ratifying the Convention, is impaired by difficulties deriving from the fact that the observance of these standards appears to imply state intervention in matters which are left to be negotiated freely between the parties to industrial relations. [2] As emphasised in the 1963 survey [3], the 1958 instruments call upon each country to pursue its national policy "by methods appropriate to national conditions and practice" [4], and hence do not oblige the State to intervene in certain areas in any manner not appropriate to such conditions and practice. In matters which by law and by tradition are left to be negotiated between the parties, the State may endeavour to obtain the desired results, where necessary, by exhortation, by attempts at persuasion or by negotiation, rather than by having recourse to executive measures or legislation. The Convention does not impose a strict obligation to legislate in every case, but provides in general terms for the enactment of such legislation as may be calculated to secure the acceptance and observance of the national policy, having regard to national conditions and practice (Article 3 *(b)*). It should be noted that some countries which had previously referred to difficulties in this respect have now announced that the adoption of new measures makes it possible for them to envisage ratification of the Convention. [5] Other countries have stated that they do not contemplate ratifying the Convention or giving full effect to the Recommendation for the time being on account of practical difficulties in exercising supervision, especially

[1] See Volume A of the present report (Convention No. 111) and below, paragraphs 33 and 65.

[2] Austria, Jamaica. Non-metropolitan territories: United Kingdom (Gibraltar).

[3] Paragraphs 59–60.

[4] See, in particular, Articles 2 and 3 of the Convention.

[5] For instance, the United Kingdom (see the summary of the report under article 19).

over the private sector. [1] More generally reference was also made to the weakness of labour administration services. [2] It should be pointed out, however, that the 1958 instruments do not require States to guarantee that all forms of discrimination have already been eliminated, but imply that they should seek to eliminate them by methods appropriate to national conditions and practice. Other difficulties relate to the need to give consideration to educational programmes calculated to secure the acceptance and observance of a policy of non-discrimination; one country [3] considers that they are not necessary, and the Convention (Article 3) provides moreover that the methods should be appropriate to national conditions and practice.

28. The federal structure of some countries is another feature to which reference has been made in relation to the possibilities of giving effect to the 1958 instruments and ratifying the Convention, bearing in mind the division of responsibilities between the federal government and the authorities of the constituent units. As already stated by the Committee, both the Convention and the Recommendation have been worded in flexible terms specially designed to lay down standards which can be implemented without impairing the division of powers between a federal State and its constituent units. [4] Among the countries which have insisted particularly strongly upon the existence of such a division, it should be noted that there is one which has ratified the Convention since the 1963 survey was published. [5] Two other countries, while supplying detailed information as to the evolution of their policy in the fields covered by the 1958 instruments and the measures taken at both the federal and local level [6], have not yet, however, made any further reference to the possibility of ratifying the Convention.

29. Another federal State (Nigeria) has indicated that the constituent states, when consulted on the possible ratification of the Convention, were in the majority against ratification for the time being, in view of the large-scale unemployment and underemployment existing in virtually all the states of the Federation. It emerges from the information supplied by the Government that preference is given in each constituent state to the employment of persons indigenous to that state, and that the federal Constitution (section 28 (2)) authorises in general terms restrictions or privileges which constitute an exception to the principles of non-discrimination embodied in it (section 28 (1)). [7] The Committee is not in a position, on the basis of the information available, to appreciate fully the nature of the difficulties encountered in this respect.

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[1] Rwanda, Uganda.

[2] Indonesia.

[3] Khmer Republic.

[4] 1963 survey, paragraph 63; see also the 1969 survey on the ratification outlook for seventeen selected Conventions, paragraph 77.

[5] Canada (ratification: 1964).

[6] Australia (report under article 19 received too late for inclusion in the summary); United States (see the summary of the report under article 19).

[7] See the summary of the report under article 19.

CHAPTER II

ELIMINATION OF DISCRIMINATORY LEGISLATIVE OR ADMINISTRATIVE MEASURES

30. Obviously one of the major elements in a national policy as envisaged by the 1958 instruments is the absence of discrimination in respect of employment resulting from formal legislative or administrative measures. This requirement is set out in Article 3 *(c)* of the Convention and in Paragraph 5 of the Recommendation.

Race, Religion, National Extraction or Social Origin

31. From the information available it appears that express distinctions in respect of employment and occupation on racial, ethnic or religious grounds or on account of national extraction [1] or social origin are made only exceptionally in the countries covered by the present survey. [2] A number of special questions arising out of provisions designed to take into account the respective situations of various communities existing within certain countries have already been examined in Chapter I; other special measures designed to protect or assist particular groups will be discussed later (Chapter IV).

32. Since the 1963 survey, certain countries have referred to specific measures recently taken to repeal provisions which were discriminatory on the basis of race or national extraction. [3] Other countries have supplied information indicating that the legislative position was being carefully reviewed. [4] Some countries have also been prompted to amend provisions enacted prior to their independence which made distinctions between indigenous workers and other workers. [5] As concerns certain distinctions made on the basis of national extraction, another government has stated that the amendment of provisions which in principle debar persons recently naturalised (normally within the past five years) from access to certain posts in the public service

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[1] As already stated, these terms do not refer to the treatment of aliens (see above, paragraph 22, and 1963 survey, paragraphs 27–28).

[2] As concerns the situation created by a policy such as that of *apartheid*, see above, Introduction, paragraph 7.

[3] This is the case of Australia. The measures in question relate in particular to the following provisions: Queensland: Sugar Works Act of 1911; New South Wales: Rural Workers' Accommodation Act, 1926; Victoria: Labour and Industry Act, 1958; South Australia: Gold Buyers Act, 1916–35, etc. The report states that measures are under consideration with a view to similar repeals or amendments which are necessary in Western Australia.

[4] This has been stated in particular by New Zealand and the United Kingdom.

[5] For example Zambia (Workmen's Compensation Ordinance, Cap. 188).

or of public interest was under consideration with a view to removing all doubt prior to ratification of the Convention. [1]

33. In some countries which have ratified the Convention, steps have been taken since the 1963 survey or are contemplated, as a result of requests by the Committee, for the repeal or amendment of special legislative provisions which allowed for the making of distinctions in respect of the exercise of certain occupations to the detriment of persons of certain national extraction [2], or in respect of land rights [3], or in the requisitioning of labour on the basis of social status. [4] Other countries which have ratified the Convention have stated, in response to requests from the Committee, that measures had been taken earlier to abolish provisions or practices taking social origin into account. [5] It should further be noted that, even where racial, ethnic or other criteria are not invoked in legislation, the existence of different systems applicable to different branches of activity or occupational categories may give rise to problems in the light of the manner in which workers of different ethnic or social origin are for the most part distributed in practice between these sectors and categories. [6]

Sex

34. As concerns distinctions in respect of employment on the ground of sex, it is fairly common for express provisions to this effect to be found in legislation, an appraisal of which leads one to question the extent to which they can be justified by considerations based on the inherent requirements of certain jobs or on the need for protection. [7] Since the 1963 survey additional measures have been taken in countries which have ratified the Convention to eliminate distinctions based on sex which were not or were no longer justified by such considerations, in regard to access to certain

[1] France: these provisions are to be found in the General Civil Service Regulations, section 23, and in the Ordinance of 19 October 1945 for the promulgation of a Code of French Nationality. As stated by the Committee in its 1963 survey on the subject, similar provisions in regard to access to certain official posts exist in other countries which have ratified the Convention; generally speaking, bearing in mind their limited scope, such provisions may be considered in such cases as being designed to take account of the special qualifications required for certain official posts (1963 survey, paragraphs 42, 92).

[2] Guatemala: Decrees Nos. 1813 and 1823 of 1936, whereby persons originating from certain Asian and East European countries are prohibited from opening commercial establishments, shops, etc.

[3] Liberia: Section 53 of the Public Lands Law, which provided for indigenous persons to be treated differently as regards their entitlement to land (according to the Government this provision is no longer applied and is to be repealed when the legislation is revised).

[4] India: Orissa Compulsory Labour Act, 1948, as amended by Act No. 10 of 1955, section 2 (distinction between the "labouring classes" and other classes for the purposes of requisitioning labour).

[5] Hungary: Decree No. 3/1963/V.19/M.M, section 6 of which specifically prohibits the taking into account of the social origin of applicants for admission to higher educational establishments. USSR: Decision of the Soviet Control Commission attached to the Council of People's Commissars dated 22–26 May 1963, which states that employment may no longer be terminated or refused on grounds such as social origin,... except by virtue of special provisions. In reply to a question from the Committee, the Government has further indicated that no special provision of this kind, which would be incompatible with the Convention, exists.

[6] See, for instance, in Volume A of the Committee's report, the observation relating to Portugal (Convention No. 111).

[7] Considerations which the 1958 instruments allow to be taken into account (in particular, Article 1, paragraph 2, and Article 5 of the Convention).

types of employment. [1] The Committee has also drawn the attention of other countries which have ratified the Convention to the need for the amendment of certain provisions in this field, either relating to the access of women in general to certain posts [2] or relating to the status of married women in the civil service. [3] Countries which have not yet ratified the Convention have announced that amendments affecting this matter have been made, particularly to measures relating to the employment of married women in the civil service [4], or that measures were being taken to amend provisions of civil law dealing with the status of married women. [5]

35. It should be noted that measures have also been taken to eliminate legal discrimination on the basis of sex in relation to remuneration—for instance, in regard to the fixing of minimum wages—in countries which have ratified the Convention (following requests from the Committee) [6], or in relation to remuneration in the civil service in certain countries which have not ratified it. [7] The Committee hopes that all governments will take steps to eliminate from their legislation and from their administrative measures all provisions allowing for discrimination on the basis of sex in respect of conditions of employment, as well as all distinctions between the sexes in respect of access to employment which are not strictly justified by the inherent requirements of certain jobs or the need for protection—which should moreover be continually reviewed in the light of changing circumstances.

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[1] For example: Italy (section 7 of Act No. 1176 of 17 July 1919, which debarred women in general from posts in the public service involving "public jurisdictional powers or the exercise of political rights or powers, or concerned with the defence of the State", was declared unconstitutional by Decision No. 33 of the Constitutional Court dated 18 May 1960. Furthermore, Act No. 66 of 9 February 1963 respecting the admission of women to public office and to the professions, which repealed Act No. 1176 of 1919, expressly opens up to women the possibility of acceding to all posts in the civil service). In the Ivory Coast, following requests by the Committee, the Government has announced that Decree No. 68-24 of 9 January 1968, which lays down special regulations for the staff of the postal and telecommunications services, has put an end to the system whereby not more than a specified percentage of posts in the operational services could be reserved for women. Spain (Act No. 96 of 28 December 1966, which deleted subsection (c) of section 3 of Act No. 56 of 22 July 1961 respecting the political, occupational and employment rights of women (*LS* 1962—Sp. 1B), which debarred women from all posts in the judiciary, except in the juvenile and labour courts).

[2] For example: Portugal (Decree No. 29,970 of 13 October 1939, section 72: diplomatic and consular posts; Legislative Decree No. 44,278 of 14 April 1962, sections 365 (1) *(a)* and 173 (1) *(a)*: posts in the judiciary; Administrative Code, section 488 (3): certain posts of authority in local government); Upper Volta (Decree No. 435 Pres. FP-P of 1960 laying down special regulations for senior staff of the labour inspection service, section 7 of which reserves posts as labour supervisory officers to persons of the male sex).

[3] Switzerland: section 55 of the Federal Act of 30 June 1927 respecting the status of civil servants, which authorises the termination or modification of the employment relationship of a female civil servant if she marries. The Government has stated that this provision is now applied more flexibly.

[4] Australia (Public Service Act (No. 2), 1966; similar measures have also been taken in the constituent states); New Zealand: (State Services Act of 1962 which revised the Public Service Act of 1912).

[5] Luxembourg (see also above, Chapter I, paragraph 23).

[6] Tunisia: Decree No. 68-113 of 30 April 1968 respecting the remuneration of agricultural workers, section 3 of which provides, unlike the earlier legislation, that the minimum daily wage rate shall be applicable without discrimination to workers of both sexes. The Government of Morocco has indicated that measures are being taken to replace the relevant provisions of the Order of 10 April 1958.

[7] New Zealand: (Government Service Equal Pay Act of 1960).

Political Opinion

36. Here too it is fairly common to encounter specific provisions affecting the rights of individuals in respect of employment which pose problems as to their compatibility with a national policy designed to eliminate discrimination based on political opinion as called for by the 1958 instruments. This is the case where the scope of such measures is such that they cannot be considered as designed to meet the inherent requirements of particular jobs or the preoccupations of state security, which the instruments allow to be taken into account [1], within the limits and under the conditions already explained by the Committee. [2]

37. Since the 1963 survey, it has emerged from the replies to requests made by the Committee to countries which have ratified the Convention that measures have been taken to repeal provisions of this nature in relation to access to or tenure of employment in general [3] or certain types of jobs [4], and also in relation to access to certain types of training [5], trade union rights [6] or entitlement to social benefits. [7] However, the Committee has also had to draw attention to the need to amend legislation recently adopted in a country which has ratified the Convention because it contains provisions couched in such broad terms as to allow for the restriction of any individual's right to employment on account of his political convictions. [8]

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[1] In particular Article 1, paragraph 2, and Article 4 of the Convention.

[2] 1963 survey, paragraphs 42, 44–49 and 91.

[3] Hungary: Decree No. 29 of 1964, to make provision for certain questions of employment relations (*LS* 1964—Hun. 1), has repealed the provisions of the Labour Code (*LS* 1951—Hun. 1, section 112) which allowed disciplinary penalties, including dismissal, to be imposed upon workers who behaved "in a way that reveals hostility to the national and social order of the People's Democracy".

[4] Guatemala: Decree No. 1725 of 14 July 1970, which repealed, *inter alia*, section 13 of Legislative Decree No. 9 of 10 April 1963 respecting the defence of democratic interests (which had the effect of debarring persons who had been convicted of certain offences enumerated in that Act from all posts in the public service and all positions of authority in employers' and workers' organisations). Portugal: Legislative Decree No. 49,397 of 24 November 1969, section 8 of which has abolished the compulsory declarations relating to the acceptance by applicants for all posts in the public service of the principles of the régime in power which were called for under section 3 of Act No. 1901 of 21 May 1935 and under Legislative Decree No. 27,003 of 14 September 1936.

[5] Bulgaria: the Government has indicated that the regulations relating to the admission of new students to higher educational establishments no longer stipulate that the political opinions of applicants must conform to the official ideology, whereas the regulations of 1950 respecting the admission of new students (*Government Gazette*, April 1950), laid down that "persons whose behaviour is fascist or hostile towards the people shall not be admitted to higher educational establishments".

[6] Iran: the regulations respecting workers' and employers' associations of 4 June 1964 have repealed the Decree of 9 November 1955 (*LS* 1955—Iran 2), regulating the establishment of occupational associations and occupational federations, section 2 of which prohibited persons who had belonged to any political group or party or worked on behalf thereof from establishing or joining such associations.

[7] Czechoslovakia: Act No. 161 of 19 December 1968 has repealed section 141 of the Social Security Act, No. 101, of 1964 (*LS* 1964—Cz. 2 A), which authorised the people's committees to suspend part of the benefit payable to persons who had played an important role in the former political and economic system.

[8] Czechoslovakia: Labour Code, as supplemented and amended by the Act of 18 December 1969 (*LS* 1969—Cz. 1), the provisions of which permit the dismissal of any worker from any job if, on account of having committed a breach of the "socialist social order", he is not considered sufficiently "reliable" to hold his office or post. See the observation contained in Volume A of the Committee's report (Convention No. 111).

38. More generally, as the Committee has already pointed out [1], measures designed to protect the "security of the State" within the meaning of Article 4 of the Convention must also be clearly defined and so worded as not to form a basis for discrimination based solely upon political opinion, which would be inconsistent with the 1958 instruments. Since the 1963 survey the Committee has had cause to make requests for additional information in this respect to a number of countries which have ratified the Convention, both as concerns the existence of a right of appeal as provided for in Article 4 and, in particular, as concerns the practical application of certain substantive provisions couched in broad terms, in order to ascertain their limits. [2] It is clear that enforcement through the courts will not suffice to guarantee the application of the standards embodied in the 1958 instruments in this respect if the provisions which the courts have to apply are themselves incompatible with these standards. All legislative or administrative measures which it is possible to interpret as being applicable to the holding of certain political opinions, and not only to activities prejudicial to the security of the State, should be amended in accordance with the 1958 instruments.

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[1] 1963 survey, paragraphs 44–49.

[2] For example: Bulgaria: in regard to the Higher Education Act of 1958, section 19 *(a)* of which provides for the dismissal of members of the teaching staff in the event of "activities prejudicial to the cause of the people", the Government has indicated that this clause refers to crimes against the security of the State, and has furnished examples of court decisions. Cuba: in regard to Act No. 924 of 4 January 1961, which provides for the dismissal of persons employed in the public and private sectors in the event of "counter-revolutionary activities", the Government has indicated that the activities in question involve, for example, the destruction of means of production, and has referred to provisions of the Penal Code.

CHAPTER III

LEGAL PROTECTION AGAINST DISCRIMINATORY ACTS

39. The Convention provides in general terms that each Member undertaking to pursue a national policy designed to eliminate discrimination in respect of employment and occupation must "by methods appropriate to national conditions and practice, ... enact such legislation ... as may be calculated to secure the acceptance and observance" of this policy. As indicated by the broad wording of this provision and by the preparatory work for the Convention [1], the use made of legislation as a means of eliminating discriminatory practices may vary according to national conditions and practice, and the Convention imposes no obligation to legislate in this respect in all the fields covered by the Convention. Nevertheless, it is undoubtedly of vital importance that individuals, as well as the authorities responsible for the enforcement of the law, should have the possibility of obtaining a remedy for or opposing discriminatory acts, especially on the part of the public authorities, and where necessary in private relationships. Recommendation No. 111 contains provisions suggesting appropriate ways of bringing this about. [2]

New Anti-Discrimination Provisions

40. Since the 1963 survey new provisions dealing specifically with discrimination have been enacted in certain countries. In one country (which has not ratified the Convention), where anti-discrimination legislation already existed in most of the constituent states (and at the federal level as regards posts in the civil service and government contracts) [3], new federal legislation has been enacted prohibiting discrimination on the basis of race, colour, religion, sex or national origin in undertakings, labour organisations and public and private employment agencies. [4] There are noteworthy exemptions from the coverage of this Act: the ban in fact applies to employers engaged in an industry affecting commerce who have twenty-five or more employees and labour organisations with twenty-five or more members. [5] It is interest-

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[1] Cf. 1963 survey, paragraphs 60 and 76.

[2] Paragraphs 4 *(b)* and *(c)*.

[3] See 1963 survey, paragraphs 79, 96, 98, and below, Chapter IV.

[4] United States: Civil Rights Act of 1964, Title VII (*LS* 1964—USA 1). Title VI of the same Act affords protection against discrimination and equality of treatment in federally assisted programmes or activities, without distinction on the ground of race, colour or national origin. This applies, for instance, to the building of schools, employment and training schemes, etc., i.e. to all the activities of the federal and state employment services. (See more especially Chapter IV as regards employment in the civil service and in undertakings under contract to the Government.)

[5] Since 1 July 1968; application has been progressive, covering first of all undertakings and labour organisations with 100 employees or members, then 75 and then 50.

ing to note that the discriminatory practices prohibited under this Act consist in failing or refusing to hire or to refer for employment or discharging any individual, discrimination in respect of remuneration or other conditions of employment; limiting, segregating or classifying employees or members of labour organisations in any way which would deprive them of equal employment opportunities; excluding or expelling any individual from membership of a labour organisation, and inciting an employer to discriminate against him; discrimination in apprenticeship and training programmes; discrimination against any individual because he has opposed a practice made unlawful by this Act; the publishing of discriminatory notices or advertisements.

41. In other countries where formerly there were no specific provisions prohibiting discrimination in respect of employment, such provisions have also been introduced. A case in point is a country where earlier legislation covering other forms of discrimination (especially those concerning admittance to public places) has recently been amended to cover discrimination in respect of employment. [1] The definition of discrimination is broad, but the list of grounds of discrimination is limitative: there is said to be discrimination when a person treats another person less favourably than he would treat other persons (segregation being deemed to be a form of less favourable treatment) on the ground of colour, race or ethnic or national origins. The Act covers (i) employment (engagement, terms and conditions, training, promotion and dismissal); (ii) trade union rights (admittance to membership, benefits of membership, expulsion); (iii) housing (disposal of and conditions of occupation of housing accommodation, business premises and land); (iv) the provision to the public of facilities and services (banking, insurance, facilities for education or training, the services of any business, profession or trade); (v) the ban on discrimination extends to advertisements and publicly displayed notices. As in the previous case, application of the Act is progressive. [2] Other exceptions are allowed under the Act, among which mention should be made of the "racial balance" clause, whereby discrimination is not unlawful if the act is done in good faith for the purpose of securing or preserving a reasonable balance of persons of different racial groups employed in an undertaking, or in part of an undertaking; this exception does not apply to dismissal and may not be invoked in the case of a worker, whatever his origin, who has been wholly or mainly educated in the country concerned. Moreover, while the Act applies to employment under the direct control of the Government, it does not invalidate rules which impose restrictions on the ground of birth, citizenship, nationality, ancestry or residence. Mention may also be made of other countries where new provisions along the same lines have been adopted. [3] In another country (which has ratified the Convention) [4] special legislation has recently been promulgated with a view to punishing any demonstration of racism or tribalism, including refusal to engage a worker on racial or tribal grounds,

[1] United Kingdom: Race Relations Act, 1968, to supplement the Act of 1965 on the same subject (*LS* 1968—UK 1). The 1968 Act does not apply to Northern Ireland.

[2] During the first two years it has been applicable only to undertakings employing more than twenty-five persons, and during the next two years it will be applicable to undertakings employing more than ten persons.

[3] For example, detailed legislation comparable to that of the United Kingdom has been enacted in one non-metropolitan territory (Bermuda) (the Race Relations Act of 1969). In Australia, section 7 (1) of the South Australian Prohibition of Discrimination Act, 1966 (No. 82) lays down that a worker may not be dismissed or discriminated against in his employment on account of his race, colour or country of origin.

[4] Central African Republic: Ordinance No. 66/32 of 20 May 1966 and the Decree for its implementation, No. 66/264 of 27 July 1966.

dismissal and, in general, any form of discrimination in this respect based on the origin, race or religion of workers.

42. The Committee has noted the introduction of legal measures against discrimination on the ground of sex, and in particular for ensuring equality of remuneration, in two countries where it has traditionally been exceptional for the legislature to intervene in industrial relations in this connection. In one case the special legislation [1] stipulates that the pay must be equal for equal work in jobs the performance of which requires equal skill, effort and responsibility and which are performed under similar working conditions in the same establishment. The Act concerned prohibits labour organisations from causing or attempting to cause an employer to discriminate. The work performed in these jobs does not have to be identical, but only "substantially equal". [2] The protection of the Act is available to a man as well as to a woman. Pay must be adjusted to the higher of the two rates. Certain exceptions are permitted where differences in pay are found to be based on any "factor other than sex", such as a bona fide seniority or merit system or payment of wages under a piecework plan. [3] The second example is more recent; the new Act [4] requires employers to grant equality of treatment to men and women in respect of similar work or work deemed to be equal in value. Unlike the Act referred to previously, this Act covers all terms and conditions of employment and not merely remuneration. A woman entitled to equal treatment under the Act may claim any contractual right enjoyed by the men concerned (such as the right to promotion after a stipulated period of service, or the right to "day release" for further education).

43. Discrimination on the basis of age has also formed the subject of special legislation in one of the two countries mentioned above. The Act in question [5] protects workers of from 40 to 65 years of age. Discrimination on the part of any employer engaged in an industry affecting commerce (with twenty-five or more employees), any labour organisation (with twenty-five or more members) or any employment agency is unlawful. The practices deemed to be discriminatory are the same as those enumerated in the Civil Rights Act. [6]

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[1] United States: Equal Pay Act, 1963 (Public Law 88–38, 10 June 1963).

[2] *Shultz v Wheaton Glass Co.*, 421 F. 2d 259 (C.A. 3, 1970), cert. den., 38 US Law Week 3452 (1970).

[3] The provisions of the 1963 Act having been incorporated into the Fair Labor Standards Act of 1938 (consolidated text in *LS* 1966—USA 1), its coverage is generally coextensive with the minimum wage coverage: employees engaged in commerce among the several states or between any state and any place outside thereof, or in the production of goods for such commerce. Excluded, however, are numerous jobs in state and local government and domestic employment and higher-paying executive, administrative and professional positions. (Several Bills were proposed to Congress in 1970 with a view to making the Act applicable to high-paying jobs. Source: Robert D. Moran, US Department of Labor, in *Monthly Labor Review*, June 1970, p. 31). In addition, between 1967 and 1969, seven states enacted equal pay laws, bringing to thirty-six the number of constituent states with protective legislation in this respect.

[4] United Kingdom: Equal Pay Act, 1970. Note should be taken of the progressive manner in which it is to be applied: the date of its entry into force has been fixed at 29 December 1975, so as to facilitate the adjustments that will have to be made. A similar Act has been passed in Northern Ireland, also in 1970.

[5] United States: Act of 15 December 1967 to prohibit age discrimination in employment (*LS* 1967—USA 1). At the level of the constituent states, the passing of an Act on this subject by a further state in 1968 has brought the number of constituent units affording legal protection to twenty-five.

[6] See paragraph 40.

44. In addition, new provisions for the prohibition of discrimination in general have come into force in certain countries. Examples are to be found in recently promulgated constitutions which prohibit, in the acts of public authorities and in the application of the laws, discrimination based, for instance, on race, place of origin, political opinion, colour or creed [1], or on race, sex, creed or social status. [2] Such provisions are also embodied in certain Labour Codes, in terms which sometimes correspond almost word for word with those of the 1958 instruments.[3] In some countries which have ratified the Convention, additional measures have been taken to clarify the manner in which provisions of a more general scope, concerning the practical application of which the Committee had requested further information, are to be applied in the field of employment. [4]

Enforcement Machinery

45. From the information supplied by the majority of countries, it emerged that the enforcement machinery available to deal with acts of discrimination in respect of employment consists of that established under the general rules applying to labour relations, the machinery established for supervising the legality of the acts of the administrative authorities (mainly in the case of jobs coming under the control of these authorities) and the criminal law enforcement procedures in the case of discriminatory acts which have been specifically made offences. [5]

46. As well as referring to the formal legal procedures open to persons discriminated against, a number of countries have stressed the importance of the role of the authorities responsible for law enforcement, who can act on their own initiative or on the basis of a simple complaint. Often the authority in question is the labour

[1] Constitution of Guyana of 1966, article 15, and constitutions of present and former non-metropolitan territories of the United Kingdom: Fiji (1966), Antigua, Dominica, Gilbert and Ellice Islands (1967), Bermuda (1968), Bahamas, Gibraltar (1969).

[2] Constitution of Venezuela of 1967. In addition, the Constitution of Brazil of 15 March 1967 (article 150, paragraph 1) guarantees to all equality before the law, without distinction as to sex, race, occupation, religious creed, or political convictions, and specifies that racial prejudice shall be punished by law. In Yugoslavia, the new Constitution of 7 April 1963 (*LS* 1963—Yug. 3) declares all citizens to be equal in their rights without regard to differences of nationality race, creed, sex, language, education or social status (article 33) and the Basic Act respecting employment relationships, dated 4 April 1965 (*LS* 1965—Yug. 4) guarantees the same rights to all workers, without regard to nationality, race, creed, sex, language, education, social status or membership of a particular organisation.

[3] For example: Rwanda: Labour Code (Act of 28 February 1967) (*LS* 1967—Rwa. 1), section 25 of which reads as follows: "It is prohibited to make any distinction, exclusion or preference based on race, colour, sex, religion, political opinion or national or social origin which would have the effect of destroying or being detrimental to equality of opportunity in employment."

[4] In Byelorussia, Ukraine and the USSR, whose penal codes prescribe penalties in the event of infringement of the principle of the separation of the Church and the State, decrees have been promulgated for the administration of these codes which specify that infringements of this principle comprise, *inter alia*, any refusal of admission or dismissal in the field of education or employment and any distinction made in the treatment of individuals in these spheres on account of their attitude towards religion (Byelorussia: Decree of the Presidium of the Supreme Soviet of the SSR of Byelorussia dated 1 April 1966 concerning the administration of section 139 of the Penal Code; Ukraine: Decree of the Presidium of the Supreme Soviet of the SSR of the Ukraine dated 26 March 1966 concerning the administration of section 138 of the Penal Code; USSR: Decree of the Supreme Soviet dated 18 March 1966 concerning the administration of section 142 of the Penal Code). In addition, the new "Basic Principles of Labour Legislation" of the USSR, promulgated in 1970, include "attitude to religion" among the factors of discrimination prohibited in employment (section 9).

[5] Cf. 1963 survey, paragraph 78.

inspection service; some countries have stressed that one of the tasks of labour inspectors is to check whether the principles of non-discrimination in the field of labour are being observed [1], and have mentioned in some cases the existence of special instructions to that effect in regard to certain matter. Thus labour inspectors may procure the settlement of certain issues by making recommendations [3], or where necessary they may initiate legal proceedings in pursuance of specific provisions to that effect. [4] Attention has also been drawn to the opportunities for supervision open to the labour inspection service as a result of its being entitled to intervene prior to the taking of certain measures such as dismissals. [5]

47. An examination of the procedures provided for by some of the special Acts mentioned above [6] highlights the key role played by the labour administration authorities. In some cases the Secretary of Labour may initiate proceedings in the civil courts. [7] In others, he may, like the employer or the employee, refer the dispute to an industrial tribunal. [8]

48. In a more general sense, certain countries have made special reference to the supervisory role of authorities vested with general powers to ensure respect for the laws and regulations both by individual citizens and by the administrative authorities (the attorney general and the local representatives of the public prosecutor's office, *prokuratora*), who are competent to take decisions upon any matter relating to discriminatory acts in the field of employment. [9] In other countries special supervisory functions—at any rate as regards action taken by public and administrative authori-

[1] This is stated, for instance, in the reports of Chad, Tunisia, Upper Volta and other countries with similar labour inspection systems.

[2] This is so in Ethiopia, according to its Government's report, as concerns equality of treatment without distinction on the basis of sex (Inspection Manual of 1965).

[3] This is stated, for instance, in the report of Malawi.

[4] For example, the Government of Costa Rica states that the labour inspection service is responsible for ensuring the implementation of the non-discrimination policy in private undertakings and that whenever a case of discrimination is brought to light a deadline is set for the employer to put the matter right, failing which the inspection service will report the matter to the competent authority with a view to the imposing of the penalties prescribed by the legislation (in particular, Act No. 2694 of 22 November 1960 for the prohibition of all discrimination within the meaning of the Convention in respect of employment and profession; cf. 1963 survey, paragraph 79).

[5] For example, Mali (Act No. 62-64 A.N./R.M. of 19 August 1962, to promulgate a Labour Code for the Republic of Mali (*LS* 1962—Mali 1), section 38 of which provides that an employer wishing to dismiss a wage earner engaged for more than three months must apply to the inspectorate of labour for authorisation to do so.

[6] Equal Pay Acts of the United Kingdom and the United States, Age Discrimination Act of the United States.

[7] United States: (i) Equal Pay Act of 1963 (a worker who has been underpaid can take proceedings in the courts to recover the sums due); (ii) Age Discrimination Act of 1967, which makes it incumbent upon the Secretary of Labour to effect voluntary compliance with the requirements of the Act through conciliation and persuasion.

[8] United Kingdom: Equal Pay Act of 1970.

[9] For example, Bulgaria (Public Prosecutor's Act, published in *Government Gazette* No. 11, 5 February 1960); the Government has stated that a prosecutor with whom a complaint of discrimination is filed may, if he deems the complaint to be well founded, make a "protest" to the person responsible. If the latter refuses to accept the protest, he must refer the matter to his immediate hierarchical superior for a decision, which in its turn may be the subject of a further protest. In addition, in certain cases the chief public prosecutor may refer the matter to the Council of Ministers or to the Presidium of the National Assembly; USSR (Constitution, article 113, and Regulations respecting the competence of the Public Prosecutor's Office in the USSR (Ukase of the Presidium of the Supreme Soviet of the USSR dated 24 May 1955).

ties—are entrusted to an *ombudsman*, or Parliamentary Commissioner—an independent authority who reports to Parliament and has the task of exercising general surveillance over the public administration to ensure respect for the rights and interests of private individuals. [1] The reports of these countries have stressed that the *ombudsman* is qualified, *inter alia*, to examine and investigate any complaint alleging discrimination, make recommendations to the official responsible and initiate legal proceedings if the latter refuses to act upon these recommendations.

49. The role of supervisory authorities with power to act on their own initiative or on the basis of facts which private individuals may be more ready to bring to their notice than they would be to take them to court, for instance, is particularly important in the case of discrimination, where there is a frequent risk that private individuals may be unfamiliar with the procedures open to them, find it difficult to prove their case or be subjected to intimidation. [2] Furthermore, and for the same reasons, Recommendation No. 111 suggests that the examination of complaints of discrimination should for preference be entrusted to agencies offering simple special procedures for investigation and attempts at conciliation in the first instance (Paragraph 4 *(b)* and *(c)*). Machinery of this kind has been set up in a number of countries for the administration of special legislation of the kind mentioned earlier. Commissions or boards have been established [3], which proceed by means of investigation and attempts at conciliation; in some cases the task of setting the procedures in motion is in the first instance reserved to the existing labour authorities. [4] If these efforts fail, civil proceedings may be instituted by the complainant [5] or by the special commission or board. [6] The courts may, according to the circumstances, prohibit the unlawful conduct in question by granting an injunction, award damages, revise contracts or order such positive action as is appropriate (such as the reinstatement or engagement of workers). Mention may be made of the role in one country of the Attorney-

[1] For example, Denmark (Act of 11 June 1954); Guyana (Constitution, sections 52 and 53); New Zealand (Parliamentary Commissioner Act, 1962); Norway (Act No. 8 of 22 June 1962); Sweden (Constitution, article 96); United Kingdom (Parliamentary Commissioner Act, 1967). An *ombudsman* or parliamentary commissioner has likewise been appointed in certain Canadian provinces, including: Alberta (Ombudsman Act, 1967—S.A., 1967, Ch. 59); Manitoba (Ombudsman Act, 1970—RSM 1970, Ch. 26); New Brunswick (Ombudsman Act, 1967—SNB 1967, Ch. 18); Newfoundland (Parliamentary Commissioner (Ombudsman) Act, 1970); Quebec (Public Protector Act, 1968—S.Q., 1968, Ch. 11).

[2] This would appear to be so, for instance, from reports on the enforcement in India of the Untouchability (Offences) Act, 1955. It should be added that some governments have indicated that there have been no cases calling for the practical application of their anti-discrimination legislation, or have furnished no information on the subject (for example, Central African Republic (as concerns the aforementioned Ordinance of 20 May 1966); Costa Rica (as concerns the aforementioned Act of 22 November 1960)).

[3] For example, United States, under the Civil Rights Act of 1964 (Title VII), mentioned above: Equal Employment Opportunity Commission; United Kingdom, under the Race Relations Act of 1968, mentioned above: Race Relations Board.

[4] This is the case, for instance, in the United Kingdom. Cases must be referred in the first place to the Secretary of State for Employment and Productivity, who will, if satisfied that there is suitable conciliation machinery in the industry concerned, refer them to that machinery. The machinery may consist of one of the joint bodies which usually serve for the purposes of conciliation or collective bargaining or of an ad hoc body specially set up under the Act. If there is no appropriate machinery, the complaint will be handled by the Race Relations Board. In addition, an appeal may be made to the Board against the decisions of the industrial machinery to which a complaint has been referred first.

[5] United States: Civil Rights Act, 1964, section 706 *(e)*.

[6] United Kingdom: Race Relations Act, 1968, section 19.

General. [1] These special commissions or boards may act not only when complaints are referred to them but also on their own initiative. In addition, wide powers are vested in them so as to enable them to take "positive action" in the fields of research, information and co-operation with various bodies. [2] Lastly, since the 1963 survey, developments have taken place with regard to a comparable procedure, in countries which had already mentioned the existence of such procedures. [3]

50. In the light of this information on the experiences of a variety of countries—and bearing in mind the fact that under the terms of the Convention and Recommendation of 1958 the nature of the legislative provisions calculated to afford protection against discriminatory practices should be adapted to national conditions and practice—the Committee considers it desirable to draw the attention of all countries to the need to review constantly the protection afforded by their legislation to ensure that it is appropriate. The Committee hopes that further progress will be made through the taking of all such supplementary measures as may be useful in this field, bearing in mind, in particular, the evolution of existing needs and the emergence of new needs, arising out of distinctions based on race and other comparable factors as well as out of those based on sex, creed or opinions.

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[1] United States: Civil Rights Act, 1964; a court may permit the Attorney-General to intervene in a civil action if he certifies that the case "is of general public importance" (section 706 *(e)*). The Attorney-General may also bring a civil action himself if he has reasonable cause to believe that there is "a pattern or practice of resistance to the full enjoyment of any of the rights secured" [by Title VII of the Act] (section 707 *(a)*).

[2] On these points see Chapters V and VI.

[3] Canada (Fair Employment Practices Act of 14 May 1953 (*LS* 1953—Can. 2). Under section 5 of this Act, the officer instructed to inquire into a complaint—generally an official of the Department of Labour—must endeavour, after inquiring into the complaint, to effect a settlement by means of conciliation. If this proves impossible, the complaint is referred to a special commission which will make recommendations to the Minister of Labour, whose decisions are final and conclusive. A similar procedure is provided for in most of the fair employment practices Acts enacted by the provinces of Canada.

CHAPTER IV

ACTION TO PROMOTE EFFECTIVE EQUALITY OF OPPORTUNITY IN RESPECT OF EMPLOYMENT AND OCCUPATION

51. The previous chapter described how forms of legislative action against discrimination have developed, and showed the importance attached to the role of law in certain countries. But the protection afforded by law, though essential, will never suffice to achieve fully the objectives set forth in international standards. The shortcomings of enforcement procedures are known and recognised [1]; progress is made case by case, and a great deal depends on the victims of discrimination themselves taking the initiative. Responsibility for promoting real equality of opportunity lies with society at large, and this means that "positive action" is required. This concept, embodied in international instruments and emphasised by the Committee in its previous general survey, will constitute the main theme of this chapter. On the assumption that groups at a disadvantage because of prejudice or for other reasons need above all else vocational training, access to jobs at all levels, and the chance to earn fair, steady wages, there is an urgent need for active policies in all these fields. Emphasis thus shifts from protection of rights to promotion of equal opportunity.

52. The amount and quality of the information passed on to the Committee have varied immensely, and this, clearly, has dictated the choice of national examples. Two other considerations were the need to illustrate the acuteness and relative urgency of the problems, and the Committee's desire to show, by means of examples, the broad character of the kind of policy it considers desirable. [2]

An Active Manpower Policy

Education and Training.

53. In many countries, equality of opportunity as regards education and training is promoted by a system of free and compulsory primary education, free technical and vocational training [3], and a variety of benefits available to all for continuing their studies and acquiring skills. [4]

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[1] See, for example, United States Executive Order 10925 (6 March 1961), the 1968–69 Report of the United Kingdom Race Relations Board, p. 22, and the Report by the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes and Connected Documents, New Delhi, India, 1969, Part I. These documents mention the difficulties attending application of the law, i.e. absence of information, inability or reluctance to institute proceedings, inadequate enforcement, etc.

[2] On this point, see paragraph 71.

[3] For example: Argentina and the USSR.

[4] In the USSR, students taking a course of technical and vocational training are maintained and supplied with food and clothing; during their practical training, they are paid a wage as well.

54. Equality of opportunity in access to education and training, and thereafter to employment, is frequently hampered by language difficulties experienced by many ethnic groups. In two countries characterised by their linguistic unity, inadequate command of the national language by minorities with different cultural backgrounds is recognised as one of the main obstacles to education and training, and action has been taken accordingly to overcome this handicap. [1] Elsewhere, the position is more complicated, because of the diversity of the languages spoken, a fact which is reflected in the way the educational system is organised. It frequently happens that vernacular languages (indigenous tongues other than the national language) are used in the schools, at least up to a certain level. [2] Sometimes, too, one of the major international languages (for example English in Malaysia, the Philippines and Thailand, and French in Cambodia, Laos, etc.) is used from a certain level upwards—access to higher education and to posts of responsibility is often dependent on a command of it. [3] Where this is so, there is no simple or uniform solution. It is up to each country to define a language policy appropriate to its own specific circumstances and problems. In so doing, it should, however, give careful consideration to the different objectives of education: the development of the human being, respect for the cultural rights of every group, national unity, equality of opportunity, and the economy's needs for manpower.

55. In many countries, provision is also made for adult education; courses are organised, training centres set up, and financial and other assistance is sometimes available. [4] In some countries, undertakings are required by law to take part in national schemes of this kind. [5] The scope and object of the action taken will clearly vary a good deal from one country to another, depending on the level of national development and educational standards. In the industrialised countries, the chief

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In Yugoslavia, special allowances are granted to students at technical and professional schools during their period of practical training.

[1] This applies, for example, to the Indians in the United States and to coloured immigrants in the United Kingdom. In the United States, manpower programmes are giving increasing emphasis to the teaching of English as a second language (see: *Manpower Report of the President*, March 1970, p. 105). In the United Kingdom, the problem has been investigated, and financial assistance is given to firms which release their employees for language classes. In addition, another Government (New Zealand) considers that the high school drop-out rate among the Maoris is attributable in great measure to an inadequate command of English.

[2] This is true in the various Republics of the USSR and in Yugoslavia. In Rumania, the Constitution recognises the right of the various minorities to education in their mother tongue. The Government trains the teaching staff and publishes the textbooks. In Malaysia, the vernacular languages (Mandarin and Tamil) are used in elementary schools (see the *Malaysia Official Year Book*, 1968, pp. 145–169).

[3] In Malaysia the national language (Malay) is the instrument of instruction and its study is compulsory in elementary and secondary schools, but English is the language chiefly used in secondary and higher education.

[4] In Sweden, for example, the Government reports that it encourages adult education and training through evening classes, part-time courses, vocational training centres, etc., and in its report to the United Nations on the status of women, 1968, p. 76, it says that training allowances are granted. In the Federal Republic of Germany, there is legislation (*LS* 1969—Ger. F.R. 1) encouraging people to take part in refresher courses and advanced training programmes, provision being made for the grant of maintenance allowances. In Byelorussia, workers wishing to take a training course are entitled to a shorter working day without loss of pay and also to additional leave. In Yugoslavia facilities are granted to persons wishing to take part-time courses.

[5] See, for example: Mexico (Federal Labour Act dated 2 December 1969 (*LS* 1969—Mex. 1), section 132, subsections XIII to XV); Czechoslovakia (Labour Code, sections 141–144 (*LS* 1965–Cz. 1).

purpose is to enable those made redundant by technological change to acquire new skills, or, ideally, to anticipate what the future will demand of them. In the less advanced countries, it is often necessary to train labour rapidly so that industry can keep up a sustained rate of growth. Lastly, in a good many developing countries where illiteracy is common, its eradication among adults is, or should be, one of governments' main concerns. [1] The Committee wishes to stress the seriousness of the barrier to equality of opportunity and promotion of economic growth and employment constituted by illiteracy, and also the effectiveness of action in this field—money invested in teaching people to read and write quickly pays a dividend, and, moreover, there is a close link between the parents' degree of literacy and the benefit derived by children from their education (and therefore the extent to which equality of opportunity can operate from the outset). [2]

56. The experience of several countries shows that ethnic and cultural minorities do not have equal access to education and training, or else that a much higher percentage of them leave school prematurely than is the case among the majority. This inequality is observed even in countries where such minorities enjoy equality of access [3], and in one country (which has ratified the Convention) where a proportion of the places available in schools and vocational training institutions has been reserved for minorities. [4] The Committee notes with interest the efforts made by such countries to ensure that recognised rights are in fact exercised and to promote equality of opportunity. Free education or exemption from fees are not usually found to be adequate incentives. The normal procedure is to institute a scholarship scheme for general education or vocational training. [5] Measures aimed at providing lodging facilities (such as hostels or boarding schools) are particularly worth considering, since they can help to overcome two major handicaps: i.e. the distance of the town or school from the students' homes, and the poor cultural background of their families. [6]

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[1] Laws, decrees or regulations defining the purposes of anti-illiteracy campaigns and creating special institutions have been promulgated in many countries. See, for example: Jordan: Act for the elimination of illiteracy and the promotion of adult education. As a result of this legislation, adult education centres have been opened, some of them reserved for women (Act No. 120, 1965, *Official Gazette*, No. 1888, 1 December 1965); Chile (Decree No. 10,117 dated 11 October 1968 establishing a civic anti-illiteracy service); Indonesia (Decree No. 329, dated 30 December 1968); Libya (Decree dated 2 April 1968, making it obligatory for adults to learn how to read and write).

[2] With regard to this last point, see the proceedings and recommendations of UNESCO; in particular, ECOSOC, Thirty-sixth Session, *World Campaign for Universal Literacy*, E/3771, 15 May 1963 (Document submitted by UNESCO); and UNESCO, General Conference, 13th Session, Programme Committee (Document 13/C/PRG4, September 1964, p. 7).

[3] For example, the Maoris in New Zealand.

[4] In India, the Minister of Education of the Union urged the various ministries, state governments, and universities in 1964 to lay down quotas for the benefit of the scheduled castes and tribes in schools and vocational training institutions. Thus, for example, in the handicraft training programme, 12.5 per cent and 5 per cent of the places available have been reserved for the scheduled castes and tribes respectively. (See *Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the year 1964-65*, p. 48, and *Report of the Seminar on Employment of Scheduled Castes and Scheduled Tribes*, 1964, Appendix VII, p. 233). The Committee recalls that such action, sometimes described as "positive discrimination" or "discrimination in reverse", can be justified only if designed to assist disadvantaged groups in real need of protection or assistance (see the study published in 1963, paras. 50–52). This problem is encountered in connection with employment as well. The UNESCO international standards on education adopt a similar position.

[5] Australia (for the aboriginals), Costa Rica (for the indigenous peoples), India (for the scheduled castes and tribes), Norway (for the Lapps).

[6] See, for example, the Norwegian programmes for the children of nomadic Lapps (*Study by the Subcommittee on Prevention of Discrimination and Protection of Minorities*, E/CN4/Sub.-2/L.92/Add. 44, p. 4) and those of India for pupils from the scheduled tribes and castes. A special programme

In some cases, special programmes have been devised to prepare members of disadvantaged groups for school examinations or trade tests, or for employment. [1] The Committee likewise observes that while such programmes frequently encounter financial difficulties, especially in certain developing countries, other things can be done which involve no outlay and certainly produce an effect. Thus, for example, the conditions governing admission (age, standard, etc.) to educational establishments can be relaxed to the advantage of certain groups. [2]

57. The Committee has noted from the statistics supplied by certain countries [3] that certain ethnic minorities are now employed in considerably greater numbers. But an analysis of employment figures and the composition of the active population reveals that, very generally speaking (although there are considerable variations), these people tend to be found in the humbler, less-skilled jobs. The main reason is that so few members of these minority groups have reached a high standard of education or training. Considerable interest attaches, therefore, to the efforts being made (and the results achieved) in giving ethnic minorities access to higher education. [4]

58. In many countries, the countryside has been left behind in the race for economic growth and progress, and is especially ill-equipped as regards education and training. This amounts to *de facto* discrimination against the rural population. The problem may be even more complicated when the countryside is largely peopled by specific ethnic groups. [5] Governments are usually well aware of this and are either planning to take, or are actually taking, action. [6] Their attention is called to the importance of quality (of equipment, teaching staff, etc.), for it is not merely on a quantitative level that the countryside lags behind.

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for girls' boarding schools has been included in the third plan. (See, with special reference to the scheduled castes: Government of India, *Report of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes and Connected Documents*, 1969, Part III.) To make good the handicap imposed by the shortcomings of the pupils' family background, it is essential that the teaching staff in boarding schools or other similar establishments be adequately qualified and sufficiently numerous. With the same end in view, special programmes for aboriginal children of pre-school age (dealing with basic subjects and knowledge) have been instituted in Australia.

[1] In India, special courses are available to members of scheduled castes and tribes, to prepare for examinations governing entry to public employment. In Australia, the Government launched an Employment Training Scheme in 1969 to compensate for the aboriginal's lack of experience of work. Under the scheme, aboriginals get assistance and allowances, and normal wages are paid. Private employers and local government bodies are subsidised to meet the cost of their wages while being trained on the job.

[2] India (for the scheduled tribes and castes); Viet-Nam (for the mountain peoples).

[3] Notably the United States and India.

[4] Thus, in the United States, where "junior colleges" have been set up to provide a two-year course of higher education, with curricula specially designed to prepare the pupils for the careers and posts available, the experiment seems to have turned out well. Attendance rates (at the higher levels) for students from the disadvantaged groups (including Negroes) are twice as high in cities where these colleges exist. See: *Manpower Report of the President*, March 1970, p. 180.

[5] As in Malaysia, where the majority of the Malays live in the countryside.

[6] In Liberia, for example, the Education Act provides for the creation of technical colleges and other schools throughout the country. The Nicaraguan Land Reform Act (Decree No. 797 dated 3 April 1963, *La Gaceta*, No. 85 dated 19 April 1963) states that one way of attaining the targets aimed at is to increase the number of schools in rural areas and to devise special curricula for vocational training in agriculture. The curricula adopted in the Malaysian plan are designed, amongst other things, to correct the disparities between town and countryside (see First Malaysia Plan, 1966–1970, p. 166). In Guinea, vocational training schools have been set up in each region. In Viet-Nam, craftsmen's vocational training schools have been opened, while accelerated and advanced training courses have been specially organised for the mountain peoples.

59. Several countries admit the existence of discrimination based on sex. The reasons why women do not enjoy equal opportunities in employment and occupation are complex; one of the most important is undoubtedly the fact that women are less well educated and trained than men. Attention should be given, the Committee feels, not merely to making education and training available to girls and women on a larger scale and granting them equal access to educational establishments of all types, but also to offering women a wider choice of training opportunities, so that they are no longer excluded from the higher, well-paid jobs. Some countries are concerned with these problems, and there are reports of rapid progress. [1] Certain governments also report that they are organising short-term training programmes so that women who for family reasons have had to abandon paid employment can rapidly acquire a skill [2] or at least undertake part-time work. [3] In yet another country, a woman taking a supplementary training course becomes entitled to a maintenance allowance. [4] In addition, if these objectives are to be achieved, it is essential to organise child care facilities. [5]

Vocational Guidance and Placement.

60. As regards the work done by employment offices, the Committee has noted that in a number of countries a definite policy of non-discrimination is followed. Certain governments declare that there is no discrimination in the placing of job applicants, the only criteria considered being objective, i.e. possession of the requisite aptitudes and skills. [6] For other countries, respect for the principle of non-discrimination entails refusing any vacancy notice accompanied by discriminatory conditions [7], or at least ignoring them. [8] In some countries, an employer is forbidden by law to refuse, without valid reason [9], or for a reason of a discriminatory character [10], a job applicant referred by an employment office. In another country, employment agencies decline to serve employers who continue to practise discrimination. [11]

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[1] For example: the United States (see *Manpower Report of the President*, March 1970, p. 188). Moreover, the Committee takes note with interest of the statistical data given in the USSR report on human rights (report for the period July 1966–June 1969, E/CN.4/1011, Add. 3, p. 41 in the English text), showing that girl students actually outnumber men in law and economics, teaching and arts, and medicine. The Vocational Training Act which entered into force in the Federal Republic of Germany on 1 September 1970 makes no distinction between men and women, but may in practice contribute to progress in this direction. Occupations and trades which require little in the way of skills (most of them traditionally reserved for women) will no longer be taught. Instead, the basic curricula will consist of basic vocational training, general technical instruction, and specialised technical training (Berufsbildungsgesetz, dated 14 August 1969, *Bundesgesetzblatt* I, p. 1,112).

[2] Australia.

[3] Japan (source: OECD, 12 November 1970 (C(70)23), Japan, March 1967–March 1969).

[4] Federal Republic of Germany: Employment Promotion Act, dated 25 June 1969 (*LS* 1969—Ger. F.R. 1), sections 41 to 46.

[5] The action taken under this heading will be considered later, in connection with employment (see paragraph 66).

[6] E.g. Dahomey, Denmark, Iraq, Mali, Sierra Leone, Yugoslavia.

[7] Federal Republic of Germany, Mexico, Morocco.

[8] Iraq and Libya.

[9] Czechoslovakia (Instructions of the State Planning Office concerning Government Ordinance No. 92/1958).

[10] Federal Republic of Germany, Israel.

[11] United States.

61. In the previous survey, the importance of more positive action was emphasised [1], and the Committee notes with interest some of the information supplied. In one federal country, the government declares that State employment offices have, for example, begun to instruct their staffs in the laws and regulations governing equality of opportunity, or the need to keep minorities informed about employment and training prospects. [2] In another federal country, employment advisory boards have been set up, workers and employers being represented; their task is to persuade the State governments, their agencies and other employers to accept the policy of non-discrimination pursued by employment offices. [3] Age, too, is a reason frequently invoked when refusing an applicant, and in the industrialised countries, where the average working life is shortening while expectation of life is lengthening, this is a reason for growing concern. In one industrialised country in Asia, "talent banks" have been set up in several of the larger towns. Their main task is to find technical and managerial jobs for the middle-aged or elderly, especially in smaller firms, where such staff is in short supply. Special courses are also run for them. [4] In one West European industrialised country, there is an employment youth service with special "careers officers" to provide advice and vocational guidance to coloured immigrants and girls. [5] An interesting case—from several points of view—is that of a developing country in Asia where arrangements have been made to set aside a proportion of the available jobs for the disadvantaged classes of the population. [6] The employment offices make special efforts to find applicants for these reserved jobs and to inform them about the prospects. Special courses are run for the scheduled castes and tribes so as to guide them into suitable jobs and kinds of training, and to equip them to cope with earning a living. In connection with this example, the Committee has two points to make. Firstly, an employment service should cover the whole country, so that outlying areas are not neglected; if necessary, mobile units can be used. The second is more general. In hierarchical societies, where the family decides what job is to be taken, or occupation is dictated by the caste system, it is essential that there be a vigorous policy of vocational guidance, with an eye only to equality of opportunity and to the manpower requirements of the economy. In a good many countries, this will certainly involve strengthening the facilities and staff of the employment services.

An Active Employment Policy

Public Employment.

62. One country which has not ratified the Convention affords an excellent example of how the idea of positive action can be put into practice in the sector of the employment market directly subject to government control. In this country, policy in

[1] See the 1963 survey, paragraph 105.

[2] United States.

[3] Nigeria.

[4] Japan.

[5] United Kingdom. The Government has accepted a recommendation made in the report by the Select Committee on Race Relations and Immigration (February 1970), that more coloured careers officers should be appointed in the youth employment service. As regards girls, the service does its best to ensure their access to jobs and occupations hitherto regarded as men's preserve. Its experience seems to bear out the conclusions reached in an earlier study (*Survey of Women's Employment*, 1968), namely that the attitudes and prejudices of girls and their families are usually greater obstacles than any reluctance on the part of employers. Hence the need for education, a point which is dealt with in Chapter 5.

[6] India (see paragraph 63).

this respect is defined in a series of Presidential executive orders, the latest of which clearly reaffirms and reinforces official policy, which is to outlaw discrimination for reasons of race, colour, religion, sex or national origin, and above all to ensure full equality of opportunity by all possible means. [1] To attain this latter end, each federal department, agency or executive authority must draw up and implement a "positive programme" in accordance with definite instructions. The policy of equal opportunity must form an integral part of all staff policies and practices. The administrative action taken to give effect to the Executive Order shows the direction in which federal programmes are now moving. Investigations have been made and action taken to eliminate certain obstacles to the employment of persons belonging to minority groups. For example, the qualifications required for many jobs have been reviewed. An attempt has also been made to ensure that selection tests are more in line with the actual requirements of the job and better adapted to the social and cultural backgrounds of the minorities. Many new jobs have been created by modifying job profiles and by separating from certain jobs the tasks which make but scant demands on skill. [2]

63. In another country, which has ratified the Convention, a quota system has been adopted. Under the Constitution, a percentage of all public posts filled by direct recruitment or promotion is reserved for members of the scheduled castes and tribes. [3] Standards can be waived or relaxed with regard to recruitment. [4] Action has been recommended to eliminate the barriers constituted by selection policies. [5] The Committee notes that progress has been made in securing equality of access to employment in the public service, but that the difficulties of securing equality of promotion are more severe. [6] The same sources show that steps have been taken, and recommen-

[1] United States, Executive Order 11478 (8 August 1969) (*LS* 1969—USA 2). The authority responsible for enforcing order is the Civil Service Commission, which has a threefold duty to perform. It must direct and guide departments and agencies in conducting equal opportunity programmes, assess the progress made, and consider complaints. In dealing with complaints, the emphasis is placed on conciliation and Equal Employment Opportunity Counsellors have been appointed to seek a solution by informal means. They must be consulted before a complaint can be formally lodged with the appropriate body (a complainant is free to appeal to the Civil Service Commission). On these points, see Chapter III.

[2] The "MUST" programme (Maximum Utilisation of Skills and Training Program), drawn up by the Civil Service Commission.

[3] India. The Government has recently (March 1970) increased the percentages of reserved jobs from 12.5 to 15 for the scheduled castes, and from 5 to 7.5 for the scheduled tribes. In most states of the Union, ordinances have been issued specifying that a certain proportion of posts must be reserved, the actual figures varying with the size of the scheduled caste or tribe within the state concerned. (See paragraph 56 for an account of similar action taken by this country with regard to access to training institutes.)

[4] Especially as regards the age limit (raised by five years in the state of Kerala, for example), entrance and examination fees (cut by 75 per cent in this state), and the qualifications required.

[5] It has been recognised that tests and interviews have been responsible for eliminating many candidates belonging to the scheduled tribes and castes from jobs reserved for them; the Commission for Scheduled Castes and Scheduled Tribes has suggested that such practices be done away with, at least for beginners' jobs. (See *Report of the Commissioner for Scheduled Castes and Scheduled Tribes, 1961–62*, p. 130, *1962–63*, p. 155, *1965–66*, p. 14).

[6] Action is nevertheless being taken. In India, as in the United States, recourse is chiefly had to special coaching for examinations and competitions, and in-service technical training (see below, vocational training). In the Malagasy Republic the Government has deemed it equitable to increase the representation of persons from provinces other than Tananarive at the higher echelons of the civil service. Until such time as equality of opportunity in education is achieved, the methods used are special training or direct promotion for lower-grade officials.

dations made, to extend the principle of reserved employment to publicly owned industry. [1]

Employment Conditions.

64. The most general question under this heading concerns equality of remuneration. Under Convention No. 111 (Article 1 (3)) the word "employment" covers "terms and conditions of employment", while Recommendation No. 111, paragraph 2 *(b)* (v) lays down that: "all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of ... remuneration for work of equal value". The principle of equal remuneration for work of equal value is winning ever wider recognition as regards posts in the public service, although the developing countries may find themselves departing from it when expatriate technical staff has to be recruited. [2] One government declares that apart from proclaiming and carrying out a policy of equal pay for equal work in all fields controlled by it, it requires all employers setting up in reservations where aboriginals live to apply this principle as well. [3] But in the great majority of contexts, equal pay for equal work means equal pay for women. The federal government of one country observes that it was the first of the nation's major employers to introduce equality of remuneration without distinction of sex. [4] In other countries, it has also been decided to implement the principle, and this is being done little by little. [5] In this respect, of course, governments can give a lead. But the principle is by no means always observed by private enterprise—hence the need for legislation such as has been enacted in several countries. [6] Other countries, which have not ratified Convention No. 111, report that the principle has acquired the force of law because they ratified Convention No. 100—to make it clear that the question of equal remuneration, although covered by the 1958 instruments, is essentially a matter dealt with under Convention No. 100. [7] One of the main technical difficulties in applying the principle lies in the difficulty of defining what is meant by "equal value" and in the objective assessment of jobs and posts.

65. In one particular instance, the Committee has in fact had to consider the objectivity of job assessments and the level of skills required. In the country concerned, law and practice are not uniform for all categories of workers and as a result, there are considerable differences as regards general conditions of work (chiefly in wages and the benefits of trade union membership). In such circumstances, it is more than usually important to arrange for a really objective classification of jobs and workers,

[1] And to private concerns as well; see the information submitted by the government of the state of Kerala to the Government of the Union.

These provisions can be compared with those mentioned in Chapter 3, concerning protection against discrimination in activities receiving federal subsidies in the United States (Part VI of the Civil Rights Act, 1964).

[2] As in Nigeria.

[3] Australia.

[4] United States.

[5] Malaysia. Non-metropolitan territories: United Kingdom (Hong Kong).

[6] See Chapter III on the protection afforded by the law.

[7] The Committee recalls that there exist special international standards in this respect: the Equal Remuneration Convention, 1951 (No. 100) and the Equal Remuneration Recommendation, 1951 (No. 90). Countries ratifying this Convention undertake: (i) by means appropriate to the methods in operation for determining rates of remuneration, to promote and ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value; and (ii) to ensure that the principle is applied, to the extent that this is compatible with the said methods. Convention No. 100 has been ratified by 71 member States.

so as to avoid a state of affairs in which ethnic criteria influence the assignment of workers to one category or another. [1]

66. The Recommendation defines in greater detail the general principle embodied in the Convention, and urges that every individual should, without discrimination, enjoy equality of opportunity and treatment as far as general conditions of work are concerned (working hours, rest periods, annual paid leave, occupational health and safety) and in social measures connected with employment (social security schemes, social services and social benefits). [2] The Committee notes that the position of women is improving. [3] In the market economy countries, as in those where the economy is planned or directed, the figures show that—in varying forms and degrees—women's activity rates are steadily rising. The growth in the employment of married women is particularly noteworthy. This has led in turn to a strong increase in the demand for social services. Many governments have taken action to keep pace with or assist these trends, the aim usually being to provide assistance and services so that women can combine running a home with keeping a job outside. [4] The Committee wishes to emphasise the importance of taking action of this kind to promote the employment of women belonging to economically or culturally disadvantaged groups, in which women are frequently heads of families and family incomes are often both small and unreliable. Indeed, such action is doubly worth-while, since programmes involving the provision of nurseries, kindergartens and mothers' helps can benefit the children both physically and psychologically, and thereby correct—at an early stage—an unequal distribution of opportunities. [5] The main burden of responsibility for this

[1] Portugal (overseas provinces). The Committee has examined an order by the Governor-General of Angola applying to the skilled workers in a particular undertaking (published in the *Official Bulletin*, first series, No. 233, dated 2 October 1968). The clauses of this order on grading mean that many workers now receive more favourable treatment. There are, it would seem, considerable differences between the position in Angola and that in Mozambique with regard to these matters, as the Committee points out in the observation contained in Volume A of its report (Convention No. 111).

[2] Recommendation No. 111, paragraph 2 *(b)* (vi).

[3] No attempt is made here to describe the action taken in almost every country to regulate women's conditions of work. This protective legislation is usually based on the relevant international standards.

[4] An international instrument has been adopted with regard to this matter: the Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123). It urges governments to pursue appropriate policies so that women can exercise their right to work without discrimination, and to establish (or facilitate the establishment of) services to enable women to meet their family and employment responsibilities. The information to hand seems to show that the services and facilities provided mostly take the form of nurseries or kindergartens, or works nursery schools, for example: Czechoslovakia (Labour Code, 16 June 1965, *LS* 1965—Cz. 1); Iraq (Labour Act No. 151, 1970, section 84); Brazil (Order No. 1 of the National Occupational Safety and Health Department, *Diario oficial*, 24 January 1969, No. 17, p. 880); Portugal (Legislative Decree No. 49,408, 4 November 1969, Section 120, 2); Mexico (Federal Labour Act, 2 December 1969, *LS* 1969—Mex. 1); Cuba; Federal Republic of Germany; Yugoslavia; and Sweden. Special allowances are granted to single women and unmarried mothers to meet the cost of child-minding (Sweden). Housing loans are granted to single working women with children (Federal Republic of Germany). In Portugal, the legislation referred to requires employers to set up nurseries or similar institutions, or to help in their provision. In Turkey, employers with at least 100 women workers are expected to provide such services (Decree No. 6/11,648, to make regulations for the conditions of employment of expectant and nursing mothers, and for nursing rooms and crèches—4 April 1969, *LS* 1969—Tur. 1). In Japan, there is a special system for financing the construction of nurseries by undertakings (Source: OECD C (70) 23 Japan—March 1967–March 1969).

[5] See the remarks on education and training, paragraph 56.

must be borne by society, although the employers' and workers' organisations can certainly do much to help. [1]

Public Contracts and Positive Action.

67. The Convention emphasises very rightly what can be done by governments with regard to employment under their direct control. But they can do more than this, for the Recommendation urges Members to promote the principle of non-discrimination elsewhere, for example, by making the award of contracts conditional on observance of this principle. [2] Private firms working under public contract often employ a substantial proportion of the total labour force. [3] The Committee has been able to consider the progress made with an experiment in one country, notes that something similar is being done in part of a federal State, and observes the interest aroused in yet another country. In the first country, a non-discrimination clause must appear in every contract [4], and private employers are required to take "positive action" to make good the effects of previous discrimination. This "positive action" imposes three major obligations on contractors: they must analyse the employment of minorities in jobs of all kinds, lay down targets and a timetable for the action to be taken, and submit returns and reports on the progress being made. The employer must inform the trade union of what he has undertaken to do with a view to ensuring equal opportunity. [5] In another country, this experiment has been closely followed. The procedure is considered to be effective and preparations have been made to take similar action. [6] Finally, the Committee has taken note of a policy recently adopted by one province in a federal State. [7]

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[1] See Note 3 on the previous page, and Chapter VI.

[2] See Recommendation No. 111, paragraph 3 *(b)*.

[3] In the United States, for example, something like one-third of the country's total manpower is employed by firms working under government contracts. (Source: *Report of the US Commission on Civil Rights*, 1970, op. cit., p. 133.) By way of comparison, it may be instructive to note that the Federal Government, the biggest employer in the country, employs some 4 per cent of the active population (same source, p. 58).

[4] United States: Executive Order No. 11246 of 24 September 1965 (the non-discrimination clause is not required in contracts involving sums of less than 10,000 dollars).

[5] The Secretary of Labor of the United States has to supervise and co-ordinate the activities of contracting agencies. He can issue regulations governing the application of the Executive Order, consider complaints, check the action taken, hold hearings and impose penalties (cancellation of contracts, exclusion of firms from tendering in future, public identification of contractors). An Office of Federal Contract Compliance has been set up within the Department of Labor to administer the Order. The Philadelphia Plan illustrates the kind of action taken. When building schemes involve an outlay of more than 500,000 dollars, the employers must submit plans setting specific objectives for the employment of minorities. That this plan is legal has been formally stated by the Attorney General in answer to an allegation that it gave preference to one particular ethnic group, thereby running counter to the 1964 Civil Rights Act. A similar plan for Washington, DC, took effect in June 1970. Moreover, during the 1969 fiscal year, the Office of Federal Contract Compliance entered into agreements with five big textile firms for the drawing up of programmes of positive action. Progress is to be the subject of quarterly reports.

[6] United Kingdom. The Race Relations Board has suggested that in all contracts between the Government and private firms there be a no-discrimination clause (see the *Report of the Race Relations Board, 1968–69*, p. 22). The Government has decided to alter the general conditions governing public contracts. The new conditions require that (i) contractors refrain from forms of discrimination which are illegal under the Race Relations Act of 1968, and (ii) take all reasonable action to ensure that their employees and sub-contractors observe these provisions.

[7] The Government of Saskatchewan (Canada) will henceforward require contractors to recruit a percentage of indigenous labour in government road-building and related programmes.

Promoting Economic Activities by Disadvantaged Groups.

68. With regard to employment of other kinds, relatively little information has been brought to the Committee's notice. In order to promote rural employment, certain countries have launched programmes for land distribution, land settlement and assistance to agriculture for the benefit of disadvantaged groups. [1] To start development in tribal areas one country has organised "pilot sectors"; for their benefit it finances programmes of economic development, infrastructure schemes and social services. [2]

69. In one country with indigenous peoples living on reservations, the government has recently changed its policy. Whereas before, attempts had been made to train workers for employment outside, the government has decided that jobs should be created and local training facilities provided within the reservations themselves to counter the effects of economic stagnation. Firms are encouraged to open plants in the reservations or their immediate vicinity, and the Indians are helped to go into small business on their own account. [3] Further examples can be given of assistance in the establishment or expansion of businesses for the benefit of indigenous or aboriginal peoples. [4]

70. Lastly, in so far as inequality of opportunity is due to the geographical distribution of population or industry, the programmes adopted by certain countries to promote more balanced economic growth should be mentioned. [5]

71. These few examples, showing how action has been taken to promote the employment of minorities in rural and industrial occupations, have led the Committee

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[1] India (for the scheduled castes and tribes); Viet-Nam (for the mountain peoples).

[2] India. Information provided as part of the Government's report on the Indigenous and Tribal Populations Convention, 1957 (No. 107), ratified by India.

[3] United States. This change of policy occurred in 1968. The results seem positive: there were 4 firms in 1960 and 110 in 1968, employing more than 4,000 Indians, while unemployment on the reservations sank from 49 per cent in 1962 to 40 per cent in 1968. (*Manpower Report of the President*, March 1970, pp. 103–106.)

[4] In Australia, the Aboriginal Enterprises (Assistance) Act, 1968, has laid the foundation for a policy of assistance in the development of aboriginal businesses. A Commonwealth Capital Fund for Aboriginal Enterprises has been created to finance aboriginal enterprises likely to pay their way (through loans, security for bank loans, the holding of shares, etc.). In this way, the Government hopes to be able to promote the creation of really productive and remunerative jobs and thus make its contribution towards greater equality between the aboriginals and other citizens. In the Philippines, the Government has launched a scheme to set up pilot concerns in agriculture and industry for the benefit of the national cultural minorities (see Republic Act, No. 1888, section 4 *(a)*). In Canada, provision has been made for a programme of financial aid (subsidies, loans and guarantees) to indigenous inhabitants wishing to go into business.

[5] For instance, the programmes in the USSR for the industrialisation of outlying areas have made for geographically more even growth, while promoting equality of opportunity as regards education and training. In Rumania and Niger account is taken, in the allocation of resources under the plan, of the priority needs of backward or under-equipped areas. In Japan, an Integration Project Special Measures Law (No. 60) dated 10 July 1969, is designed to facilitate the economic integration of areas where, for historical or social reasons, there are obstacles to development; this is to be done by improvement of the environment, by promotion of social welfare, industrial development, and social security, by better education, by reinforcement of civil rights, etc. Action has recently been taken with regard to vocational guidance and training, placing in employment, and the encouragement of a more enlightened attitude among employers. In Yugoslavia, the reduction of disparities in levels of income and development as between different regions is one of the main objectives of the 1971–75 Economic Plan. It is expected to allocate additional resources, representing about 3 per cent of national product, for the development of backward regions during the five-year period. See OECD—Economic Surveys, Yugoslavia, November 1970, pp. 40-41 (this information relates to the draft 1971–75 Plan approved by the Federal Executive Council at the beginning of 1970).

to suggest that, in its view, action on a much wider scale, and of a much more comprehensive kind, is frequently called for, not merely to promote equality of opportunity, but to ensure that the demands of equality are compatible with those of economic development and growth. For example, it is probably desirable, in the cause of civil rights and of economic efficiency alike, that greater efforts should be made in the developing countries to promote the employment of members of disadvantaged groups, or those subjected to discrimination, in the productive key-sectors of the economy in which there are severe labour shortages, rather than to rely too much on the public sector, where the labour force is sometimes unduly large and productivity often low. An over-all strategy will have to be framed, worked out and applied. Apart from the manpower and employment policies considered in this chapter, it will have to be based primarily on minimum and fair wage policies, and redistributive tax systems. Of course, this action will have to form part of a national plan [1] and be based on very full statistical data. This last consideration cannot be overstressed, for no realistic planning is possible unless the planners are fully acquainted with the demographic, social and economic characteristics of the populations they are dealing with. [2]

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[1] A beginning has been made in some countries. See the Uganda Second Five-Year Plan, 1966–71, p. 13, and the Indian Third Five-Year Plan, pp. 10–13, and Fourth Five-Year Plan, 1969–74, p. 16.

[2] Hence the value of obtaining separate data concerning special groups in the course of general censuses, as was emphasised particularly in the Report of the Seminar on Equality of Opportunity in Employment organised by the ILO in Manila in December 1969 (see: *Equality in Employment in Asia : Problems and Policies*, op. cit., ILO, Geneva 1970, p. 21, point 3). This method is used, for example, with varying degrees of accuracy, in the United States, India and Malaysia. A sample survey, being more flexible and less costly, can usefully be resorted to at times (see, for instance, that done in Malaysia: *Malaysia Socio-Economic Sample Survey of Households, 1967–68*, Kuala Lumpur, April 1970). In the United Kingdom, the Race Relations Board in its reports draws attention to the lack of reliable statistics, emphasising that in this field, where reactions, opinions and judgments are characterised more by passion than by objectivity, such data are more than usually important. (Report for *1968–69*, p. 22.)

CHAPTER V

INFORMING AND EDUCATING THE PUBLIC

72. The issue of informing and educating the public raises four fundamental questions. Why inform? Who should be informed and how? What are the effects of measures taken in this field? During the preparatory work on the Convention, a large number of countries indicated the importance they attached to educational activities [1] and, according to the terms of the Convention, each Member which has undertaken to declare and pursue a national policy of non-discrimination must "promote such educational programmes as may be calculated to secure the acceptance and observance of the policy" (Article 3 *(b)*). These choices of approach are largely based on: (i) a study of the causes of discrimination and inequality; several factors constitute the "vicious circle" of discrimination, including psychological factors; (ii) the belief that the law or economic and social policies can change behaviour but not mental attitudes. The fight against prejudice of all kinds, against misconceptions and private opinions, calls for special action of a psychological nature, designed to foster the idea of equality in people's minds. [2] The two other questions (who and how to inform) are answered to some extent by the countries. The Committee nevertheless regrets the brevity of many reports on these points and their frequent tendency not to deal with substantive problems. This will be reverted to in the concluding paragraph in connection with the last question, that of effectiveness, after considering below the information with which the Committee has been provided.

73. In reporting on their efforts to inform and educate the public, many countries refer to the use of mass communication media: the press, radio, television, films and books. The comparative importance attached to each of these media obviously depends on how well the country is equipped and on the extent to which direct control is exercised by the government, just as account must be taken of the rate and degree of illiteracy of the population concerned. Information provided by the countries on this aspect is not generally very specific. It may be deduced that, generally speaking

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[1] See International Labour Conference, 40th Session, Geneva, 1957, Report VII (2) pp. 81-83. See in particular the replies to the questionnaire by Brazil, Czechoslovakia, Ecuador, France, the Federal Republic of Germany, Guatemala, Haiti, Iran, Italy and the United States.

[2] In countries where there is legislative protection against discrimination, the word information (or education) seems to be understood in both a strict and a broad sense, expressing the dual nature of the functions. In the strict sense it involves informing all those directly concerned of their rights (and obligations) under the law. In the broader sense it involves moulding public opinion so that it is in favour of accepting and applying the notion of equality of opportunity. As examination of the reports reveals, it is often difficult to distinguish between the two functions.

the usual audiovisual means are used, or can be used, for this purpose. [1] In some cases programmes are devoted to labour law [2], and to the social legislation in force. [3] In others more specific questions are dealt with: the spirit and terms of international standards on discrimination and human rights [4], national anti-discriminatory laws and regulations [5], and the meaning and implication of the principle of equality. [6]

74. The Committee has examined with considerable interest the situation of a huge developing country which may be taken as an example as regards both the problems raised and the methods adopted. The two categories of activities to which reference has already been made [7] can be distinguished: those designed to provide workers with information on the laws against discrimination and on their rights under these laws [8], and those whose purpose is to educate public opinion as to the irrational nature of prejudice. The characteristics of the latter type of activity are interesting to note: emphasis has been laid on positive measures taken to eliminate discrimination (based, in this case, on social origin), on the co-ordination of efforts and responsibility between official and non-official bodies, and on the particular needs of certain regions. [9]

75. Generally speaking, the government services responsible for national education and instruction in civics have the main responsibility for promoting the idea of equality and fostering a spirit of non-discrimination. In many cases governments state that they discharge these responsibilities by incorporating education in civics and notions of racial and sexual equality, etc. in the curricula for the various levels of schooling. [10] More specific activities are undertaken in some countries: whether in combating a particular type of discrimination [11] or incorporating notions of human

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[1] For example: Austria, Bulgaria, Colombia, Ethiopia, Nigeria and Uganda. Non-metropolitan territories: United Kingdom (Bermuda). The Government of Yugoslavia has indicated that there is an extensive network of public information media in the languages of the various minorities and nationalities.

[2] Central African Republic.

[3] Morocco.

[4] Iran (radio and television programmes commemorating the anniversary of the founding of the United Nations Organisation and the Universal Declaration of Human Rights). Morocco (a series of broadcasts is planned on the instruments concerning human rights adopted by the ILO. The role of the ILO and certain fundamental principles in respect of non-discrimination have moreover been referred to in the broadcasts, mentioned previously, on social legislation).

[5] Canada (a film on anti-discriminatory legislation, highlighting the value of practical action).

[6] USSR (radio and television programmes, books, monographs and other publications on the rights of citizens as regards employment and in particular on the application of the principle of equality in a socialist society).

[7] See footnote 2 under paragraph 72.

[8] India. The Ministry of Home Affairs has had translations of the Untouchability (Offences) Act distributed in the various languages used (Hindi, English and regional). Among other factors, the vast area of the country, the inadequacy of administrative machinery and the illiteracy of the masses impede the dissemination of information. The Committee on Untouchability found, more than ten years after the promulgation of the Act, that there was still considerable ignorance, not only among the population as a whole but also among officials. See the *Report of the Committee on Untouchability*, op. cit., Part I, Chapter VI, pp. 42–53.

[9] Campaign carried out by the Indian Ministry of Information and Broadcasting by means of radio programmes, press notes and articles, films, pamphlets and posters. See the *Report of the Committee on Untouchability*, op. cit., Part I, Chapter V, pp. 38–39 and Annex V, pp. 68–69.

[10] For example: Byelorussia, Costa Rica, Federal Republic of Germany, Hungary, India, Ivory Coast, Mexico, Syrian Arab Republic, USSR.

[11] Federal Republic of Germany: programmes of education in civics designed to combat anti-semitism.

rights with regard to employment in school curricula. [1] In view of the very general nature of the information with which it has been provided it is very difficult for the Committee to have an idea of the practical application of the programmes. It is, however, possible to make the following comments which probably apply in the majority of cases but which have a merely indicative value. It is a well-known fact that in many schools the importance attached to civics is secondary, if not minor. Perhaps a campaign should be launched to educate both teachers and public opinion in the importance of instruction in civil rights and fundamental values and principles. Moreover, special attention should be paid to the training of teachers responsible for this type of education. Finally, it appears essential for ideas in this respect to be inculcated as early as possible, and not later than primary school level. This is because mental attitudes and prejudices are formed very early, and because, in the developing countries, pupils leave school in large numbers often well before the beginning of secondary education.

76. A considerable part of the educational role of governments can be played by the labour and employment services. Some countries state that these functions are carried out as part of the general information provided by their usual agencies or methods. [2] In another country there is a separate branch within the Ministry of Labour responsible for the enforcement of legislation on fair employment practices and for drawing up a national education programme. [3] The information effort may relate to more specific questions. In this connection mention may be made of the programmes of certain employment and labour services to combat prejudice in respect of the segregation of occupations according to sex [4], age [5], or ethnic origin. [6] In these programmes, as in many others, information is directed both towards employers and workers. [7] The need has become apparent for this information to be directed also towards the civil servants and officials of the employment services. [8] Moreover the Committee notes with interest that in some countries governments are developing research activities. [9]

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[1] Canada: This is carried out by the Federal Government with (and thanks to) the collaboration of a large number of civil rights bodies and of provincial educational departments. Moreover, some provinces of this country (Alberta, Nova Scotia and Ontario) mention the study and revision that is being made of school text books that might deal inaccurately or in an unsuitable manner with ethnic minorities.

[2] Colombia, El Salvador, Indonesia.

[3] Canada: Fair Employment Practices Branch, set up in 1967 with a full-time staff.

[4] For example: Belgium, Federal Republic of Germany, Sweden.

[5] United States: The Department of Labor has published a practical guide to inform employers and employees on the interpretation to be given to the Age Discrimination in Employment Act of 1967.

[6] United Kingdom: Race relations employment advisers have been appointed in each of the regional offices of the Department of Employment and Productivity to advise, inform and assist employers and workers. (Source: Department of Employment and Productivity—*Employment and Productivity Gazette*, November 1970, p. 969.)

[7] In the latter case it is relevant to recall the part played by the vocational guidance services, to which the Committee will not revert at this point since they were studied in the preceding chapter.

[8] For example in Canada and in the United States information and training sessions have been organised for the staff of the Employment Service on the laws and regulations on equality of opportunity.

[9] In the United Kingdom the Department of Employment and Productivity is sponsoring research into the cultural, religious, racial and linguistic factors of unequal opportunity for coloured immigrants. In the United States the Age Discrimination in Employment Act, 1967, confers wide powers on the Secretary of Labor to undertake studies and promote research into the working of

77. It may further be pointed out that public opinion can be informed as to the nature and extent of problems affecting certain groups and may also be associated in the formulation, application and assessment of equal opportunity policies through periodic official reports submitted to parliamentary bodies for consideration. [1]

78. While the Convention leaves a free choice of methods whereby countries should promote educational programmes, the Recommendation goes into further detail. It suggests that one of the functions of the appropriate agencies, advisory committees and other interested bodies whose institution it advocates, should be "to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination" (Paragraph 4 *(a)*). As has been seen, such bodies have been set up in some of the countries that have adopted special legislation on civil rights and race relations. Considerable powers have been conferred on them with regard to information. To be more precise, there are two major categories of activities, according to their purpose. The first are of a promotional and educational nature; their aim is to promote racial harmony and the acceptance of affirmative action programmes to educate and inform employers, trade unions and employment services. [2] The second category of activities consists of research. [3] The Committee once again lays stress on the role and applications of research. That undertaken by

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this discrimination factor (section 3 *(a)* and *(b)* of the Act). The Committee recalls in this respect that several governments replied in the affirmative, during the preparatory work on the Convention, to the question concerning the desirability of research to support the educational campaign. See, in particular, the reply of the United States: "Research is an important tool in constructing a sound foundation for education and policy promotion". (International Labour Conference, 40th Session, Geneva, 1957, Report VII (2), p. 83.)

[1] These may be reports by governments or by special bodies concerning the situation and policy in respect of underprivileged groups. [India, Report of the Commissioner for Scheduled Castes and Scheduled Tribes, drawn up and submitted to Parliament under article 338 of the Constitution. For an example of questions raised in Parliament, see: *Report of the Commissioner for Scheduled Castes and Scheduled Tribes for the Year 1965-66*, Part IV, Chapter 19, p. 159. United Kingdom, Report of the Race Relations Board, drawn up and submitted to Parliament under section 14 (7) of the Race Relations Act, 1968. United States, Report of the Secretary of State, submitted to Congress under section 13 of the Age Discrimination in Employment Act of 15 December 1967.] Such reports may also consist of special information on certain groups given regularly in an over-all manpower assessment report, as is the case in the United States (annual Manpower Report of the President).

[2] See: United States, Civil Rights Act of 1964, section 705 (i): A special division has been set up within the Equal Employment Opportunity Commission to carry out such activities. Apart from pamphlets, films and conferences, the means used include public and private hearings. (See: *Report of the United States Commission on Civil Rights, 1970*, op. cit., pp. 284–285, and 360–366.)

In the United Kingdom, under the Race Relations Act, 1968 (section 25) these functions have largely been attributed to an independent body, the Community Relations Commission. This Commission has set up an Advisory Committee on Employment to promote racial harmony in the field of employment. A network of local community relations councils has also been set up (see Chapter VI). It should however be emphasised that the Race Relations Board also discharges functions with regard to information, to which it attaches as much importance as to the examination and settlement of complaints. It is concerned with informing the three major categories of persons concerned: employers, workers and the general public. It carries out these programmes by holding conferences, producing guidance notes, such as those concerning the interpretation of the "racial balance" clause, and by the use of audio-visual methods and advertising. (See *Report of the Race Relations Board for 1968-69*, pp. 16–19.) In Canada, the provincial Human Rights Commissions also carry out information and education programmes for the various persons concerned. In the Federation of Nigeria, one of the duties of the Advisory Committees on Employment is to educate employers on the evils of discriminatory practices in employment.

[3] In the United States a special division of the Equal Employment Opportunity Commission is responsible for carrying out research and publishing the results (see: *Report of the US Commission on Civil Rights*, op. cit., pp. 286–287). In the United Kingdom, similar functions are discharged by the Race Relations Board (see: *Report of the Race Relations Board, 1968-69*, p. 19).

the bodies in question should make it possible to compile and process a series of data from which objective information can be derived and which will at the same time be useful in planning manpower and employment promotion policies. Moreover such research must be operational so that the activities of these bodies can be assessed systematically and periodically.

79. It is of course also necessary to reserve an appropriate place for the use and operation of such natural channels of communication as the trade unions and various other voluntary bodies. Their contribution will be considered in the following chapter on co-operation with occupational and other organisations in applying the policy prescribed by the Convention.

80. In conclusion, the Committee expresses the hope that the next government reports will not be merely descriptive but will analyse situations more thoroughly, particularly as regards two essential problems: the content of information and its effects. In the meanwhile a number of comments can be made. First of all it may appear desirable that campaigns to educate public opinion should not be based solely on moral arguments, which are generally the first to be invoked. It would be worth while laying emphasis on other considerations, such as the economic factor; when thorough studies have been made of the costs of discrimination, at both macro-economic and micro-economic levels [1], people will probably be easier to pursuade if they also realise where their interests lie. Furthermore, it is not enough to eliminate negative attitudes but appears desirable to try, as has been done in certain countries, to encourage positive attitudes by doing more to promote the idea of equal opportunity from its theoretical and practical aspects. This leaves the problem of assessing educational programmes. It would be useful to have data whereby the impact of educational activities, in relation to activities as a whole, could be assessed. At first sight it seems that this must be neither under- nor over-estimated. It must be remembered that since these activities involve no compulsion, the persons for whom they are designed may resist them.

[1] In the United States for example, "it is estimated that society loses up to $20 billion per year of potential production as a result of employment discrimination and poorer educational opportunities for non-whites" (*Economic Report of the President—1965*, p. 167).

CHAPTER VI

CO-OPERATION WITH EMPLOYERS' AND WORKERS' ORGANISATIONS AND OTHER NON-GOVERNMENTAL BODIES

81. In both content and intent, the 1958 instruments indicate clearly the extent of the role to be played by employers' and workers' organisations in the attainment of the objective of equality—or equalisation—of opportunity. It is worth recalling that in the enumeration given in the Convention of the various means of implementing the national policy pride of place is given to seeking the co-operation of employers' and workers' organisations (Article 3 *(a)*). Indeed, a policy can only be deemed to be truly "national" in so far as it is also accepted and pursued in sectors of employment other than those under government control. If this is to be achieved, in accordance with the precepts set forth in the Recommendation, it will be important for employers and workers to respect the principles of non-discrimination and equality of treatment both in their actions and in structuring their organisations. While this implies their assumption of a series of moral obligations not to do certain things, it also, and above all, calls for positive action on their part. [1]

82. In concrete terms, along what lines is the co-operation of employers' and workers' organisations (and of other appropriate bodies) to be organised? How can such co-operation facilitate the acceptance and pursuance of national policies for the promotion of equality of opportunity? Essentially in four ways. First of all, in the framing and implementation of that form of law, binding upon the parties to it, known as a collective agreement. Next one can single out, parallel with the government action discussed in the preceding chapters, the role of these organisations in the enforcement of anti-discrimination legislation, in the information and education of the public, and in providing employment opportunities for disadvantaged groups.

Collective Agreements

83. The 1958 instruments in no way imply state intervention in areas of labour-management relations which are by tradition left to the discretion of the parties. All they do is to call upon Members to endeavour to enlist the co-operation of employers' and workers' organisations. The latter will be able to co-operate effectively if, as the Recommendation urges them to (Paragraph 2 *(e)*), they respect the principle of equality of opportunity in employment and occupation in the field of industrial relations in general, and in regard to collective agreements in particular. Thus collective agreements afford one means of implementing the national policy.

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[1] See Paragraphs 2 *(d)*, *(e)* and *(f)*, and 9 of the Recommendation.

84. As well as ensuring, as advocated by the Recommendation (Paragraph 2 *(e)*), that collective agreements contain no provision of a discriminatory character, it is undoubtedly desirable that the parties should in addition embody in them clauses which actually prohibit discrimination. A number of examples of such clauses are to be found. In some countries the employers undertake thereby not to take into account political opinions, creed or social or racial origin when they engage, employ, promote or dismiss workers. [1] In other countries collective agreements contain provisions on equality of treatment as between the sexes [2], or on the various forms of discrimination within the meaning of the Convention. [3] Similar provision is made in countries where industrial relations are governed mainly by arbitration awards; it is to be noted that it is becoming more and more frequent for the latter to guarantee equality of remuneration without distinction on the basis of sex, or of ethnic origin. [4]

85. Furthermore, protection against discriminatory clauses in collective agreements exists to varying degrees in different countries. The form it takes may depend upon the relationship between the law and collective agreements, or upon the powers vested in the administrative authority in regard to their extension. As a rule collective agreements are not allowed to contain provisions less favourable than those embodied in the legislation concerning employment and occupation. In some cases the parties to a collective agreement may make exceptions to laws which are not mandatory, but they must in all circumstances observe the standards contained in ratified international Conventions and provisions of laws or regulations which are a matter of public policy; the principle of equal pay for equal work, for instance, is deemed to be such. [5] The procedure for extending collective agreements to the whole of the branch of activity concerned also restricts the possibilities for making abusive use of the contractual freedom allowed in this respect, or at any rate allows the administrative authority to make its own evaluation in this respect. In some countries it is, in fact, compulsory for collective agreements to contain clauses on certain matters, among which mention may be made of freedom to exercise the right to organise and the procedure for applying the principle of equal pay for equal work to women and young persons. [6] The authority competent to decide whether it is desirable to extend an agreement may exclude unlawful clauses or refuse to allow the extension of agreements containing discriminatory provisions. [7]

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[1] For example, Chad, Guinea, Ivory Coast (article 7 of the collective agreement of 1961 for mining and mining production), Mali, Upper Volta.

[2] Philippines.

[3] Guyana.

[4] In Australia, the concept of equal pay for equal work or for work of the same nature and of equal value was accepted in June 1969 by the Commonwealth Conciliation and Arbitration Commission; the main two sectors to which it applies are the civil service and the metal trades. Provision for the introduction of equal pay has been made in several states (e.g. section 12 (1) of the Queensland Industrial Conciliation and Arbitration Act; section 43 of the Western Australia Industrial Arbitration Act). Also to be noted is the government backing given to claims referred to the Conciliation and Arbitration Commission in 1965 and 1966, thanks to which it was possible to achieve equal pay as between aborigines and other Australians in the stockbreeding sector. In New Zealand, mention may be made, as regards equality of remuneration as between men and women, of the New Zealand Butchers Award 1968 and the New Zealand Taxi Drivers Award 1969.

[5] France and various French-speaking countries in Africa.

[6] See, for example, Ivory Coast, Labour Code 1964 (*LS* 1964—I.C. 1), section 70; Rwanda, Labour Code, 1967 (*LS* 1967—Rwa. 1), section 74.

[7] In Switzerland, for example, the federal authorities have refused to allow the extension of a certain number of collective agreements deviating from the principle of equal pay for equal work. In Belgium, the Government states that the Crown would not confer the force of law upon collective

Co-operation in the Enforcement of Legislation

86. In countries which have enacted legislation affording protection against discrimination, the employers' and workers' organisations co-operate in the enforcement of the law in various ways. In one case, the industrial machinery for conciliation or collective bargaining is vested with semi-judicial powers under the law and plays a leading role in the handling of grievances. [1] Furthermore, being represented on the special bodies set up under the legislation, the employers' and workers' organisations (as well as a number of voluntary organisations) are in a position to offer advice to the public authorities and to further a policy of equality of opportunity in one particular field. [2]

87. In another case, the law provides for two-way co-operation between the employers and the trade unions, on the one hand, and the administrative authority responsible for enforcing the law, on the other. [3] Moreover, the action undertaken by the main trade union confederation in this same country is also worthy of note. This organisation has set up its own department to handle questions relating to civil rights, which works in liaison with the competent public and administrative authorities (thus co-operating in the enforcement of the law). In addition, this civil rights department has established procedures for handling complaints involving civil rights. [4] The use of such arrangements would appear to be recommendable, since it would obviously seem desirable for injured parties to be able to have recourse to grievance machinery organised within their own branch of activity, thus enabling solidarity to come into play.

88. Lastly, within this context, mention may also be made of co-operation by employers' and workers' organisations in the framing and enforcement of labour legislation. This may be achieved through the representation of employers and workers on various advisory bodies on labour matters, whose functions are to make studies and give advice to their government. [5] It may also come about where trade unions are assigned the responsibility of supervising the application of labour legislation. [6] It is recalled in this connection that Convention No. 81, concerning labour inspection in industry and commerce, calls upon governments to make appropriate arrangements to promote collaboration between officials of the labour inspectorate and employers' and workers' organisations (Article 5 *(b)*).

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agreements which ran counter to the principles set forth in Article 119 of the Treaty of Rome (and hence to that of equality of remuneration as between male and female workers).

[1] United Kingdom (see Chapter III, paragraph 49).

[2] Idem, Community Relations Commission at the national level and local community relations councils, in the field of race relations.

[3] United States. On the one hand, it is compulsory under the law for employers and trade unions to keep records which the administrative authority may consult for the purpose of compiling data on employment (Civil Rights Act of 1964, section 709 *(c)*). On the other hand, this authority provides to employers and labour organisations (under section 705 *(g)* (3) of the same Act) with such technical assistance as they may require for the promotion of training and employment opportunities for minorities. See in this connection: *Report of the US Commission on Civil Rights 1970*, op. cit., pp. 357–360 and 367–369.

[4] See American Federation of Labor and Congress of Industrial Organizations, *Equal Rights for All the AFL-CIO Program*, Publication No. 133, revised edition of May 1970.

[5] For example: Australia, Ghana, Guinea, Iraq, Ivory Coast, Mali. Non-metropolitan territories: United Kingdom (Hong Kong).

[6] For example, Brazil (under section 631 of the Consolidation of Labour Laws, 1943, *LS* 1943—Braz. 1), Bulgaria, Czechoslovakia, USSR.

Co-operation in Information Activities

89. Little detailed information has been furnished in governments' reports as to the contribution made by employers' and workers' organisations in this field. It may be noted that in some cases they perform, or could perform, educational functions as part of their general information activities, through publications [1], through meetings and seminars [2], or through the exercise by the trade unions of supervisory and enforcement functions in respect of labour legislation. [3] Some governments have stated that the employers' and workers' organisations play a prominent role in providing education and information on the national anti-discrimination policy [4], or that the principle of non-discrimination in employment is embodied in their educational programmes [5], or else that these organisations are associated in government propaganda campaigns on particular subjects. [6] Lastly, in the aforementioned case where a union has set up its own civil rights department, one of whose main functions is providing information, there is cause to believe that co-operation can be particularly effective because a solid framework exists for it. [7]

90. Valuable help can be provided by organisations other than those of employers and workers. This is particularly true of voluntary organisations, and at the time of the preparatory work leading up to the Convention many countries joined in recognising the special role they can play. [8] In one country, for instance, where prejudices stem from the traditional caste system and are deeply rooted in the minds and habits of the people, it is interesting to note that the government subsidises voluntary organisations carrying out educational programmes. Although making numerous efforts on its own behalf in this sphere, the government in question considers that voluntary organisations are, by their nature, in a better position to exert an influence upon prejudices and attitudes. [9] Other institutions, such as universities and research institutes, probably merit closer attention.

Co-operation in the Promotion of Training and Employment Opportunities

91. One country which has not ratified the Convention has a wealth of interesting experience to offer in the field of positive action for the promotion of equality of opportunity in employment, undertaken and carried out jointly by the administration, the employers and the trade unions. Co-operation between the government and private industry has been sought after, encouraged and made effective by means of contracts negotiated between firms and the administration, giving concrete form to the employers' voluntary acceptance of the principle that affirmative action should be

[1] Sweden.

[2] Guinea.

[3] USSR. Supplying information is one of the tasks performed by the trade union labour inspection machinery and the labour protection committees.

[4] Mali (in particular through holding information meetings in undertakings).

[5] China.

[6] Tunisia (national campaign for the social advancement of women).

[7] United States. The AFL-CIO's Civil Rights Department provides information to its affiliates about the law and legal matters and about affirmative programmes of action, and organises workshop sessions to demonstrate to unions how they can bargain with employers to help end discrimination (see the AFL/CIO publication cited above, No. 133, May 1970).

[8] See International Labour Conference, 40th Session, 1957, Report VII (2), op. cit., pp. 83–85.

[9] India, see *Report of the Committee on Untouchability*, op. cit., Part I, pp. 33–39.

taken on behalf of disadvantaged groups or the victims of discriminatory practices. The general concept of the programme in question is based on the premise—supported by experience—that the system of immediate placement in jobs at regular wages provides more job motivation than results from a system of preliminary training. The main responsibility for carrying out these recruitment and training programmes lies with the employers. The Government provides technical and financial assistance. Costs are shared on the basis of a "standardised programme", i.e. individual undertakings bear as much of the cost as would be involved in their normal recruitment and training operations, the extra cost entailed in overcoming the special handicaps of minorities being offset out of public funds. It would be premature as yet to evaluate the success of these efforts. One of the main stumbling blocks seems to be the high turnover of such workers. [1]

92. In another federal State which has ratified the Convention, the Government has urged nation-wide workers' and employers' organisations to make every effort to ensure that their members observe in practice the principle of non-discrimination in employment. [2] In some of the constituent units of the country in which, as has been seen, jobs in the public sector are earmarked for disadvantaged groups, private employers have also been required to set aside a proportion of jobs for these groups or at least to ensure that they are adequately represented. [3]

93. The Committee likewise notes with interest that in some countries, the part that the trade unions can play in implementing fair employment practices is understood and recognised by governments [4] and that elsewhere the unions co-operate actively with the labour administration and the employers in positive schemes to promote vocational training and employment. [5]

94. In conclusion, the Committee would like to make two points. The first is of a practical character. Fuller and more analytical information is requested from

[1] United States. The setting up of the organisation known as "Plans for Progress" in 1961 marked the beginning of a vast campaign based on this voluntary approach. Among its most interesting achievements mention may be made of the founding by private undertakings, with government aid, of vocational guidance institutes for the purpose of providing special training for school vocational guidance counsellors and forging links with industry. The introduction in 1968 of the JOBS Program. (Job Opportunities in the Business Sector Program) was a further landmark. The programme is the outcome of the joint efforts made by the Department of Labor and the National Alliance of Businessmen, a private body with the task of enlisting, promoting and co-ordinating the co-operation of the private sector. In 1970 the programme, formerly confined to the major cities, was extended to the whole country, with the stress being laid on upgrading in employment. Sources: Government's report on the Convention and Manpower Reports of the President, 1969 (pp. 93–94) and 1970 (pp. 61–63).

[2] India.

[3] Kerala state, Pondicherry Territory.

[4] See United Kingdom, observations on the report of the Committee of Inquiry into Race Relations and Immigration. See also: Department of Employment and Productivity, *Employment and Productivity Gazette*, Feb. 1970, pp. 100–103.

[5] In Canada and the United States, positive schemes of this kind have been tried out in the building industry. The special apprenticeship programmes launched in the latter country owe most of their success to the effective recruiting methods employed and the special coaching given to candidates for examinations and tests (see *Manpower Report of the President*, 1970, pp. 98–99). Also in the United States, the central trade union organisation is taking part in schemes to promote employment by private firms (the JOBS Program), mainly through the training of employment counsellors selected from among the workers themselves, and is also assisting the special Job Corps Centers set up in 1965 to help young people to surmount the social and cultural handicaps due to their environment.

governments about the organisation, operation, results and difficulties of collaboration with the employers' and workers' organisations. It would undoubtedly be helpful as well if the measures taken by trade unions on their own initiative were better known, and in this respect the Committee appreciates the effort made by one country in particular. [1] This point leads to a second, more general comment. The problem of discrimination is extremely complex because it is multi-dimensional. As has been seen it calls for a wide range of measures and active collaboration from voluntary bodies, first and foremost among which are the employers' and workers' organisations. But if national policy is to be satisfactorily accepted and implemented, there can be no doubt that the groups concerned must themselves have a voice in the definition of this policy and in the achievement of its objectives. While it has received information on a few experiments based on the principle of self-help [2], the Committee would like to have more information about the way this participation works. It would, for example, be of interest to know more about the nature and functions of the voluntary organisations in the disadvantaged communities themselves, their links with the trade unions and the value placed by governments on their activities.

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[1] The Government of Switzerland asked the employers' and workers' organisations for details of the steps they had taken to apply the principle of equal pay and supplied the replies together with its own report.

[2] See, for example, the interesting results obtained by community organisations in the United States in the provision of vocational training such as the Opportunities Industrialization Center (OIC) established in Philadelphia in 1964, and similar centres set up elsewhere in accordance with the same principles (cf. *Manpower Report of the President*, 1967, p. 60).

CONCLUSIONS

95. In 1963, in the conclusion to the first general survey devoted to the instruments concerning the elimination of discrimination in respect of employment and occupation, the Committee noted that the 1958 Convention appeared to be in the process of becoming one of the international labour Conventions which had been the most rapidly ratified in the years following their adoption and, in due course, one of the most widely ratified. This trend has fortunately been maintained, since the number of ratifications has risen from 39 in 1963 to 75 at the date of the present report (a figure which ranks Convention No. 111 among the ten international labour Conventions ratified by more than seventy countries) and is likely to increase still further in the fairly near future with ratifications by an appreciable number of other countries. [1] The Committee hopes that a re-examination of the problems which have delayed ratification, and to which reference is made in particular in Chapter 1 of this survey, will make it possible for member States which have met with difficulties in this respect to find appropriate solutions with a view to further progress.

96. As regards the implementation of the measures provided for in the 1958 Convention and Recommendation, the Committee also emphasised in 1963 the importance of giving constant attention to the need for a continuous programme of action, such as to lead to steady progress, in the manifold fields in which equality of opportunity and treatment in employment or occupation is capable of further development. Even though more information has been available to the Committee this year as to the measures taken to this end—which is certainly evidence of an increased awareness of what needs to be done in this field in many countries, and is undoubtedly largely attributable to the influence of action based on standards and other efforts at the international level—the comment recalled above is none the less just as pertinent now as it was then. The need for continuous action is moreover fully provided for in both the Convention and the Recommendation, under the terms of which the elimination of discrimination in respect of employment and occupation presupposes the constant pursuance of "a national policy designed to promote equality of opportunity and treatment" in these fields.

97. In this "International Year for Action to Combat Racism and Racial Discrimination" [2], it cannot be recalled too often that the achievement of equality of opportunity and treatment for human beings of all races, cultures, religions and origins is not only essential in the interests of justice but is also an indispensable prerequisite for peace, both internal and international, as is unhappily still shown by all too many examples of tension and strife.

98. It is certainly important to observe in this connection that it is today a universally recognised necessity to repudiate any official policy which provides for

[1] See Introduction, paragraph 4.

[2] See Introduction, paragraph 2.

inequality of status based on race or any other distinction between population groups. Special consideration is being given to questions concerning a system such as *apartheid* within the framework of special action taken by the international community, as recalled in the Introduction [1], and it falls within the terms of reference of the Committee only in so far as it relates to the application of international labour standards, but the Committee wishes to stress once again the glaring inconsistency between this system and the aspirations of the world community as expressed in fundamental international instruments.

99. However, the rejection of racial or other discrimination as part of official policy does not suffice to ensure that it is eliminated in practice. The measures required to this end may obviously vary according to national conditions, but the information available nevertheless prompts the Committee to stress how necessary it is that national policies in this field should continue to be the subject of constant attention in the light of the various problems which are still far from being resolved.

100. One problem very commonly encountered—though its effects may be more marked in some countries than in others—involves discriminatory practices prevalent within a society, which restrict the opportunities in the fields of employment and occupation (and often in other fields as well) of the members of certain population groups (whether the distinction is made on the basis of race, ethnic or national origin, religion or some other ground). The setting up of machinery for receiving complaints relating to such practices and providing remedies, on the one hand, and the taking of active steps for the persuasion and education of the public, on the other, are weapons the need for which is coming to be more and more widely recognised. The Committee has noted with interest that, in countries where specific measures to this end had already been reported in 1963, supplementary measures have been taken since then, while other countries which up to that time had not considered it appropriate to take such measures have recently done so. In many countries the view is still held that certain existing measures of a more general character give satisfactory results, but it would appear desirable to re-examine such measures, more and more thoroughly, in order to ascertain whether this is really the case.

101. Furthermore, it would appear that still not enough is done to orient public opinion along the right lines, even in countries where specific measures to this end have been taken. While complaints machinery is an essential weapon for combating certain discriminatory practices, it should not be forgotten that it is not always easy to have recourse to such machinery, that it cannot always be counted upon to bring cases of discrimination to light, and that in any event it is important to launch a more general attack upon the prejudices which give rise to such practices so as to prevent their occurrence. The Committee believes that this is a matter to which increasing attention should be given, not only in countries which have already been directly faced with this problem but in many others (largely on account of the increase in internal and international migration, which is likely to bring more and more workers into contact with discrimination on account of their racial, ethnic or cultural particularities if public opinion in the host communities is not properly prepared for this situation).

102. Lastly, it may be said that, generally speaking, the elimination of discrimination between ethnic groups signifies not only the combating of the most clearly manifest negative attitudes but also the creation of positive attitudes and conditions propitious to the training, employment and economic and social advancement of certain groups. Particularly significant in this respect is the experience of certain

[1] See Introduction, paragraph 7.

countries where the emphasis was laid in the first place on protection against discriminatory acts through legislation, but where considerable attention is now being given to the practical and economic measures called for to meet the needs of certain groups. If such measures are not taken, resistance—conscious or subconscious—to changes in the established social and economic structures will inevitably perpetuate discrimination in practice even though ostensibly it is no longer indulged in by individuals. In the Committee's view, more systematic action in this direction, which also presupposes an all-out attempt to enlist the support of public opinion, should be given increasing prominence in national policies, whether with a view to remedying the position of certain racial, ethnic or cultural groups or "castes", or for the more general purpose of remedying discrimination based on social grounds. It is indeed upon measures of this kind that efforts should seemingly be concentrated in circumstances (often deriving from a colonial status in the distant or recent past or even in certain respects in the present) in which, even when formal discriminatory practices are generally a thing of the past, substantial disparities in economic and social status are likely—if nothing is done to put matters right—to perpetuate what in fact amounts to discrimination between the bulk of the population and a privileged minority.

103. Discrimination based on sex is another form of discrimination whose elimination also calls for constant attention and the development of a series of positive measures in various fields. One view which is often implicit in governments' reports is that such discrimination as may exist in this respect may be ascribed to sociological factors which must be left to evolve. Nevertheless, the efforts that have been made in some countries show that it is possible in the end to secure acceptance of the fact that many of the distinctions between the sexes which it has become customary to accept as "normal" are really discriminatory; and there is a risk that sociological practices and circumstances may not evolve in the desired direction unless specific efforts are made with this end in view.

104. Even today the law and official practice themselves often allow for distinctions on the basis of sex the objective justification for which is not necessarily unquestionable. It should be stressed in this respect that such distinctions should be constantly reviewed in the light of changing circumstances to see whether they are really justified from the standpoint of the qualifications required by the nature of certain jobs or of the need for protection within the meaning of the 1958 instruments. It is more and more widely acknowledged that it is not fully legitimate to lay down that all women are physically unfitted for certain tasks, when, while this may be the case for most women, it is not necessarily true for all. Other requirements are social or psychological in character, and stem from the fact that contemporary living conditions and prevailing ideas would make it difficult for certain jobs to be performed by women. While such considerations may be understandable in certain circumstances and at a given point in time, they should be regularly re-examined extremely carefully, not only to take account of changing trends but in order to encourage such trends.

105. As regards the elimination of discrimination based on sex which derives—irrespective of any legislative provision on the matter—from opinions widely held in practice, governments' reports tend as a rule to stress the fact that labour legislation guarantees equality of opportunity and treatment to workers of both sexes. It should be pointed out, however, that in practice the extent to which training and employment opportunities, and the possibility of promotion in employment, are open to women appears in fact to remain largely outside the scope of such guarantees. Even in regard to general conditions of work, the principle of equal pay for equal work is not easy to put into practice where, for instance, different rates are paid because in practice

certain tasks are performed mainly by men or by women, whereas if an objective evaluation of these tasks were undertaken it would be seen that they were of equal value. Broadly speaking, there are many fields of action where there is room for the development of national policies associating governments, employers and workers in the effort to create conditions which will enable every woman who so desires to have access to education and vocational training, and subsequently to the employment of her choice, and to enjoy full equality of treatment in that employment. Whatever stage of economic and social development a country has reached, two fundamental considerations should be borne in mind in this connection: first of all, the primary objective is to remove the obstacles which stand in the way of freedom and equality in this field, and not to impose by force social changes affecting the role of women in society. Secondly, in view of their role in the family and in the community, the raising of the status of women—which implies their right to freedom and equality even if they do not all choose to avail themselves of it—is today looked upon as an essential prerequisite for economic and social development itself.

106. The need for practical action, both economic and social, which arises in regard to the elimination of discrimination based on ethnic or social origin and of discrimination based on sex, is not felt in the same way when it comes to the elimination of discrimination based on intolerance in respect of political or religious opinion. What is essential in this field is the provision of legal guarantees and the training of people to respect the convictions of others so as to ensure that their opportunities and rights in respect of employment are not impaired because of their convictions. However, a major difficulty in this respect is that the elimination of discrimination of this sort must in reality go hand in hand with the protection of freedom of opinion itself and of its indispensable corollary, freedom of expression. In the absence of these freedoms, any endeavour to eliminate political discrimination in respect of employment is likely to be limited in its effects. Sometimes the legislation contains such broad definition of activities contrary to public order and provides for penalties in respect of such activities which have such serious consequences in the field of employment that the legislation itself must be considered to be incompatible with the respect of human rights in the field of employment. The Committee is aware of the fact that the same problems may arise as a result of practice. All too often, in a more general sphere, measures designed to safeguard "the security of the State" are too far-reaching, and serious doubts cannot fail to exist as to whether they are really compatible with respect for the rights of individuals in regard to employment regardless of their political opinions. The Committee hopes that a determined effort will be made to eliminate all provisions and practices the effect of which is to impair the rights of individuals in the field of employment on account of their convictions.

107. The elimination of discrimination in respect of employment—whether on the basis of race, origin, convictions, sex or any other arbitrary criterion—is inseparable from the elimination of discrimination in the other fields of economic, social and cultural rights and in respect of civil and political rights. The conjugation of international and national efforts with a view to making the necessary progress in these various fields is essential. In this context, however, equality of opportunity and treatment in respect of employment and occupation is of particular practical importance since it is a person's work more than anything else which determines his position in society, and the elimination of discrimination in regard to work may itself bring about conditions which will be particularly propitious to the removal of tension and discrimination in other fields. Another important factor involves the facilities which the ILO is in a position to place at the disposal of member States in this field to help them to attain these objectives and find appropriate solutions to the problems with which they

may be faced, either through more direct contacts which might be established, for instance, in connection with the examination of the application of the Convention or through case studies made at the request of governments in order to carry out an objective evaluation of the situation in question and suggest solutions geared to the specific circumstances of each country. The Committee hopes that recourse in particular to such forms of co-operation adapted to each particular case, as a complement to the efforts being made on a wider scale by the ILO with a view to promoting equality of opportunity and treatment in respect of employment [1], will enable further progress to be made towards solving the practical problems in this field in the years to come.

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108. In assessing the results of this survey, the Committee finally wishes to re-emphasise certain positive features of the ILO's role in the age-old struggle for human dignity and equal opportunity. No aspect of this struggle is more all-pervasive than the effort to give men and women everywhere a fair chance to use their capabilities and develop their skills in pursuing their well-being and that of their families. Moral impulse and economic necessity both tend towards this goal. And in an ever-shrinking world national and international action must proceed hand in hand. What then are some of the essential lessons to emerge from this survey?

109. In the first place, it is important to see the ILO's activities in the sphere of discrimination as part of the conjugated long-range programme undertaken by the United Nations family. Attention was drawn above to certain major instruments adopted in this field by the UN General Assembly and by UNESCO. The Committee trusts that its general survey based on information available from more than 100 countries may contribute directly and indirectly to the implementation of these Covenants and Conventions; as a result the ILO's system of reporting and supervision may serve to develop and supplement similar efforts in other international organisations.

110. A second point which bears reiteration is the interdependence of standards and of practical measures in seeking equality of opportunity and treatment in employment and occupation. These two methods of action have come increasingly to reinforce each other in this, as in other spheres of ILO concern. The findings of the survey have brought to light additional examples of this close relationship and have served to illustrate the value of educational and promotional programmes. The Committee is convinced that unrelenting practical efforts by governments, employers' and workers' organisations, as well as by other public and private bodies, are essential to ultimate success in a sphere where legal action—though crucial—is subject to obvious limitations. The machinery established for this purpose in certain countries, the campaigns undertaken, the patient day-to-day efforts to overcome outdated prejudices and customs, all these are needed to expose abuses, to inform public opinion and thus to promote, in the words of Convention No. 111, "the acceptance and observance of [the] policy" of non-discrimination.

111. This leads the Committee to a third and final observation. Precisely because of the variety of ways in which a national policy of non-discrimination can be pursued, the ILO standards in this field are able to provide a stimulus and a focal point for formulating, executing and evaluating the necessary measures. By now, some twelve years after its adoption, the Discrimination (Employment and Occupation) Conven-

[1] See Introduction, paragraph 6.

tion has become one of the most widely and most rapidly ratified instruments so far adopted. But this encouraging record cannot suffice by itself. Due to the dynamic character of these standards it is the pace of implementation which mainly determines their actual impact. It is here that the general and flexible terms of the Convention greatly enhance its long-term value. Since employment discrimination can be fought "by methods appropriate to national conditions and practice", all countries regardless of their legal system or constitutional structure are in a position to envisage ratification of the Convention. The wide range of States Members which have already done so, as well as the prospects for similar action by a number of others, clearly show that governments are aware of this fact and that the Convention, together with the Recommendation, can provide a convenient and lasting basis for further progress. It is to be hoped that the present survey will serve a useful purpose in this direction.

Appendix I. Text of the Substantive Provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Article 1

1. For the purpose of this Convention the term "discrimination" includes—

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual report on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour Conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Text of the Substantive Provisions of the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

I. Definitions

1. (1) For the purpose of this Recommendation the term "discrimination" includes—

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms "employment" and "occupation" include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II. Formulation and Application of Policy

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles:

(a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of—

(i) access to vocational guidance and placement services;

(ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;

(iii) advancement in accordance with their individual character, experience, ability and diligence;

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

(vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(c) government agencies should apply non-discriminatory employment policies in all their activities;

(d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;

(e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

(f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should—

(a) ensure application of the principles of non-discrimination—

(i) in respect of employment under the direct control of a national authority;

(ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—

(i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;

(ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;

(iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular—

(a) to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;

(b) to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and

(c) to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

III. Co-ordination of Measures for the Prevention of Discrimination in All Fields

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

Appendix II. Reports Received by 15 March 1971 under Articles 19 and 22 of the Constitution on the Discrimination (Employment and Occupation) Convention and Recommendation, 1958 (No. 111)

Country	Reports received on Convention No. 111		Reports received on Recommendation No. 111	Country	Reports received on Convention No. 111		Reports received on Recommendation No. 111
	Art. 22	Art. 19	Article 19		Art. 22	Art. 19	Article 19
Afghanistan	—	×	—	Haiti	—	—	—
Algeria	—	—	×*	Honduras	×	—	×
Argentina	×	—	×	Hungary	×	—	×
Australia	—	×*	×*	Iceland	×	—	—
Austria	—	×	×	India	×	—	×
Barbados	—	×*	×*	Indonesia	—	×	×
Belgium	—	×*	×*	Iran	×	—	×
Bolivia	—	—	—	Iraq	×	—	×
Brazil	×	—	×	Ireland	—	×	×
Bulgaria	×	—	×	Israel	×	—	×
Burma	—	×	×	Italy	×	—	×
Burundi	—	—	—	Ivory Coast	—	—	×*
Byelorussia	×	—	×	Jamaica	—	—	—
Cameroon	—	×*	—	Japan	—	×	×
Canada	×	—	×	Jordan	×	—	—
Central African Republic	×	—	×*	Kenya	—	×*	×*
Ceylon	—	×*	×*	Khmer Republic	—	×	×
Chad	—	—	—	Kuwait	×	—	×
Chile	—	×*	×*	Laos	—	—	—
China	×	—	×	Lebanon	—	×*	×*
Colombia	—	—	×	Lesotho	—	—	—
Congo (Brazzaville)	—	—	—	Liberia	×	—	×
Congo (Kinshasa)	—	—	—	Libya	—	—	—
Costa Rica	—	—	×	Luxembourg	—	×	×
Cuba	×	—	×	Malagasy Republic	×	—	×
Cyprus	×	—	×	Malawi	×	—	—
Czechoslovakia	×	—	×	Malaysia	—	×	×
Dahomey	×	—	—	Republic of Mali	×	—	×
Denmark	×	—	×	Malta	×	—	×
Dominican Republic	×	—	—	Islamic Republic of Mauritania	×	—	×
Ecuador	×	—	—	Mauritius	—	—	—
El Salvador	—	×*	×*	Mexico	×	—	×
Ethiopia	×	—	—	Mongolia	—	—	—
Finland	—	—	—	Morocco	×	—	×
France	—	×	×	Nepal	—	—	—
Gabon	×	—	×*	Netherlands	—	×*	×*
Federal Republic of Germany	×	—	×	New Zealand	—	×	×
Ghana	×	—	×	Nicaragua	—	—	—
Greece	—	×	×	Niger	×	—	—
Guatemala	×	—	×	Nigeria	—	×	×
Republic of Guinea	—	—	—	Norway	×	—	×
Guyana	—	×*	×*	Pakistan	×	—	×*
				Panama	—	—	×
				Paraguay	×	—	—
				Peru	—	×	×

Country	Reports received on Convention No. 111		Reports received on Recommendation No. 111	Country	Reports received on Convention No. 111		Reports received on Recommendation No. 111
	Art. 22	Art. 19	Article 19		Art. 22	Art. 19	Article 19
Philippines	×	—	×	Turkey	×	—	×
Poland	—	—	—	Uganda	—	—	×
Portugal	×	—	×*	Ukraine	—	×	×
Rumania	—	×	×	USSR	×	—	×
Rwanda	—	×	×	United Arab Republic	×	—	×
Senegal	×	—	×	United Kingdom	×*	—	×
Sierra Leone	×	—	×	United States	—	×	×
Singapore	—	×	×	Upper Volta	—	×	×
Somali Republic				Uruguay	—	—	×*
Spain	—	—	—	Venezuela	—	×	×
Sudan	×	—	×	Viet-Nam	—	×	—
Sweden	—	×	×	P.D.R. of Yemen	×	—	×*
Switzerland	×	—	×	Yemen Arab Republic	—	—	—
Syrian Arab Republic	×	—	×*	Yugoslavia	×	—	×*
Tanzania	—	—	×	Zambia	—	×	×
Thailand	—	—	—	Total	55	36	86
Togo	—	—	—				
Trinidad and Tobago	—	×*	×*				
Tunisia	—	—	—				

Note : A total of 41 reports has also been received in respect of the following non-metropolitan territories: Australia (Norfolk Island, New Guinea, Papua); United Kingdom (Antigua, Bahamas, Bermuda, British Honduras, British Virgin Islands, Dominica, Falkland Islands, Fiji, Gibraltar, Gilbert and Ellice Islands, Guernsey, Hong Kong, Jersey, Isle of Man, Montserrat, St. Helena, Seychelles, Solomon Islands).

* Reports received too late to be summarised in Report III (Part 2).

× = Report received.

— = Report not received.