

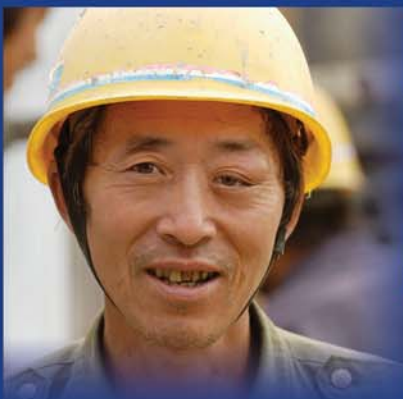
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# Equality and non-discrimination at work in East and South-East Asia

## Guide



ILO DWT for East and South-East Asia and the Pacific  
ILO Regional Office for Asia and the Pacific



# Equality and non-discrimination at work in East and South-East Asia

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**Guide**

DWT for East and South-East Asia and the Pacific  
Regional Office for Asia and the Pacific

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## Foreword

The principles of non-discrimination and equality are embedded in most countries' constitutions, in human rights treaties, and indeed, in universal notions of decency, dignity and respect. They are cornerstones of development and the establishment of peaceful, harmonious and inclusive societies. They are internationally recognized as standards of conduct of primary importance. Within the sphere of employment, non-discrimination and equal opportunity and treatment are considered to be basic human and labour rights, fundamental for social justice and sustainable economic development.

The right to equal treatment and equal opportunities empowers all persons, regardless of race, sex, religion, social or ethnic origin or disability, to strive to meet their full potential, to work their way out of poverty and to care for their families. Pursuing equality at work makes good business sense as competitive companies value the innovation and adaptability offered by workplace diversity and productive working environments. Liberating employment processes from bias allows companies to improve their talent pool, increase their access to local markets and enhance their company image. In today's world, successful economies make the most of all human potential available, regardless of whether the person involved is black, brown or white; a man or a woman; a Buddhist, a Muslim or non-confessing.

Equality of opportunity and treatment in employment forms an integral part of the ILO's Decent Work Agenda which promotes opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) was adopted by ILO member States in 1958 and remains the most comprehensive international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work. The elimination of discrimination is one of the ground rules of a fair globalization.

The training package provides evidence-based knowledge for capacity building on the application of fundamental labour principles consistent with ILO Convention No. 111. It explains the basic concepts, strategies and practical measures for eliminating discrimination and promoting equality of opportunity and treatment in workplaces. It provides trainers with practical examples based on international and national experience and gives them step-by-step guidance for conducting interactive, participatory training so that they can train others in understanding discrimination and how to promote equality and rights in employment.

The training package is the result of several years of teamwork of numerous women and men dedicated to promoting a better understanding of the internationally recognized human rights principles of non-discrimination and equality of opportunity and treatment at work. I would like to thank Nelien Haspels, Tim De Meyer and Marja Paavilainen for their untiring efforts in developing this training package. Eliminating employment discrimination is constant work in progress. It is our hope that the training package will inspire governments, employers' and workers' organizations, the judiciary, the academe, civil society organizations and the wider community to realize the principles of non-discrimination and equality of opportunity and treatment in the world of work.

Bill Salter  
Director  
ILO DWT for East and  
South-East Asia and the Pacific



### Acknowledgements

Throughout the preparation of the training package, international and national experts have been involved, and situational analyses and law reviews have been undertaken so that equality principles can be better applied in policy formulation and service delivery to workers who face discrimination at work.

Training materials development on equality and non-discrimination at work started in China where the ILO and the Ministry of Human Resources and Social Security, with the financial support of the Government of Norway, partnered from 2008 to 2010 to promote the application of equality and non-discrimination principles at work in the country. Special words of thanks go to Constance Thomas, who spearheaded this work as well as to Jinghe Guan, Hongman Zhang, Jillian Ferguson, Qun Huang and many international and Chinese scholars whose dedication, expertise and unstinting efforts advanced the promotion of workplace equality in China.

Upon request of ILO constituents in Indonesia, Mongolia and Viet Nam the training materials on equality and non-discrimination at work were adapted to facilitate the application of international and national principles on non-discrimination and equality in employment and occupation in these and other countries in East and South-East Asia. We would like to especially thank Retna Pratiwi of the Ministry of Manpower and Transmigration, Indonesia as well as Miranda Fajerman and Lusiani Julia from ILO Jakarta; Hong Nguyen Thi Dieu from the Ministry of Labour, Invalids and Social Affairs, Viet Nam and Nguyen Kim Lan from ILO Hanoi, the Ministry of Social Welfare and Labour, Mongolia as well as Busakorn Suriyasarn in Thailand.

We would also like to express our appreciation for the generous support from ILO colleagues Shauna Olney, Barbara Murray, Richard Howard, Katerine Landuyt and Emanuela Pozzan. Special thanks for editing support go to Paveena Eakthanakit in Bangkok.

The package would have never seen the light of day without the enthusiastic participation of the many people who took an active part in the training and validation workshops in China between 2008 and 2010; and in Indonesia; Viet Nam; and Mongolia in 2011. Their stories, queries and keen interest demonstrated time and again that workplace discrimination is not an abstract social phenomenon but a harrowing personal experience for many more than a healthy society should endure. We hope the training package will support you and many others worldwide in combating discrimination and promoting equality in workplaces.

In fond memory of Ian Chambers who tirelessly waged the fight for equality throughout his professional career. His intellect, compassion and quick wit will continue to inspire many of us to promote the human and workers' rights of those in need.

Nelien Haspels, Tim De Meyer and Marja Paavilainen  
November 2011, Bangkok and Singapore

## Introduction

The purpose of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is to protect all persons against discrimination at work. The Convention protects not only those who have already found employment or exercise an occupation, but also those who are preparing to work, seeking work, or risk losing their work. It covers all jobs and occupations in the public and private sector, and applies to small businesses and those in informal employment. In the East and South-East Asian region, governments in Cambodia (1999), China (2006), Indonesia (1999), the Republic of Korea (1998), Mongolia (1969), Lao PDR (2008), the Philippines (1960) and Viet Nam (1997) have ratified the Convention, thereby expressing their commitment to uphold the human rights of workers and progressively incorporate equality and non-discrimination principles in employment and other laws and regulations.

This *guide* is part of a *training package on equality and non-discrimination at work in East and South-East Asia*, developed and issued by the ILO to support the application of Convention No. 111 in the region. The guide introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment for men and women alike. It explains why the elimination of discrimination at work is fundamental for promoting social justice and economic development both within and across countries, and why certain employment practices are harmful to individuals, companies, organizations and societies. It provides a range of strategies, practical measures and tools from international and national experience to combat discrimination and promote equality in workplaces.

The guide is intended as a reader and reference guide for policy-makers and professionals working on economic, employment and social policies, labour law and gender equality. It aims at reaching a broad audience from government, employers' and workers' organizations, as well as from universities, mass organizations and federations, non-governmental and community-based organizations and associations, engaged in non-discrimination work and protecting the rights and interests of women, migrant workers, ethnic and religious minorities or persons living with disabilities and health conditions.

The guide includes four chapters:

Chapter 1. The equality principle and standards on equality at work.

Chapter 2. Discrimination and equality: Concepts, principles and standards.

Chapter 3. Methods of application of Convention No. 111.

Chapter 4. Practical tools.

The guide can be used as a handbook in awareness raising, training and advocacy on the fundamental concepts of discrimination and equality of opportunity and treatment in employment and occupation. The guide is complemented by an *exercise and tool book for trainers* with different types of learning activities for delivering interactive training on equality and non-discrimination at work.

## Chapter 1. The equality principle and standards on equality at work

### 1. The origins of discrimination

A university graduate cannot get a job because she may get pregnant one day. Her older sister is repeatedly denied a promotion to a management position because “women cannot cope with the stress.” A young man with a hearing impairment does not get hired because an employer assumes he “might not fit in.” Members of an ethnic minority consistently earn less than members of the predominant ethnic group, although the jobs they typically carry out require skills at least as developed as the jobs typically carried out by “normal citizens.” Farmers cannot send their children to school when they obtain work in the city because “they are from the countryside.”

All human beings distinguish between different groups of people and a common inclination is to favour the group of which one is a member and to develop prejudices against people who are “different” and belong to other groups. This phenomenon, known as bias or prejudice, naturally makes up for gaps in information or education in the human mind and is often embedded in the way society organizes social life. However, bias may hamper people’s ability to make impartial, objective and fair decisions.

Once bias starts to inform decisions that directly affect people’s livelihood – such as whether to find or hold employment for which one is qualified – it produces negative effects that reverberate far beyond the life of an individual. Bias becomes discrimination at work when it influences public or private decisions affecting people’s employment, occupation or livelihood on grounds that are not a genuine occupational requirement.

The Constitution of the International Labour Organization (ILO) declares that, “**all human beings, irrespective of race, creed or sex,**<sup>43</sup> have the right to pursue both their material well-being and their spiritual development in conditions of **freedom and dignity, of economic security and equal opportunity.**”<sup>44</sup> These principles are articulated as fundamental rights of every human being. What is right for the individual human being is also right for society, as well as smart for the economy and for the nation.

No society is free from discrimination and discriminatory practices pervade all spheres of life, including politics and public life (e.g. participation in the formulation and governance of government policy), education (e.g. access to quality education), health care (e.g. access to affordable hospitals), public services (e.g. public transport), and culture (e.g. access to cultural expressions in the native language).

Workplaces do not escape prejudice that society holds against groups of persons with common characteristics (e.g. women, ethnic groups, persons with a particular complexion or skin colour). At the same time, workplaces that value and reward persons on the basis of merit instead of characteristics irrelevant to job performance offer a powerful rebuke to prejudice and contribute directly to society’s cohesion.

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<sup>43</sup> In this guide the terms sex and gender are used interchangeably. Gender refers to the social differences and relations between men and women that are learned, vary widely within and between cultures, and change over time, while sex is about biological functions which are universal and are generally difficult to change. In recent years the term gender has started to replace the term sex in day-to-day language. Most laws and other legal texts refer to sex discrimination. However, some laws and many policy documents have also started to use the term gender discrimination.

<sup>44</sup> ILO: *Declaration of Philadelphia*, General Conference of the International Labour Organization, 26<sup>th</sup> Session, Philadelphia, 1944.

Unrelenting social, economic and political efforts are therefore needed to realize equality of opportunity and treatment for all human beings. Within the international community, the ILO is mandated to promote social justice and secure decent work for all by assisting its member States to combat discrimination and promote equality in the world of work.

### 2. Why is equality important for people, society and business?



#### The objective of fighting discrimination in the labour market

“The elimination of discrimination through the promotion of equality of treatment and opportunities is not about nullifying all differences in the labour market. The goal of these policies is to make sure that differences in labour market outcomes reflect a free choice in the selection of occupations, an absence of bias in the way merit is defined and valued, and equal opportunities in the acquisition and maintenance of market-relevant skills.”

ILO: *Time for equality at work* (Geneva, 2003), p. 26, para. 83.

Equality of opportunity and treatment should be pursued at various levels: the level of the person, the society and the macro-economic environment, as well as the level of the company and institutions.

#### 2.1 At the personal level - Discrimination violates human dignity and productivity

Discrimination denies a person his or her integrity by reducing the person to a single characteristic, which is often one the person cannot change. A woman worker is not only a woman, but also a professional, a daughter, a mother, a talented musician or an athlete. Depending on the contents of the job, some of these characteristics are relevant, while others are not.

Discrimination at work also denies a person an essential means of self-fulfilment by impeding the pursuit of material, social and spiritual needs. Exposure to being the subject of discrimination is usually not a one-off, stand-alone, isolated event but happens to people repeatedly on one or multiple grounds often from the day they are born and throughout their life. Over time this has a strong, cumulative feedback effect. This negative feedback effect of discrimination is not always recognized. For example, it is often thought that women select low-quality and low-pay jobs out of their “own free will.” This is interpreted by some as a sign of non-discrimination as if women make free, individual choices in accepting second class work. Others consider that free choice has little to do with such decisions but that women are “forced” to adapt to gender biases in the labour market. Repeated negative experiences in job search and treatment at work lead to the “discouraged worker” phenomenon, because repeated negative experiences are internalized, and shape the training and job choices, inspirations and efforts by workers.<sup>45</sup>

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<sup>45</sup> D. Grimshaw and J. Rubery: *The adjusted gender pay gap: A critical appraisal of standard decomposition techniques* (Manchester, 2002); N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

### Box 1. Complaint from a helpless university graduate at the crossroads

Dear Professor,

First of all, I wish you a Happy Spring Festival in advance!

I graduated from the Graduate School of China University of Political Science and Law this summer and am looking for a job. I am as capable as others and have received job offers from a few large-scale State-owned-enterprises. However, because I am a Hepatitis B virus (HBV) carrier (with a normal liver function), I was rejected by all of them. I am exhausted and nearly desperate now.

I have checked the relevant laws. The Employment Promotion Law of our country and the Regulations on Employment Service and Employment Management of the Ministry of Labour both stipulate that enterprises shall not refuse job applicants because they are HBV carriers, and they shall not make the HBV indicator check-up compulsory in the physical exam, otherwise they are subject to a fine of 1,000 Yuan.

But the reality is that enterprises do not abide by the law. The HBV indicator is still compulsory in the health check. The Labour security department and the Health department also ignore these regulations. Such ignorance encourages HBV discrimination. I have reported to the Beijing municipal labor department that enterprises are still checking HBV, but they told me the responsibility lies with the District labour bureau and the Health department, while the Health department said it is the responsibility of the Labour department.

Is this supposed to be the way the nation and society treat students who have not yet graduated from college? We have spent 10 years studying hard to be capable, but the results are so disappointing. How helpless we are! I got HBV from my mother, it is not my fault. Why should I become unemployed due to people's ignorance and discrimination, after investing more than 10 years in education? I am able to defeat others in a fair competition, but I am defeated by HBV discrimination.

I have no idea what to do next. I have no more strength left to fight for other opportunities.

I am sending you this email because I know you are studying the subject of employment discrimination. I hope you can report the situation to the National People's Congress and the National People's Political Consultative Commission (NPPCC) sessions, as this is about the equal employment rights of 130 million people. I really hope you can speak on behalf of the people who have been abandoned by society.

I am really desperate, not knowing what next steps to take. Can you please give me some advice?

A helpless university student at the crossroads.

Source: D. Cai: *Unpublished training materials* (Beijing, 2009).

### 2.2 At the level of the society – Discrimination denies social justice and cohesion

Social justice requires that all human beings have an opportunity to obtain a fair share of the wealth that humanity as a whole is able to generate. It means that there should be a fair balance between the amount of wealth that is being created and the extent to which this wealth is distributed and prosperity is enjoyed by all human beings. Severe and structural forms of discrimination contribute to and result in poverty and social exclusion.

Discrimination frequently enhances - and is enhanced by - other violations of fundamental rights at work. People who are denied legitimate opportunities to earn a livelihood through work or fail to reap a fair reward are more vulnerable to coercion to make their services available at disproportionately

low wages. Thus, they may be at greater risk to become subject to forced labour. Their opportunity cost to send children to school instead of full-time work is higher, and this may fuel child labour.

Absence of fairness is particularly dangerous for social cohesion and development if it affects groups of people within society that are well-defined within public consciousness. Ethnicity, religion, political opinion and sex form natural “fault lines” in all complex societies. Discrimination along these lines creates powerful negative social dynamics, potentially leading to instability, war and wealth destruction.

Conversely, respect for the valuable contribution that people from different social groups, cultural communities, educational backgrounds or personal experiences can make to a common purpose is a strong force for social inclusion. Diversity also tends to stimulate creativity, generate new ideas and hence new products and services. Innovation, in turn, contributes to higher productivity and competitiveness.

### 2.3 At the level of the macro-economy – Discrimination cripples social and economic development

In economic terms, discrimination is sometimes referred to as “market failure” or the inability of market processes to reach the most efficient allocation of resources. A person coming from a particular ethnic group may be the most qualified professional or personality for a particular job, but will not be able to realize his or her full potential – and the employer will not tap the most productive potential available – if recruitment is impeded by behaviour that discriminates against the ethnic group concerned. Wealth creation will not be optimized unless an intervention is made by the government or market to change the discriminatory behaviour.

Economic research also consistently demonstrates that high inequality has a negative effect on economic growth. High inequality that is based on social exclusion, discriminatory practices and impediments to people investing in human capital, entrepreneurship and economic advancement will make it much more difficult for low-income people to move out of poverty. By hampering that very economic advancement, inequality will impede future economic growth and poverty reduction. This may even have political repercussions as it will become more difficult for leaders to generate public support based on trust for efficiency-enhancing reforms.

#### Box 2. Concern for rising inequalities in Asia

Most countries in the East and South-East Asian region have enjoyed fast economic growth and achieved remarkable successes in poverty reduction in the past decades. However, at the same time inequalities are raising in the majority of Asian countries.

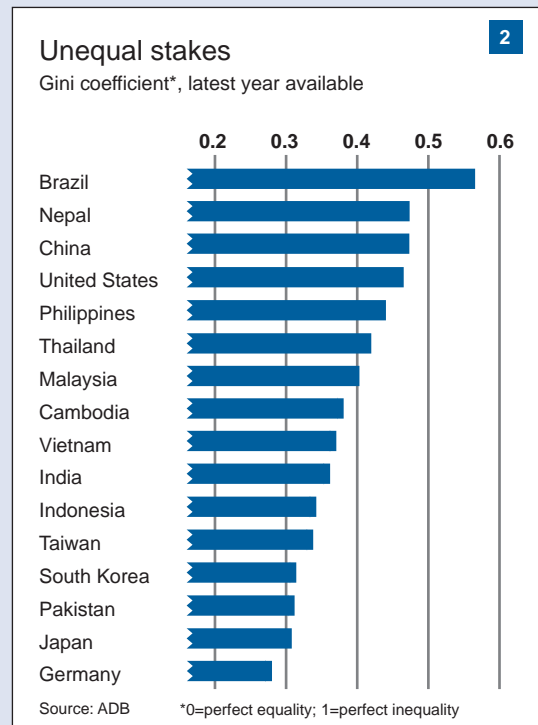
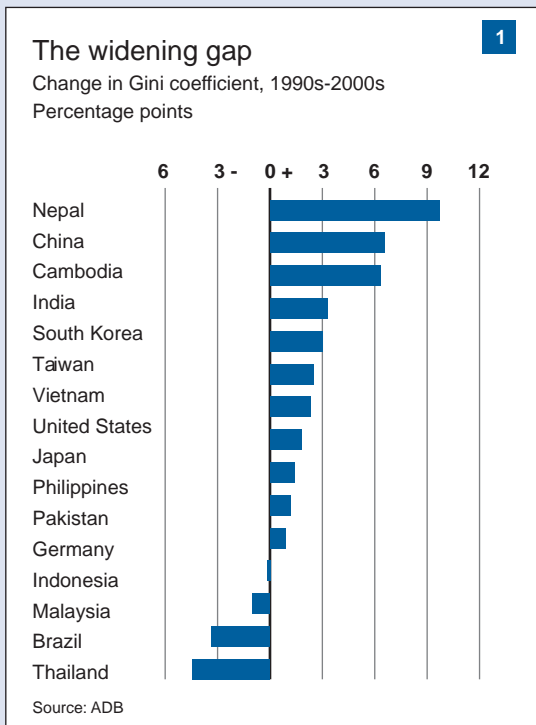
According to a report published by the Asian Development Bank (ADB) in 2007, from 1990s to 2000s income inequality increased in 15 of the 21 Asian countries covered in the study. The biggest increases in inequality were in China, Nepal and Cambodia (see Chart 1). For example, China’s Gini coefficient rose from 0.41 in 1993 to 0.47 in 2004, the highest in Asia after Nepal (see Chart 2). The three main exceptions where income inequality did not rise were Thailand, Malaysia and Indonesia, the countries worst hit by the 1997 financial crisis.

Does the income inequality matter as long as poverty is falling? The ADB report concluded in 2007 that, at the level of the macro economy, increases in income inequality **damp the poverty reduction efforts** and may **hinder growth prospects**. Moreover, the International Monetary Fund (IMF) noted in 2010:

“A large and growing chasm between rich and poor – especially within countries – wears down the social fabric. More unequal countries have **worse social indicators**, a **poorer human development record**, and **higher degrees of economic insecurity and anxiety**.”



Economic disparity within and between countries was also identified as one of the most important risks in the coming decade in the World Economic Forum (WEF) Global risks survey in 2011. According to the WEF named economic disparity also as the most underestimated trend in terms of its impact.



Source: Asian Development Bank (ADB): *Inequality in Asia: Key indicators 2007 special chapter: Highlights* (Manila, 2007); “Asia’s rich and poor: For whosoever hath, to him shall be given, and he shall have more” in *The Economist*, 9 Aug 2007; “Unbottled gini: Inequality is rising. Does it matter – If so why?” in *The Economist*, 22 Jan 2011; World Economic Forum (WEF): *Global risks 2011*, January 2011, Sixth edition, An initiative of the Risk Response Network.

### 2.4 At company level – Equality of opportunity and treatment makes good business sense

Being aware of bias and preventing it from influencing decisions regarding recruitment, remuneration or retention of employees is good for business:

1. It enables the employer to **attract talent and skilled workforce** and to improve the quality of recruitment by better matching the requirements of jobs with the skills, knowledge and experience needed without the distractions of sex, status or ethnicity.
2. It allows the employer to **better utilize the human resources** available and retain qualified staff.
3. Better utilization of human resources **supports employee growth, morale, satisfaction and commitment, and reduces labour turnover**.
4. The same benefits may be derived from family-friendly working practices enabling employees to **balance work and family life**.
5. Greater workplace diversity often yields dividends such as finding **creative solutions** to long-standing problems; finding **innovative ways** of doing things more efficiently; or **gaining or retaining new customers** and accessing new market segments.
6. Sustained efforts to achieve equality of opportunity and treatment may **increase brand value and company reputation**, both with customers and future employees.
7. This may strengthen the employer’s position in international, national and local **supply chains** that attribute value to equality of opportunity and treatment.

8. Equality efforts also enhance **legal compliance** and reduce the risk of workplace conflicts and labour disputes, and of costly and damaging litigation.
9. All of the above **adds shareholder value**.

It is important to emphasize that the elimination of discrimination does not require employers to treat everybody identically, but only to ensure that different treatment reflects objective differences relevant to the job, and is not based on irrelevant factors. The elimination of discrimination means that people can freely choose a job for which they are qualified, free from interference by factors that are irrelevant to job performance, such as their sex, race or ancestry.

### Box 3. Business case for workplace partnership, diversity and equality – Ireland

A survey of 130 leading companies in Ireland has confirmed a strong link between bottom-line business performance and the use of strategic human resource management, workplace partnership, and implementation of workplace diversity and equality strategies. The main findings of the study were as follows:

#### Labour productivity:

The use of the above three strategies accounted, on average, for **14.8 per cent** increase in labour productivity among the survey sample:

- strategic human resource management accounted for **10 per cent** of the increase,
- workplace partnership was associated with **3.9 per cent** of the increase, and
- diversity and equality strategies accounted for **6.5 per cent** of the increase.

In terms of total economic value, annual productivity-per-employee was found to be EUR 299,992, of which EUR 44,399 was directly attributable to the use of strategic human resource management, workplace partnership and diversity and equality strategies. For the median-sized company in the survey (270 employees), this equates to an additional EUR 12 million in annual sales revenue.

#### Workforce innovation:

The use of the above three strategies accounted for **12.2 per cent** increase in workforce innovation:

- strategic human resource management was associated with greater workforce innovation (**5 per cent** of variance), and
- equality and diversity strategies accounted for **7.9 per cent** of the increase.

The increase in innovation was equivalent to sales revenue of EUR 2,061 per employee per annum, or EUR 556,200 in the median-sized company.

#### Employee turnover:

The use of the above three strategies accounted for **7.7 per cent** decrease in annual employee turnover.

- strategic human resource management and workplace partnership accounted for **4 per cent** decrease in employee turnover, and
- diversity and equality measures accounted for **4.4 per cent** in employee turnover.

Niall Crowley, Chief Executive Officer of the Equality Authority, commented: "**This report establishes workplace equality and diversity strategies as a key component of High Performance Work Systems.** This must ensure that the promotion of workplace equality and diversity now emerges as a priority focus in the implementation of the Government's National Workplace Strategy. This report quantifies, for the first time in an Irish context, **a compelling business case for companies to invest in equality and diversity strategies, and to integrate these strategies into their corporate strategy and culture.** Equality and diversity strategies are now clearly associated with higher labour productivity, increased workplace innovation and lower employee turnover. A competitive Irish economy needs businesses committed to equality and diversity."

Source: National Centre for Partnership & Performance (NCPPI) and The equality Authority: *New models of high performance work systems. The business case for strategic HRM, partnership and diversity and equality systems* (Dublin, 2008)

### Box 4. Female leadership and company profitability

Various studies show that there is a positive and significant correlation between company performance, profitability and gender diversity in company senior management. The studies show that both small and medium enterprises (SMEs), and larger companies can gain a competitive advantage over their peers by identifying and eliminating obstacles to women's advancement to top management.

A study conducted by the Finnish Business and Policy Forum (EVA) analyzed statistical data from 12,738 limited companies in Finland. The data sample of this study is one of the most representative and extensive company-level data used in gender research, covering 91 percent of Finnish limited companies with more than 10 employees. The study found out that when all other factors affecting firm profitability (such as size, sector etc.) were controlled, **a company with a female CEO was about 10 percent** (slightly more than one percentage point) **more profitable than an otherwise similar company with a male CEO**. Similarly, a company with a gender balanced board was on average about 10 percent more profitable than a similar company with an all male board. The study concludes that to boost their profitability, companies should promote gender-neutral career opportunities and take steps to remove the numerous and often difficult-to-observe mechanisms and networks that favour men and hinder women from climbing the executive ladder.

Similar conclusions were drawn in a study conducted by McKinsey & Company, an international management consulting firm. The study analyzed the performance of 89 European listed companies with the highest level of gender diversity in top management. The selection criteria included the number, proportion and function of women on the executive committee and presence of more than two women on the board. The study found that **companies with a high level of gender diversity in top management outperformed their sector** in terms of returns on equity (11.4 per cent vs. sector average of 10.3 per cent), operating results (EBIT 11.1 per cent vs. 5.8 per cent), and stock price growth (64 per cent vs. 47 per cent over the period 2005-2007). Another study conducted by McKinsey & Company established a striking **correlation between organizational excellence and women's participation in management bodies**. The nine criteria analyzed were: leadership, direction, accountability, coordination and control, innovation, external orientation, capability, motivation, work environment and values. The study was based on analysis of answers from 58,240 respondents from 101 large corporations in Europe, America and Asia.

Sources: Finnish Business and Policy Forum (EVA): *Female leadership and firm profitability*, EVA Analysis No. 3 (Helsinki, 2007); McKinsey & Company: *Women matter: Gender diversity, a corporate performance driver* (Paris, 2007).

### Box 5. Diversity management in European companies

The European Commission commissioned two studies in 2005 and 2008 to map diversity management practices in European companies. The two surveys were both conducted among member companies of the European Business Test Panel (EBTP). The 2008 survey verified that compared to 2005, an increasing proportion of companies recognize the links between diversity and good business performance.

Of the 335 companies participating in the 2008 survey, 56 per cent had established some kind of an equality and diversity policy. One quarter of these policies covered all six grounds of discrimination prohibited under European law (gender, age, ethnicity and race, disability, religion and belief, and sexual orientation), whereas 64 per cent covered only some grounds and 12 per cent covered only one ground. The equality and diversity policies handled most often issues related to staff recruitment, retention and management (93 per cent), organizational culture (75 per cent) and work-life balance (70 per cent). One-quarter of the companies with equality and diversity policies had also adopted affirmative action measures, setting targets for the recruitment, training, or promotion of staff from underrepresented groups.

Almost two-thirds of the surveyed companies recognized that implementation of equality and diversity policies had made a positive impact upon their business. The most common benefits included improved employee motivation and efficiency; access to a new labour pool; company reputation, corporate image and good community relations; recruitment of high quality employees; and opportunities for innovation and creativity. The links between innovation and diversity were recognized by 63 per cent of the companies. Diversity-led innovation had increased significantly more in companies implementing affirmative action measures (83 per cent) compared to companies without such measures (55 per cent). These benefits were equally recognized both in SMEs and in large and very large companies.

Source: European Commission: *Diversity management in 2008: Research with the European Business Test Panel* (2008).

### 3. Key international policy instruments to promote equality

Equality is a human right that all people shall enjoy in the world of work as well as in all other walks of life. The principle was first recognized in the ILO Constitutional documents in 1919 and 1944, and then in the Universal Declaration of Human Rights in 1948. Thereafter, the principle of non-discrimination has been established in various international labour standards and international human rights treaties. The main internationally recognized fundamental instruments establishing the principle of equal opportunity and treatment at work are the ILO Equal Remuneration Convention, 1951 (No. 100) and the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

#### 3.1 The Constitution of the International Labour Organization

The promotion of equality and the fight against discrimination have been a guiding principle of the ILO since it was established in 1919. The Peace Treaty of Versailles of 1919 that initially spelled out nine objectives for the ILO included the principle of equal remuneration for women and men for the work of equal value and called for equitable economic treatment for all workers lawfully resident in any country (Part XIII, Article 427).

The Declaration of Philadelphia (1944) annexed to the ILO Constitution in 1944 reformulated and reaffirmed the principle of equality at work. The Declaration affirms:

“all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”

#### 3.2 International labour standards on non-discrimination and equality

International labour standards are key instruments through which the ILO attempts to realize its constitutional objective of equality of opportunity and treatment at work. They can take two forms: conventions and recommendations. They set the standards which guide national law and practice and benchmark achievements:

- Conventions create obligations which are binding under international law upon ratification by ILO member States. Non-ratified conventions influence national law and policy.
- Recommendations provide the same authoritative guidance as conventions, but they are not open to ratification. Generally they contain guidelines for higher standards.

The **Equal Remuneration Convention, 1951 (No. 100)**<sup>46</sup> and the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**<sup>47</sup> set the fundamental standards on the elimination of

<sup>46</sup> Supplemented by the Equal Remuneration Recommendation, 1951 (No. 90).

<sup>47</sup> Supplemented by the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).

discrimination at work. Only a handful of ILO member States have not yet ratified either or both Conventions. The ILO 1998 Declaration on Fundamental Principles and Rights at Work as well as the 2008 Declaration on Social Justice for a Fair Globalization reaffirm the importance of non-discrimination as a fundamental principle and right at work. Both Conventions are included among the core principles of the United Nations Global Compact which was launched in 2000 as a strategic policy initiative for businesses that are committed to aligning their operations with ten universally accepted principles in the area of Human rights, labour environment and anti-corruption.



### Non-discrimination is a fundamental workers' right

The **Equal Remuneration Convention (No. 100)**, adopted by the International Labour Conference in 1951, promotes equal pay for work of equal value between men and women. It was the first ever international labour instrument adopted to eliminate discrimination in employment, addressing pay discrimination on the ground of sex.

The **Discrimination (Employment and Occupation) Convention (No. 111)**, adopted by the 42<sup>nd</sup> Session of International Labour Conference on 4 June 1958, sets comprehensive standards to promote equality of opportunity and treatment in the world of work:

- The purpose of Convention No. 111 is to **protect all persons against discrimination** on the basis of race, colour, sex, religion, political opinion, national extraction or social origin in employment and occupation.
- The Convention protects not only those who are employed or engage in an occupation, but also those who are preparing to work, seeking work, or risk losing their work.
- The Convention applies to all sectors of activity and covers all occupations and employment in both public and private sectors, as well as in the informal economy. It covers not only wage-employment, but also independent and own-account work.

The Convention calls upon States to adopt and implement a national policy to promote equality of opportunity and treatment with a view to eliminating discrimination in all aspects of employment and occupation for all workers. The Convention, therefore, is not only concerned with the elimination of discrimination – or the absence of inequality – but goes a step further and requires a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation:

- Equal employment opportunity means that a person must have chances to secure access to training, placement or employment that are not less favourable than the chances of persons in the same or comparable situations.
- Equal treatment in employment means that an employer must treat an employee not less favourably than other employees who are in the same or comparable situations.



### The principle of gender equality

Gender equality, or equality between men and women, refers to the enjoyment of equal rights, opportunities and treatment by men and women of all ages in all spheres of life and work. It implies that men and women are free to develop their personal abilities and make choices without the limitations set by stereotypes and prejudices about gender roles or the characteristics of men and women. It means that the different behaviour, aspirations and needs of women and men are considered, valued and



favoured equally. It does not mean that women and men are the same or have to become the same. It means that their rights, responsibilities, social status and access to resources do not depend on whether they are born male or female, and that all are treated in a fair and just manner and have equal chances to succeed in work and in life.

**Box 6. International labour standards benchmarking non-discrimination**

- Equal Remuneration Convention, 1951 (No. 100).
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- Workers with Family Responsibilities Convention, 1981 (No. 156).
- Maternity Protection Convention, 2000 (No. 183).
- Migration for Employment (Revised) Convention, 1949 (No. 97).
- Migrant Workers (Supplementary Provisions) Convention, 1973 (No. 143).
- Indigenous and Tribal Peoples Convention, 1989 (No. 169).
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159).
- Employment Policy Convention, 1964 (No. 122).
- Human Resources Development Convention, 1975 (No. 142).
- Private Employment Agencies Convention, 1997 (No. 181).
- Part-Time Work Convention, 1994 (No. 175).
- Home Work Convention, 1996 (No. 177).
- Domestic Workers Convention, 2011 (No. 189).
- Older Workers Recommendation, 1980 (No. 162).
- HIV and AIDS Recommendation, 2010 (No. 200).

**Box 7. Ratifications of ILO equality conventions in East and South-East Asia**

|                   | Convention No.100 | Convention No.111 |
|-------------------|-------------------|-------------------|
| Cambodia          | 1999              | 1999              |
| China             | 1990              | 2006              |
| Indonesia         | 1958              | 1999              |
| Japan             | 1967              | --                |
| Republic of Korea | 1997              | 1998              |
| Lao PDR           | 2008              | 2008              |
| Malaysia          | 1997              | --                |
| Mongolia          | 1969              | 1969              |
| Philippines       | 1953              | 1960              |
| Singapore         | 2002              | --                |
| Thailand          | 1999              | --                |
| Viet Nam          | 1997              | 1997              |

Source: ILOLEX Database of international labour standards and recommendations (accessed 16 Sep. 2011).

**3.3 International human rights instruments on non-discrimination and equality**

Protection against discrimination is a fundamental human right. Provisions and instruments calling on States to combat discrimination are a mainstay of international law and are contained in a number of United Nations (UN) instruments.





### Non-discrimination is a human right<sup>6</sup>

The general principle of equality and non-discrimination was adopted in the **Universal Declaration of Human Rights** (UDHR), 1948. The UDHR declares that human rights should be enjoyed without distinction of any kind. The UDHR sets out a non-exhaustive list of prohibited grounds for discrimination:

- Race or colour.
- Sex.
- Language.
- Religion.
- Political or other opinion.
- National or social origin.
- Property, birth or other status.

The nine core human rights treaties reflect the general principle of equality and non-discrimination in enjoyment of human rights, as adopted in the UDHR. The above list of prohibited grounds of discrimination is also included in the **International Covenant on Civil and Political Rights** and the **International Covenant on Economic, Social and Cultural Rights**. Subsequent treaties have expanded the list further. The **International Convention on the Elimination of All Forms of Racial Discrimination** (CERD) and the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW) are specifically aimed at eliminating racial discrimination and discrimination against women respectively.

### Box 8. International human rights treaties of the United Nations

1. International Covenant on Civil and Political Rights.
2. International Covenant on Economic, Social and Cultural Rights.
3. International Convention on the Elimination of All Forms of Racial Discrimination.
4. Convention on the Elimination of All Forms of Discrimination against Women.
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
6. Convention on the Rights of Persons with Disabilities.
7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
8. Convention on the Rights of the Child.
9. International Convention for the Protection of All Persons from Enforced Disappearance

 See Box 9 below for ratification status of UN human rights treaties in East and South-East Asia.

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<sup>6</sup> Office of the High Commissioner for Human Rights: *OHCHR Factsheet 30*, <http://www.ohchr.org> (accessed 15 Sep. 2010).

Box 9. Ratification status of UN human rights treaties in East and South-East Asia

|   | Cambodia | China  | Indonesia | Japan  | Republic of Korea | Lao PDR | Malaysia | Mongolia | Philippines | Singapore | Thailand | Viet Nam |
|---|----------|--------|-----------|--------|-------------------|---------|----------|----------|-------------|-----------|----------|----------|
| <p><b>S = Signature</b>, demonstrates the State's intent to examine the treaty domestically and consider ratifying it.<br/> <b>A = Accession</b> and <b>R = Ratification</b>, signify an agreement to be legally bound by the Convention.</p> |          |        |           |        |                   |         |          |          |             |           |          |          |
| 1. International Covenant on Civil and Political rights (CCPR) (1966)   | A 1992   | S 1998 | A 2006    | R 1979 | A 1990            | R 2009  | --       | R 1974   | R 1986      | --        | A 1996   | A 1982   |
| 2. International Covenant on Economic, Social and Cultural rights (CESCR) (1966)  | A 1992   | R 2001 | A 2006    | R 1979 | A 1990            | R 2007  | --       | R 1974   | R 1974      | --        | A 1999   | A 1982   |
| 3. International Convention on the Elimination of all Forms of Racial Discrimination (CERD) (1966)  | R 1983   | A 1981 | A 1999    | A 1995 | R 1978            | A 1974  | --       | R 1969   | R 1967      | --        | A 2003   | A 1982   |
| 4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)  | A 1992   | R 1980 | R 1984    | R 1985 | R 1984            | R 1981  | A 1995   | R 1981   | R 1981      | A 1995    | A 1985   | R 1982   |
| 5. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT)(1984)  | A 1992   | R 1988 | R 1998    | A 1999 | A 1995            | S 2010  | --       | A 2002   | A 1986      | --        | A 2007   | --       |
| 6. Convention on the Rights of the Child (CRC) (1989)   | A 1992   | R 1992 | R 1990    | R 1994 | R 1991            | A 1991  | A 1995   | R 1990   | R 1990      | A 1995    | A 1992   | R 1990   |
| 7. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) (1990)   | S 2004   | --     | S 2004    | --     | --                | --      | --       | --       | R 1995      | --        | --       | --       |
| 8. Convention on the Rights of Persons with Disabilities (CRPD) (2006)  | S 2007   | S 2007 | S 2007    | --     | --                | R 2009  | R 2010   | A 2009   | R 2008      | --        | R 2008   | S 2007   |
| 9. International Convention for the Protection of All Persons from Enforced Disappearance (2006)  | --       | R 2008 | S 2010    | --     | --                | S 2008  | --       | S 2007   | --          | --        | --       | --       |

Source: *United Nations Treaty Collections*, <http://treaties.un.org/> (accessed 28 Dec. 2010).

## Chapter 2. Discrimination and equality: Concepts, principles and standards

The aim of Convention No. 111 is to promote equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds that are not a genuine occupational requirement. Each ratifying State must adhere to the basic goal of promoting equality of opportunity and treatment by means of a national policy which aims to end all forms of discrimination in employment and occupation. The elimination of discrimination at work is indispensable to any strategy to achieve decent work, reduce poverty and ensure sustainable development.

### 1. Analysis of the definition in Convention No. 111



#### Definition of discrimination

“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.”

(Article 1 (1) (a) Convention No. 111).

Discrimination at work means a different, usually less favourable work-related treatment or opportunity for which there is no objective or legitimate justification. For example, discrimination occurs when two people of the same merit but of a different race, colour or sex are paid different salaries or treated differently for the same job or a job of equal value. If, however, the pay differences reflect differences in productivity or prior qualifications of the workers, the employer may have a legitimate reason to pay one person more than another.

Discrimination originates from bias, perceptions and subjective views and opinions, preconceptions or prejudices about the abilities or attitudes ascribed to individuals belonging to particular groups, rather than objective facts. Examples include generalizations about abilities of men, women, persons with disabilities or of different age or background, presumptions about “men’s jobs” and “women’s jobs” and stereotyped ideas about the kinds of jobs suitable and not suitable for rural migrants or ethnic minorities. All people have biases as it is natural for people to feel sympathy and accept things that are “familiar” and like people who are “similar” to oneself. No one wants to believe and admit that they harbour biases but research-based evidence shows that most, if not all, people have prejudices to some extent. Hidden bias that goes unrecognized easily leads to discrimination.

Turning to the definition of discrimination in Convention No. 111, three elements constitute discrimination as follows.

#### **Fact - Differential treatment: “any distinction, exclusion or preference”**

Discrimination occurs when a person (or group of persons) is excluded from an opportunity, preferred over another one, or treated differently on the basis of personal characteristics not related to the job.

Examples:

- Distinction in treatment: Laws with different regulations for men and women, such as differences in the age of retirement, or restrictions on the employment of women in certain jobs or work processes or at certain hours.
- Exclusion from opportunity: Rejecting a job applicant who carries the HIV, or Hepatitis B virus or specifying one sex only in job advertisements.

- Preference given: Preferring good looking young women and men as sales persons, or giving preference to members of a certain religion or political party when recruiting civil servants.

**Cause - Prohibited Grounds: “on the basis of race, colour, sex, ...”**

Differential treatment amounts to discrimination under the Convention if it is based on one or more of the “prohibited grounds” referred to in the Convention: race, colour, sex, religion, national extraction, political opinion, social origin, and any other ground determined at national level. 📖 These prohibited grounds are further explained below in Section 3.

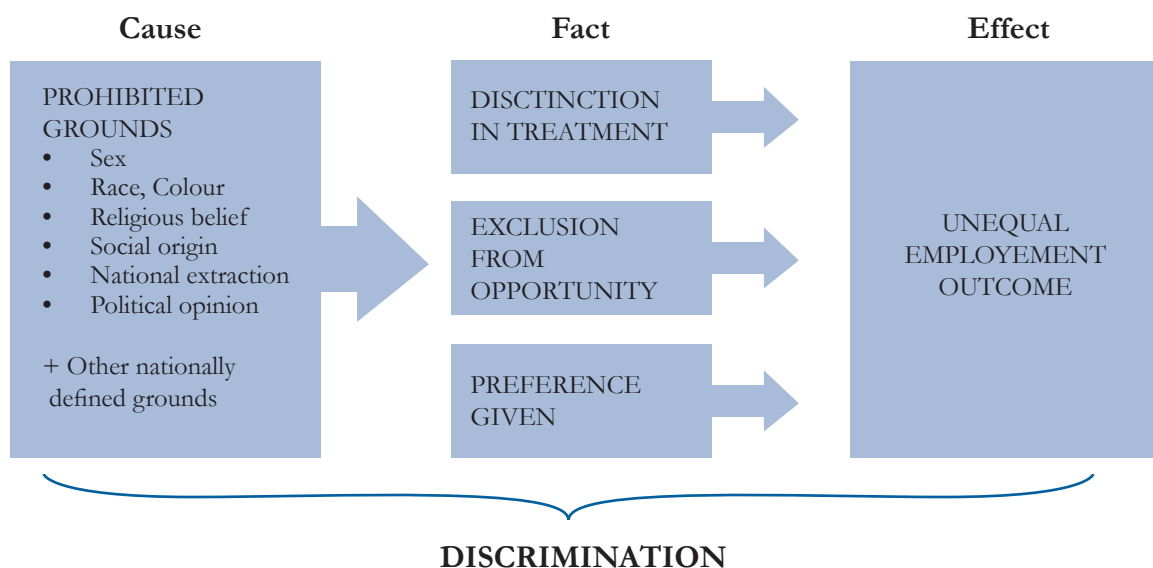
Differential treatment that is not based on any of these prohibited grounds, but is related to the content of a job, does not amount to discrimination. **Job content** is often also referred to as “**inherent requirements of the job**” or “**genuine occupational requirements.**” In exceptional cases a personal attribute such as sex, religion or absence of a specific impairment or disability can be an inherent requirement of a job, if this characteristic is a necessary, objective and proportionate requirement for performing the essential functions of the job in question. For example, a theatre has a legitimate reason to hire only women to play female roles in a play. 📖 See Section 6 below on what does not constitute prohibited discrimination.

**Effect – Unequal outcome in employment or occupation: “nullifying or impairing, ...”**

If differential treatment based on any of the prohibited grounds leads to unequal outcomes or less favourable results, this amounts to discrimination. When analyzing whether discrimination has taken place the focus should be on assessing the **actual outcomes**, that is, actual labour market situations. Whether or not the discrimination is intended action is not always relevant. In other words even if there is no intention to discriminate, a certain act or fact can still constitute discrimination. To conclude that discrimination has actually taken place, it is sufficient that the differential treatment:

1. Has a negative, disparate impact on a group of persons in which persons of a particular sex, ethnicity, social status, religion or political opinion predominate.
2. Can not be objectively justified and convincingly explained by an inherent requirement of the job necessitating the differential treatment.

**Figure: The three components of the discrimination definition in Convention No. 111**



### Equality of opportunity and treatment

Discrimination and equality are two sides of the same coin. Discrimination means absence of equality. Equality at work represents a fundamental value and principle enabling workers to claim a fair share of the wealth which they help generate:

- The principle of **equal opportunity at work** aims to ensure that people have equal chances to develop their potential to the fullest and can allocate their time and energy where reward is the highest.
- The principle of **equal treatment at work** aims to ensure that people's work performance is rewarded according to their productivity and merit. It refers to employment and working conditions, such as equal entitlements in pay and job security.

### Employment and occupation

Convention No. 111 aims at the elimination of discrimination with respect to all aspects of employment and occupation:

- **Employment** refers to work performed under an employment relationship with an employer.
- **Occupation** means the trade, profession or type of work performed by an individual, irrespective of the branch of economic activity or the employment status of the worker.

Discrimination in the labour market and the workplace can be found in different work situations and in formal and informal employment in all economic sectors. The Convention provides protection against discrimination not only to employees, but covers the full spectrum of the working population. Traditional occupations pursued by indigenous peoples, such as subsistence farming, handicraft production or hunting, are occupations covered by the Convention. The terms “employment and occupation” apply also to work carried out by public servants (including members of the armed forces and police), by agricultural workers, unpaid family workers, owners of enterprises, own-account workers and the self-employed in sectors not covered by labour protection, such as subcontracted homeworkers, domestic workers, street vendors, taxi and (motor-) cycle drivers.

The Convention's definition of discrimination adopted in 1958 was forward-looking and ahead of its time as it recognizes direct, indirect and structural discrimination, covers (sexual) harassment and requires ratifying member States to report not only on measures taken to promote equality but also indicate “the results secured by such action” (Art 3(f)). It remains the most comprehensive, dedicated international instrument to guide national legislation on the promotion of non-discrimination and equality.

## 2. What is discrimination at work? – Key concepts

In order to better understand and address discrimination, it is useful to categorize how it manifests. It can exist in law or in practice, happen directly or indirectly, and it may consist of harassment. It is often structural, in other words entrenched in society and its institutions. The Convention covers all these forms.

### 2.1 Discrimination in law and in practice

Discrimination can exist in laws or regulations - also known as “**de jure**” – and/or exist in reality and in practice – known as “**de facto**.” A labour code stipulating that people from one ethnicity shall receive less pay than persons from another ethnicity because of their ethnic origin is “de jure” discrimination, whereas the actual practice of paying persons belonging to one ethnic group more than those belonging to another ethnic group is “de facto” discrimination.

It is relatively easy to remedy “de jure” discrimination and considerable progress has been made over the past 50 years in this respect. In most countries laws have been changed and rules preferring or excluding one group over another have been repealed. However, de jure discriminatory provisions still exist in a number of countries. For example, in some countries, laws still place limitations on the type of work women can do, or exclude them from certain sectors or occupations such as the judiciary or the police. In many countries men are often also entitled to more fringe benefits than women engaged in the same work or in jobs of equal value.


Discrimination in practice is still widespread and is more challenging to combat. For example, in many countries it is now forbidden to specify one sex or ethnicity in job advertisements. However, in most countries people of a certain sex or ethnicity are preferred for certain jobs and this leads to bias against groups of the other sex or ethnic origin in actual recruitment practices.

### 2.2 Direct discrimination

Another useful distinction to make is the difference between direct and indirect discrimination. Direct discrimination occurs when a prohibited ground is explicitly used for job-related differential treatment in laws, rules or practices. For example, a labour law stipulating that rural migrants in cities shall receive less pay than residents of these cities for the same job is directly discriminatory. Or, creating a different job-related opportunity for men or women only, or for persons confessing to a certain religion only, constitutes direct discrimination.

Direct discrimination continues to be common in actual employment practices. Explicit or direct “taste-based” discrimination often occurs when employers select one sex only in fields where they consider that this sex has a competitive advantage, for example, women in service jobs due to customer preferences for women, or men as managers because they are perceived as more capable decision makers.

### 2.3 Indirect discrimination

Indirect discrimination refers to rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by people of one sex, race, colour or other characteristics, and cannot be justified by the inherent requirements of the job. Indirect discrimination may involve certain requirements (e.g. physical height or dress code), conditions (e.g. working hours) or practices (e.g. blaming for common incidents) that have a disproportionately negative impact on members of a certain group, such as women, ethnic or religious groups.  See Section 6.1 below for more information.


Indirect discrimination is often hidden and invisible at first glance. It may be unintentional and stem from unconscious and culturally accepted practices. In many instances indirect discriminatory practices may be considered “business as usual” or “normal” operating procedures that are in line with long-accepted traditions. To understand indirect discrimination one must often challenge established assumptions and convincingly document their negative impact and outcomes in the labour market. One must not ask what the motives are of the involved persons but what the results are of their action.

Statistics play a vital role in establishing or disproving indirect discrimination, because hard data can provide the evidence that an employment practice has an adverse impact on one group and not on another.<sup>43</sup> For this reason, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR)

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<sup>43</sup> Thomas, C. and Taylor, R.: *Enforcement of equality provisions for women workers* (Geneva, ILO, 1994).



consistently requests governments to collect and analyze relevant data, disaggregated by sex and where possible social origin and/or religion, on the distribution of the different groups of the population in the various sectors of employment, occupations and levels of earnings.<sup>8</sup>  See Chapter 3, Section 4.1 Research on equality and discrimination



### Examples of direct and indirect discrimination

- An employer of cleaning workers who has a different wage scale for men and for women cleaners engages in direct sex discrimination.
- An employer of cleaning workers who uses different job titles and pays a higher wage to “**surface technicians**” (who are all men) than to “**cleaning maids**” (who are all women), although the work is very similar and the value of their output is exactly the same, engages in indirect sex discrimination.
- Bank loan conditions that require applicants to be a member of the dominant religion in order to qualify for a loan are a form of direct discrimination.
- Bank practice of providing information on access to credit in the majority language only while it is known that most ethnic minority peoples cannot read the majority language can amount to indirect discrimination.
- Job advertisements that state that persons with disabilities or health conditions need not apply are directly discriminatory.
- Job advertisements that specify an irrelevant height requirement that a person using a wheelchair cannot meet can be indirect discrimination if the height requirement is not related to the inherent requirements of the job in question.
- The exclusion of domestic workers, workers in agriculture, part-time and seasonal workers from social protection measures may result in indirect discrimination against various groups. Low-income women, workers belonging to ethnic minorities, migrants and elderly workers are disproportionately represented in these types of work and therefore suffer the most from this type of exclusion.

## 2.4 Structural discrimination

Differential treatment is most readily thought of as emerging from the behaviour of an individual employer in a given situation at a given point in time. However, often discrimination is not an exceptional or aberrant occurrence, resulting from isolated acts of an individual employer or worker, but a systematic phenomenon, deeply embedded in the way organizations function, laws and rules are applied and workplaces operate. Its effects are far more significant, obviously, if it emerges from laws, administrative regulations, policies, practices, the functioning of institutions or social patterns – this is known as **structural** (systemic, systematic or institutional) **discrimination** and must be addressed over time as a matter of public policy.<sup>9</sup>

<sup>8</sup> On Convention No. 100,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 88<sup>th</sup> Session (Geneva, 1999), p. 354.

<sup>9</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); ILO: *Time for equality at work* (Geneva, 2003).

**Box 10. Example of structural discrimination: Wage discrimination****Demographics of low-wage workers in Asia**

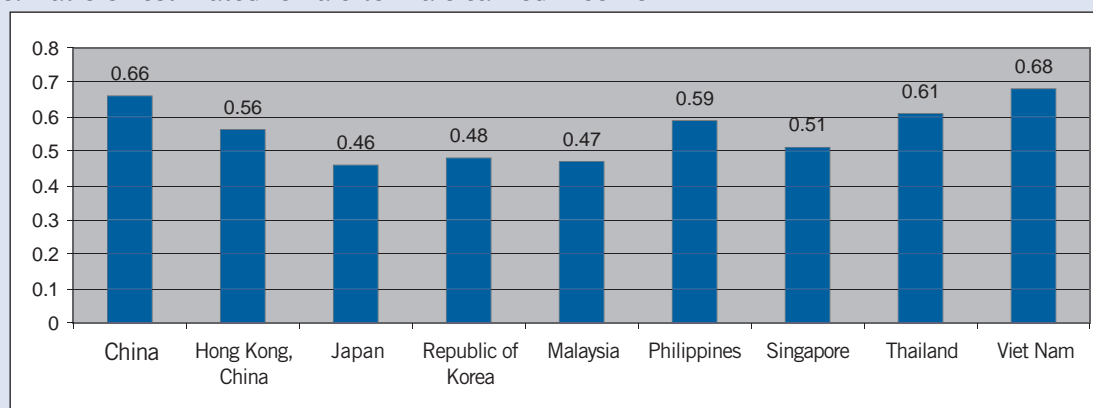
Systematic undervaluing of work performed by certain groups of workers in the labour market is a good example of structural discrimination. The ILO Global wage report 2010/2011 analysis of demographics of low-wage workers<sup>10</sup> noted that globally workers in low-wage jobs tend to be **young**, are disproportionately **female**, have a **low level of education**, and are more likely to be members of a disadvantaged **ethnic minority, racial or migrant group**.

In the East and South-East Asian region, women and young workers were at higher risk of low wage employment. **Gender** and **age** were identified as variables increasing the risk of low pay in China, Indonesia, the Republic of Korea and the Philippines. Women made up the majority of low-wage employees, even though they usually have a lower labour market participation rate. Among the most disadvantaged were domestic workers. For example in the Philippines three out of four domestic workers were low paid.

In China, the risk of low-wage employment was at least twice as high for **rural migrants** as for local workers. Incidence of low-wage employment was 28.2 per cent for local workers and 60.6 per cent for migrant workers. Especially disadvantaged were **rural migrant women**, 67.6 percent of whom were in low-paid jobs compared to 56.4 per cent of rural migrant men and 35.8 per cent of local women. It was estimated that about 60 percent of these large differences between local workers and migrant workers were attributable to the characteristics of workers, such as the level of education. However, the remaining **40 percent of the wage differences was due to discriminatory treatment of migrant workers**.

**Evidence of the gender wage gap in Asia**

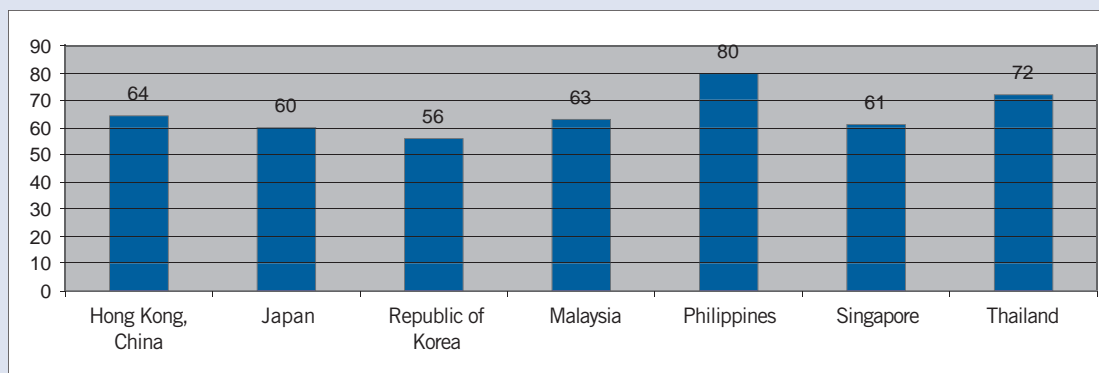
According to an OECD study published in 2010 the gender wage gap in the Republic of Korea was almost 40 per cent and in Japan over 30 per cent – both much higher than the average 17.6 per cent across OECD membership. An earlier regional study noted similar gaps in 2005. In 2005, women's income amounted to less than or just half of men's income in Japan, Malaysia, the Republic of Korea and Singapore; to around 60 per cent of men's income in Hong Kong SAR, the Philippines and Thailand; and to around two-thirds of men's income in China and Viet Nam. These low figures reflect the large number of women working in agriculture and as unpaid family workers in the region. Data on wages in manufacturing show a marginally smaller gender pay gap. In this sector, women's wages as a percentage of men's amount to over 70 per cent in the Philippines and Thailand; below 65 per cent in Hong Kong SAR, Malaysia and Singapore; and 60 per cent or lower in Japan and the Republic of Korea.

**Figure: Ratio of estimated female-to-male earned income**

Source: UNDP: *Human development report 2005*, (New York, 2005).

<sup>10</sup> In the report low-paid workers were defined as workers whose hourly wages were less than two-thirds of the median wage across all jobs. ILO: *Global wage report 2010/2011* (Geneva, 2010).

Figure: Female-to-male ratio of wages in manufacturing, 1993/2003\*



\*As in source (specification of year not given)

Source: United Nations: *The world's women 2005* (New York, 2005).

Gender wage gaps vary widely among sectors and occupations within countries. Looking, for example, at Indonesia, the overall gender wage gap narrowed between 2004 and 2008 but considerable gaps remain to exist, especially in the service sector (where women accounted for 52 per cent of the workers in 2010). The gap widened among professional, technical and related workers to the detriment of women, but among administrative and managerial staff women started to earn more than men. However, the economic inequalities faced by the majority of women continue to constrain their ability to participate as equals in the Indonesian economy. Estimates suggest that Indonesia loses about US\$2.4 billion a year due to inequalities in labour market participation between men and women.

Table: Female wage as percentage of male counterpart wage by occupation type, Indonesia

|   | 2004 | 2008  |
|---|------|-------|
| Professional, technical and related workers | 84.5 | 79.1  |
| Administrative and managerial               | 97.7 | 108.9 |
| Clerical and related workers                | 81.1 | 87.3  |
| Sales workers                               | 67.4 | 69.9  |
| Service workers                             | 46.3 | 48.7  |
| Agricultural workers                        | 68.8 | 76.3  |
| Production workers, operators & labourers   | 74.3 | 76    |
| Occupation total                            | 77.8 | 82.8  |

Source: ILO: *Labour and social trends report: Indonesia* (Jakarta, 2009).

Difficulties encountered in achieving equal remuneration are closely linked to the general situation and status of women in the labour market and society. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has long taken the view that discrimination in respect to remuneration requires action to address the root causes of the gender pay gap. Under Convention No. 111, States are encouraged, for example, to develop measures to provide equal opportunities to men and women in education and vocational training and enable women to enter and advance in a wider variety of jobs and occupations, and at senior levels. Moreover, Convention No. 100 calls for carrying out objective job appraisals on the basis of the work to be performed and free from gender bias.

Source: ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.22; JICA: *Country gender profile Indonesia* (Jakarta, 2011); OECD: *Gender Brief*, OECD (2010); ILO: *Global wage report 2010/2011* (Geneva, 2010); N. Haspels & E. Majurin: *Work, income and gender equality in East Asia: Action guide* (ILO, Bangkok, 2008); ILO: *Equality at work: Tackling the challenges* (Geneva, 2007), p.73; ILO: *Labour and social trends report: Indonesia* (Jakarta, 2009); UNESCAP: *Economic and social survey of Asia and the Pacific: Surging ahead in uncertain times*, (Bangkok 2007).

### 2.5 Harassment

Differential treatment at the workplace can also consist of creating a violent, threatening and unpleasant working environment. The most serious forms of harassment include murder, rape and physical assault. Other common forms involve, for example, giving a person unwanted (sexual) attention, using a person as the target of one's social prejudices, or bullying a person for his or her racial features. Such behaviour can also occur during employment or at the recruitment stage, for example, when recruitment decisions are based on candidates' acceptance or rejection of a request for (sexual) favours. The common term used for this type of behaviour is "harassment."

Harassment is a form of discrimination if it is based on one of the prohibited grounds of discrimination defined in the Convention or in national legislation. Actions constituting harassment may be:

- physical – e.g. (sexual) violence or unwelcome physical contact such as kissing or touching.
- verbal – e.g. comments, offensive jokes, personal insults, derogatory language.
- non-verbal – e.g. staring, leering, whistling, threatening behaviour, sexually suggestive gestures, or 'freezing' somebody out.

The most severe forms of (sexual) violence are physical assault and rape which are criminal behaviour covered by criminal law. The other principal two forms of harassment include:

- "Quid-pro-quo" (meaning "this for that") harassment. It refers to a demand by a person in authority, such as a supervisor, for favours in order to obtain or maintain a job benefit – be it recruitment, a wage increase, a promotion or training opportunity, a transfer or job security. This type of harassment takes place most often as **(sexual) blackmail**, that is demanding (sexual) favours in exchange for a job benefit.
- The creation of a **hostile working environment**. This refers to verbal, non-verbal or physical conduct that creates an intimidating, offensive, humiliating, abusive or poisoned working environment, and interferes with people's performance at work.

The essential characteristic of sexual harassment is that it is unwanted and unwelcome by the recipient. In a work-related context, harassment can emanate from an employer, a supervisor, a colleague, a visitor, a customer, or anybody with whom the worker is expected to interact. It often takes place at the physical workplace, but may extend well beyond that to all work-related interactions where a perpetrator has "access" to the person being harassed. Examples include travel to and from work, office parties, phone calls and mails. Preventive measures should anticipate harassment in a wide variety of work-related interactions.

A working environment "polluted" by harassment inevitably involves loss of productivity. It can also be the source of work-related health problems such as stress, depression and, in severe cases, fatal accidents such as suicide. Due to these health impacts harassment is considered an occupational health issue, and covered under the **Occupational Safety and Health Convention, 1981 (No. 155)**.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a form of sex discrimination and should be addressed within the requirements of Convention No. 111. In the past there was little awareness on sexual harassment in workplaces and society with gender stereotypes abounding, such as "women ask for it," or "like it deep in their heart" or "it is just some workplace fun."<sup>11</sup> However, it is now widely acknowledged that sexual

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<sup>11</sup> Haspels, N.; Kasim, Z.M.; Thomas, C.; McCann, D.: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok and Geneva, ILO, 2001).

harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers. The productivity of enterprises is also impaired as sexual harassment weakens the basis upon which work relationships are built.<sup>12</sup>

### Box 11. Research evidence on sexual harassment at work in Asia

- **China:** A survey conducted by Women's Watch China in 2009 found that 20 per cent of the interviewed 1,837 female respondents had experienced sexual harassment at work. The respondents were employees from 10 enterprises in Guangdong, Jiangsu and Hebei provinces and Beijing. The study reported that only 45.6 per cent of the victims took the issue up with the harasser and only 34.3 per cent reported the harassment to managers. Fewer than 20 per cent called the police or took civil legal action. 51.3 per cent of the surveyed respondents said harassment had lowered their work efficiency, whereas 47.8 per cent said they resent going to work, 43 per cent stated they make more errors and 32.7 per cent noted that the harassment had made them skip work more often. 28 per cent of the respondents stated they want to change jobs because of the sexual harassment.
- **Hong Kong, SAR China:** A survey published in Hong Kong in 2007 showed that nearly 25 per cent of workers interviewed suffered sexual harassment. One-third of the victims were men. While 20 per cent of the female victims reported the harassment to managers, only 6.6 per cent of the male victims reported their grievance because they felt too embarrassed to face "ridicule."

Sources: "Survey finds one in five women sexually harassed", in *China Daily*, 4 May 2011; ILO: *Sexual harassment at work*, fact sheet (Geneva, 2007); ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.27.

### 3. Grounds of discrimination prohibited by Convention No. 111

The Convention requires ratifying States to ensure protection against discrimination on seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as other grounds prohibited in national legislation. ILO experience<sup>13</sup> learns that discrimination in many cases is not limited to discrimination on solely one ground. For example, a young woman from a hill tribe who has migrated from an isolated rural area to a capital city may have limited job options and has to cope with multiple forms of discrimination on the grounds of race, colour, sex, national extraction, social origin and possibly age. This leads to a vicious circle of cumulative disadvantage.

The seven grounds covered by Convention No. 111 are briefly explained below.

#### 3.1 Sex and gender


Discrimination in employment and occupation based on sex occurs when men and women have unequal opportunities or are treated differently in employment or occupation due to perceptions and prejudices on their biological and/or social gender roles in society. In many Asian countries, for example, women are assigned the main responsibility for looking after the family and household duties and this is considered to limit their job performance. Such ideas, expectations and norms about the roles, characteristics, abilities and behaviour of men and women exist in every society and they form the root causes of discrimination on the ground of sex.

<sup>12</sup> ILO: "General observation on Convention No. 111", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 91<sup>st</sup> Session, (Geneva, 2003).

<sup>13</sup> See for example, ILO: "Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009).



Objective biological differences between women and men, most notably differences in reproductive functions, may justify and sometimes even require differences in treatment between women or men. However, employment discrimination against women, and sometimes men, often does not derive from objective facts but is based on assumptions and generalizations on what each sex can and cannot, and should and should not do.

In most countries the law prohibits direct discrimination based on sex. In practice, however, women continue to encounter both the direct and the more hidden forms of discrimination during their working lives in most countries. Distinctions in the labour market based on **pregnancy and maternity** discriminate against women because only women become pregnant and give birth. Women of reproductive age often just do not get a job because they may become pregnant. Or, when they are recruited their verbal or written labour contract stipulates that they should not get married or pregnant for several years or even an unspecified period of time. If they do, they breach their contract and face immediate dismissal. This kind of practice has been found to be relatively common, for example, in China and Viet Nam, even if it has been prohibited by labour legislation.<sup>14</sup> Similar workplace practices are reported from Indonesia, the Republic of Korea and Thailand. It is also reported that women, in fear of losing their job will forego benefits, even if they are entitled to them.  See also Section 4.1 Maternity below.

In addition, many women face employment discrimination because societies assign **family and household responsibilities** almost exclusively to them. As a result, many employers are reluctant to hire them due to perceptions that mothers are less competent at work than fathers. Delivering and raising children, benefit society at large so that the responsibilities and burdens involved should be shared in society, and not be borne exclusively by women. Distinctions on the basis of **civil or marital status** are also discrimination on the ground of sex when they result in a requirement or condition being imposed on an individual of a particular sex that would not be imposed on an individual of the other sex.

 See also Section 4.2 Family responsibilities below.

One factor contributing to sex discrimination in employment and occupation, and women's disadvantaged position in employment in Asia is the persistence of **strong gender-role stereotyping** which legitimizes discrimination against women in society and the labour market. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the UN Committee on Elimination of Discrimination Against Women (CEDAW) have repeatedly reminded the governments of Asian countries about the importance of repealing these stereotypes to ensure women and men equal opportunities in employment and occupation.<sup>15</sup>

One way in which these strong gender-role stereotypes manifest is **occupational sex segregation**, which continues to limit free choice of employment and occupation for both women and men in the East and South-East Asian labour markets. Women continue to a different range of occupations (**horizontal segregation**) and often lower job grades than men (**vertical segregation**). The CEACR and the CEDAW have urged the governments in Cambodia, China, Indonesia, Singapore and Viet Nam, among others, to hasten their efforts to ensure women's access to employment in a wider range of occupations and industries. One key strategy towards this goal is ensuring girls and women

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<sup>14</sup> Ministry of Labour, Invalids and Social Affairs (MOLISA), Research Center for Female Labour (RCFL) and F. Howell: *Equality, labour and social protection for women and men in the formal and informal economy in Viet Nam* (Hanoi, ILO, 2003).

<sup>15</sup> ILO: "Individual observation concerning Equal Remuneration Convention, 1951 (No.100) with respect to Japan", in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2007), CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Cambodia (2006), China (2006), Indonesia (2007), Lao PDR (2005), Malaysia (2006), Philippines (2006), Singapore (2007), Thailand (2006) & Viet Nam (2007)* (Geneva).

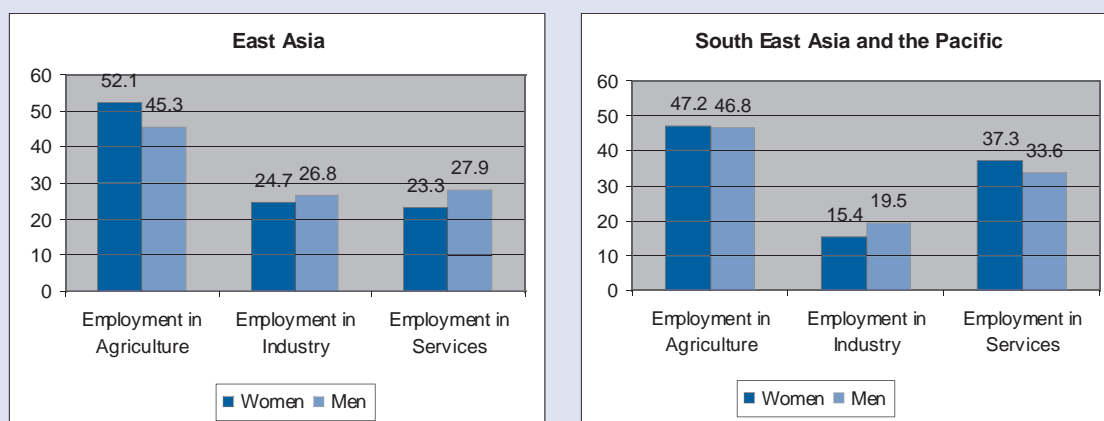


access to a more diversified choice of education and training.<sup>16</sup> The CEACR has also urged the governments to take measures to decrease the use of dual **career tracking systems** in Japan and the Republic of Korea. The career tracking systems, which encourage women to join the clerical general track and men to join the career track, lead to wage disparities and low levels of women in managerial positions.<sup>17</sup>

**Box 12. Occupational segregation – “Women’s jobs” and “men’s jobs”**

Looking at the overall sectoral trends, in East Asia, over 52 per cent of women work in agriculture, which is significantly higher than the corresponding figure for men, and the percentage of men in both industry and services is higher than for women. In South-East Asia, the proportion of women and men in agriculture is almost the same, the percentage of men in industry is higher than for women and the service sector is a bigger provider of employment for women than for men.

**Figure: Female and male share in total employment by sector in East Asia and South-East Asia and the Pacific, 2006**



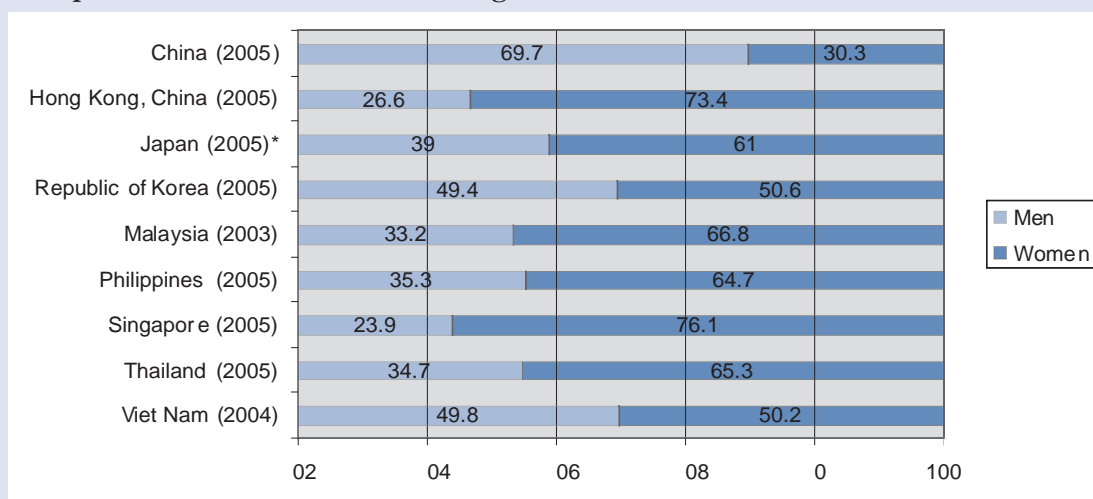
Source: ILO: *Global employment trends model*, in ILO: *Global employment trends for women: Brief*, ILO, (Geneva, 2007).

Turning to occupational segregation, worldwide, labour markets are segregated to a surprisingly large extent: some 60 per cent of non-agricultural workers in the world are in an occupation where at least 80 per cent of the workers are either women or men. In East and South-East Asia as in most other parts of the world, women are over-represented in the 5 C’s – **ca**ring, **ca**shiering, **ca**tering, **cl**eaning and **cl**erical. For example, data on the proportion of men and women among clerical workers in the figure below shows clear over-representation of women in this category in all countries except mainland China.

<sup>16</sup> ILO: “Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Viet Nam” in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2010); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women*: Cambodia (2006), China (2006), Indonesia (2007) & Singapore (2007).

<sup>17</sup> ILO: “Individual observation concerning Equal Remuneration Convention, 1951 (No. 100) with respect to Japan” in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2008, 2007, 2005); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Equal Remuneration Convention, 1951 (No.100) with respect to Republic of Korea* (Geneva, 2006, 2004).

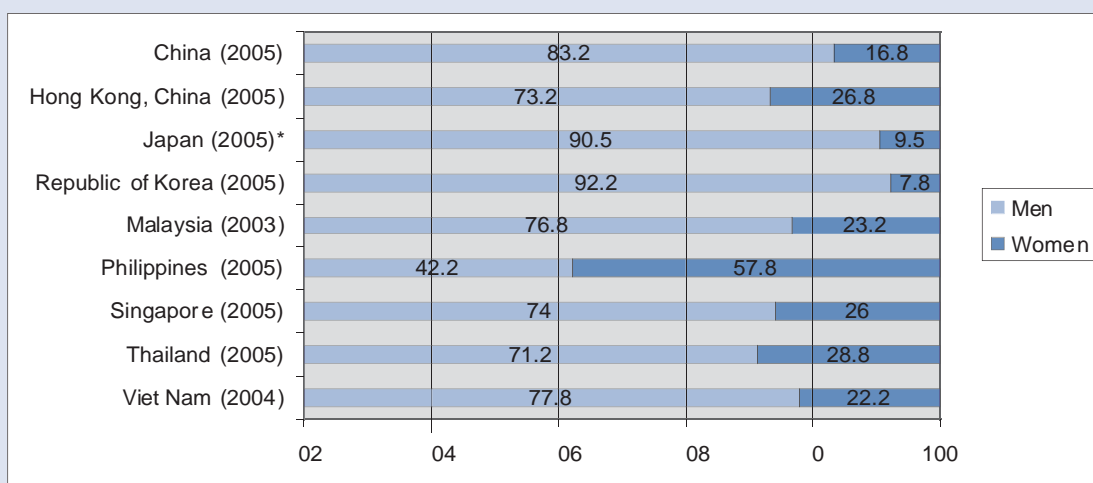
Figure: Proportion of men and women among clerical workers



\*ISCO-68 category 3 is used as equivalent of ISCO-88 category 4 (all other countries are based on ISCO-88) (accessed 15 May 2007). Source: Own calculations from ILO, *Laborsta*, Table 2C in N. Haspels; E. Majurin (Bangkok, ILO, 2008)

Available data also point to continuing **vertical segregation** in Asian labour markets. In China, including Hong Kong, Japan, the Republic of Korea, Malaysia, Singapore, Thailand and Viet Nam women represent less than 30 per cent of legislators, senior officials and managers. The Philippines is the only significant exception from this regional pattern with women making up almost 60 per cent of this occupational category. In Japan and Republic of Korea, the figure is particularly low (under 10 per cent).


Figure: Proportion of men and women among legislators, senior officials and managers



Based on ISCO-68 classification. Category 2 is used as equivalent of ISCO-88 Category 1 (all other countries are based on ISCO-88) (accessed 15 May 2007). Source: Own calculations from ILO, *Laborsta*, Table 2C in N. Haspels; E. Majurin (Bangkok, ILO, 2008)

Sources: N. Haspels; E. Majurin: *Work, income and gender equality in East Asia: Action guide* (ILO, Bangkok, 2008); ILO: *ABC of women workers' rights and gender equality*, second edition (Geneva, 2007); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Indonesia*, CEDAW/C/IDN/CO/5 (2007).

Occupational sex segregation is linked to wage discrimination suffered by women, which is the outcome of undervaluing the jobs traditionally dominated by them. The **gender pay gap**, that is, the pay difference between women and men, is considerable in all Asian labour markets with the

Republic of Korea topping the chart with a 40 per cent pay gap in 2010.<sup>18</sup> The gender pay gap is a clear form of structural discrimination against women, and must be addressed progressively over time as a matter of public policy.  See also Box 10. Example of structural discrimination: Wage discrimination above.

Discrimination against women remains pervasive throughout the labour markets in Asia as they continue to be concentrated in the most vulnerable categories of atypical and informal employment. For example, in Japan and the Republic of Korea women continue to be overrepresented in **part-time** and **non-regular employment**, earning much lower wages than full-time and regular workers, most of whom are men.<sup>19</sup> In Indonesia, women continue to predominate in informal employment and among the unemployed.<sup>20</sup>

Moreover, the global economic crisis which began in 2008 was profoundly different for women and men. Asian women workers were the earliest and the most serious casualties. The gender inequalities that pre-dated the crisis underlie the inequalities arising specifically from the crisis and also explain why women shouldered the brunt of the impact – both the first-round impacts in terms of unemployment and underemployment and the knock-on effects on informal employment, and the second-round impacts on intra-household dynamics and coping strategies. Women in Asia tend to make up the “buffer workforce” – within labour markets, where they are treated as flexible and expendable workers, and within households as “added workers” and “secondary earners” – but women themselves have few buffers against economic crises and the range and effectiveness of their buffers remain inadequate.<sup>21</sup>

### 3.2 Race and colour

Under Convention No. 111, the term “race” is considered in a wide sense to refer to ethnic groups or linguistic communities or minorities whose identity is based on cultural or religious characteristics or national extraction (See Section 3.4 below). Protection against racial discrimination covers ethnic minorities, in particular indigenous and tribal peoples, and any other minorities disadvantaged on racial grounds, including immigrant ethnic groups.

The grounds of race and colour are generally examined together, since colour is one of the most visible ethnic characteristics that differentiate human beings. Discrimination in employment and occupation based on race or colour occurs when a person’s job opportunities or treatment are determined by his or her racial features, including the colour of the skin (complexion). Racial discrimination can occur against persons who share the same citizenship, but are of a different ethnic origin.

Another ILO instrument promoting equality of ethnic minorities in employment and occupation is the **Indigenous and Tribal Peoples Convention**, 1989 (No. 169). The Convention prohibits discrimination and provides for consultation and participation of indigenous and tribal peoples with regard to policies and programmes that may affect them. It provides for enjoyment of fundamental rights, and establishes general policies regarding indigenous and tribal peoples’ customs and traditions, employment and livelihood, vocational training, handicrafts and rural industries, social security and

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<sup>18</sup> OECD: *Gender brief* (2010).


<sup>19</sup> ILO: “Individual observation concerning Equal Remuneration Convention, 1951 (No. 100) with respect to Japan” in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2008, 2007, 2005); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Equal Remuneration Convention, 1951 (No.100) with respect to Republic of Korea* (Geneva, 2006, 2004).

<sup>20</sup> Indonesia, BPS: *Labour Force Survey* (Jakarta, 2010).

<sup>21</sup> ILO; ADB: *Women and labour markets in Asia: Rebalancing for gender equality* (Bangkok, 2011), pp. 18, 19.

health, education, land rights, the use of natural resources found on traditional lands, and cross-border contacts and communication.

In East and South-East Asia ethnic minorities and indigenous peoples are often disadvantaged in **access to education**, which also hampers their later opportunities in finding skilled employment. The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) and the UN treaty bodies have expressed their concern, among others, on low school enrollment rates and poor access to vocational training opportunities in ethnic minority areas in many Asian countries and the lack of adequate opportunities for indigenous and ethnic minority children to receive instruction in their own language. Due to low education level and persistent prejudice persons belonging to ethnic minorities and indigenous peoples often also face discrimination in **access to employment**, and are concentrated in informal, casual employment, and in dirty dangerous and demeaning jobs with poor social security.<sup>22</sup>

Discrimination against ethnic minorities and indigenous peoples in **access to occupation** manifests often in lack of recognition and support for their traditional occupations. The CEACR and the UN treaty bodies have expressed their concern, among others, on poor access to land and resources to ensure indigenous people's traditional occupations in Cambodia and impacts of mining and palm-oil plantations on indigenous groups' livelihoods in the Philippines and Indonesia. One further concern is transmigration of other ethnic groups to areas traditionally inhabited by indigenous groups in Indonesia, and its impacts on public employment and traditional occupations of indigenous groups.<sup>23</sup>  See also Section 5.3 Access to occupation below.

Globally, indigenous and tribal peoples are disproportionately represented among the poor. They account for over one per cent of the world's poor, although they make up five per cent of the world's population.<sup>24</sup> Similarly in East and South-East Asia, poverty of ethnic minorities and indigenous peoples in many Asian countries has raised concerns about *de facto* discrimination against these peoples and groups.<sup>25</sup>

### Box 13. Recognition of indigenous peoples – Indonesia

In Indonesia, Act No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination was introduced to define and eliminate racial and ethnic discrimination with respect to civil, political, economic, social and cultural rights. It imposes a number of obligations on national and regional governments regarding the effective protection and elimination of racial and ethnic discrimination. However, the law does not identify indigenous peoples as a specific group.

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<sup>22</sup> ILO: "Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111)" with respect to Viet Nam (2010) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Cambodia (2010), China (2010) & Philippines (2009)* (Geneva); CERD: *Concluding comments of the Committee on Elimination of Racial Discrimination: Cambodia (2010), China (2001), Japan (2010), Lao PDR (2005) & Philippines (2009)* (Geneva); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights: Japan* (Geneva, 2001).

<sup>23</sup> ILO: "Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111)" with respect to Indonesia (2008, 2007) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Cambodia (2010) and Philippines (2009)* (Geneva); CERD: *Concluding comments of the Committee on Elimination of Racial Discrimination: Cambodia (2010) & Philippines (2009)* (Geneva).

<sup>24</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007)

<sup>25</sup> CERD: *Concluding comments of the Committee on Elimination of Racial Discrimination: Lao PDR* (Geneva, 2005).

The issue of definition of indigenous peoples remains a sensitive one in Indonesia and has not been fully resolved. Presidential Instruction No. 26 of 1998 provided for the cessation of the use of the terms “indigenous” and “non-indigenous” in official documents. Different definitions have since been used in various official documents:

- The Second Amendment of the Constitution identifies indigenous peoples as “traditional legal communities” and as “traditional peoples”.
- The National Assembly’s Decree on Agrarian Reform and Natural Resource Management (Decree No. 9 of 1999) also identifies indigenous peoples as “traditional peoples.”
- Presidential Decree No. 111/1999 and Social Ministry Decree No. 06/PEGHUK/2002 defines indigenous communities as “remote indigenous communities”: “Remote indigenous community is a local social (cultural) group, which is spread-out and lacks access to public social, economical and political services.”
- The Law on Coastal and Small Island Management (2007) incorporates a definition which has been developed by AMAN (Aliansi Masyarakat Adat Nusantara - the national indigenous peoples umbrella organization): “*Indigenous communities are a group of people who have lived in their ancestral land for generations, have sovereignty over the land and natural resources, and who govern their community by customary law and institution which sustain the continuity of their livelihood.*”

The AMAN-definition is largely inspired by and based on the definition given in the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). This definition has been accepted by some national institutions and authorities, that is, the Ministry of Fisheries and the National Human Rights Commission. The example shows that the statement of coverage of Convention No. 169 has an impact beyond the countries that have ratified the Convention.

The Committee on the Elimination of Racial Discrimination (CERD) has noted with concern that Indonesian law recognizes the existence of indigenous peoples on its territory, only “as long as they remain in existence.” Its definitions do not provide safeguards or guarantee respect for self-identification in the determination of indigenous peoples. The current Government interpretation of article 18B of its Constitution also allows for the rights of indigenous peoples to be compromised in the interest of modernization and economic and social development.

Sources: ILO: *Indigenous & tribal peoples’ rights in practice* (Geneva, 2009); J. Henriksen: *Key principles in implementing ILO Convention No. 169* (Geneva, ILO, 2008); CERD: *Concluding comments of the Committee on the Elimination of Racial Discrimination: Indonesia* (Geneva, 2007).

### 3.3 Social origin<sup>26</sup>

Discrimination on the basis of “social origin” arises when an individual is denied a job or access to a certain economic activity or only assigned particular jobs because s/he belongs to a widely recognized “class” in society or simply a group with clearly defined social characteristics. The discrimination may be based on socio-economic status, a socio-occupational category, a criminal conviction, a caste, and includes household registration if privileges are attached to this registration.

Social origin may be viewed mainly in forms of social mobility, defined as the possibility for an individual to move from one class or social category to another.<sup>27</sup> Prejudices and institutional practices based on social origin thus limit the social mobility of certain people.<sup>28</sup>

<sup>26</sup> ILO: “Equality in employment and occupation, General survey”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 75<sup>th</sup> Session (Geneva, 1988), p. 53.

<sup>27</sup> ILO: “Special survey on equality in employment and occupation in respect of Convention No. 111”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 83<sup>rd</sup> Session (Geneva, 1996).

<sup>28</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).



### Box 14. Discrimination the basis of social origin – Asia

**Burakumin, Japan:** The situation of the Burakumin, a Japanese social minority group, ethnically and linguistically indistinguishable from other Japanese people, represents an example of discrimination on the basis of **socio-occupational category**. The Burakumin face discrimination in Japan because of an association with work once considered impure, such as butchering animals or tanning leather. In particular, they often have trouble finding marriage partners or employment.

**Rural migrant workers in China and Viet Nam:** In these countries, a person's place of residence is an important determinant of benefits and opportunities, including in employment and occupation. Rural dwellers have fewer entitlements than urban dwellers. In China, the "hukou" system of resident registration, which tied people to a particular place of residence and has been in force since 1958, has been gradually dismantled since the 1980s to meet the increasing demand from industries in the major cities. While movement has been made free irrespective of where migrants have their hukou, it is nonetheless hard for migrants from rural areas to obtain an urban hukou.

Today there are an estimated 150 million rural migrant workers labouring in China's cities. Owing to their social status, rural migrants suffer from institutionalized discrimination. In some cities, authorities deny them access to certain types of jobs (the better ones) that are kept for permanent residents. Rural migrant workers usually rely on informal networks (95 per cent found jobs through friends or by themselves) and end up working in informal, low-paid, menial jobs that urban workers refuse. In January 2008, the Employment Promotion Law introduced China's first ever prohibition of discrimination against rural migrant workers, but in practice rural migrant workers continue to face challenges in urban labour markets.

Viet Nam imported the household registration system (ho khau in Vietnamese) from China in the mid-1950s, and formally extended it throughout the countryside in 1960. The ho khau was developed as a management tool for the government to regulate the geographical movement of the population, and it still remains a prerequisite for access to decent jobs, housing ownership and key public social services. Data from the 2008 Migration Impact Survey shows that the majority of migrants (94 per cent) are employed in precarious and temporary jobs in the informal sector, particularly in the so-called 3D-jobs (dirty, dangerous and difficult). Nearly 70 per cent of the interviewed migrants had experienced being rejected by an employer in formal sector because they did not have a ho khau in the city.

**Caste-based discrimination, South Asia:** Violence, discrimination and segregation, because of their alleged "impurity" and inferiority, are a daily experience for millions of men and women in several regions of the world. Discrimination rooted in caste or similar systems of rigid social stratification has been observed in Africa, Asia and the Middle East, but the practice is most widespread in South Asia, particularly in India and Nepal. Although abolished by law, which prohibits the practice of "untouchability", caste remains a dominant factor in defining the economic and social status of Dalit men and women throughout the subregion.

Caste-based discrimination confines Dalits to occupations associated with their caste, often involving the most menial tasks such as "manual scavenging" or the removal of dead animals. Dalits are generally not accepted for any work involving contact with water or food for non-Dalits or entering a non-Dalit residence. They are thus excluded from a wide range of work opportunities in the area of production, processing or sale of food items, domestic work and the provision of certain services in the private and public sectors (e.g. office helpers). Limited access to education, training and resources, such as land or credit, further impair their equal opportunities for access to non-caste-based occupations and decent work.

Where policies and laws are in place, enforcement and implementation are often lacking or unsatisfactory. Affirmative action measures have assisted a small number of Dalits in obtaining formal jobs, but have failed to lead to more even progress in providing equal opportunities to all. Purely developmental approaches to improving the lot of the Dalits are insufficient, if the underlying structural causes and caste barriers are not simultaneously addressed. India's 2007-2012 Five Year Plan includes measures to further eliminate discrimination against Dalits, including introduction of new legislation and affirmative action measures.



Source: ILO: *Equality at work: The continuing challenge* (Geneva, 2011); ILO: *Equality and non-discrimination at work in China, Training manual, Module 4: Promoting equality at work for rural migrant workers in China* (Beijing, 2010); ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); *Buraku discrimination*, <http://imadr.org/sayama/buraku.html> (accessed 30 Nov. 2010); Duong L.B. et al.: *Social protection for rural-urban migrants in Viet Nam: Current situation, challenges and opportunities*, Center for Social Protection, CSP Research report 08, January 2011 (Sussex, 2011).

### 3.4 National Extraction <sup>29</sup>

Discrimination in employment and occupation based on national extraction or national origin covers distinctions made on the basis of a person's foreign origin, place of birth or ancestry. The ground of national extraction also includes national ethnic or linguistic minority groups and immigrant ethnic groups. Distinctions made between citizens with local origin and citizens with foreign birth or origins are one of the most evident examples. <sup>30</sup>

### 3.5 Religion

Discrimination based on religion covers acts and attitudes of intolerance towards persons who profess a particular religion or religious belief, or who profess no religion. It concerns the right to exercise one's own faith or creed and the right to act in accordance with it. The requirements of a job, occupation or trade may in certain circumstances hinder the free exercise of a religious practice. This happens in cases where a religion prohibits work on a day different from the day of rest established by law or in company practice, or in cases where the exercise of a religion requires a particular kind of clothing. A constraint may also arise with regard to oaths taken when taking up a specific job, position or type of employment.

#### Box 15. Islam and gender equality

Many countries with large Muslim populations have a dual legal system, in which Islamic code is applied alongside the state secular legal system. In East and South-East Asia Islamic Shari'ah law is applied in Indonesia, Malaysia and Singapore.

Women's groups in Muslim countries and elsewhere have indicated that Islamic law may sometimes restrict the enjoyment of equal rights by Muslim women. For example, in Malaysia in 2001 when sex was added as a prohibited ground of discrimination in the Constitution, Sisters in Islam (SIS) noted that it is "concerned that the use of religion has often perpetuated discrimination against Muslim women and denied them the increasing sphere of rights that is being granted to their non-Muslim counterparts."

The UN Committee on the Elimination of Discrimination against Women (CEDAW) has also noted with concern the inconsistencies between the secular law and Islamic law with regards to women's equality. In its recent comments it has urged the Governments of Indonesia, Malaysia and Singapore to ensure that any conflicts between secular and Islamic laws with regard to women's right to equality and non-discrimination are resolved in full compliance with the Convention on Elimination of Discrimination against Women which they ratified in 1984, 1995 and 1995 respectively. With regards to Indonesia and Malaysia the CEDAW has also urged the Governments to harmonize the application of Shari'ah law across all states and to rescind local laws that discriminate against women on the basis of religion.

<sup>29</sup> Ibid. p. 32.

<sup>30</sup> For examples, see ILO: "Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to France and the Netherlands" in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2008); ILO: "Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to France" in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2006).

Sources: Sisters in Islam: *Equal rights amendment*, Press Statement, 24 July 2001, <http://www.sistersinislam.org.my> (accessed 18 Jan. 2011); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Indonesia* (2007), Malaysia (2006) & Singapore (2007).

### Box 16. Religious discrimination in Lao PDR in access to political parties and public service

According to the Special Rapporteur on Freedom of Religion and Belief of the Office of the UN High Commissioner for Human Rights, religious minorities in the Lao People's Democratic Republic are discouraged from joining the State's only political party.

Christians who wished to join this political party were asked to sign a declaration renouncing their faith. According to the Rapporteur, such a practice places "a glass ceiling on access to, and promotion in, public service for religious minorities and their effective participation in decision making."

Source: Special Rapporteur on Freedom of Religion and Belief, A/HRC/13/40/Add.4 (2010); ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.41.

### Box 17. Religious identity cards in Indonesia

On 9 December 2006, the House of Representatives in Indonesia passed a civil registration law requiring citizens to identify themselves on National Identify Cards (KTP) as belonging to one of the six religions (Islam, Buddhism, Hinduism, Catholicism, Protestantism and Confucianism) that are recognized and protected by the State. The law makes it illegal to "publicize, recommend or organize public support" for other religions or non-orthodox versions of the approved faiths. The Act does not allow for the registration of other religions on KTP cards. Members of religions not recognized by the Government are generally unable to obtain KTPs unless they incorrectly identify themselves as belonging to a recognized religion.


In practice, this can restrict members of unrecognized faiths, such as animists, Baha'is, Sikhs and members of other small minority faiths, from registering marriages or births, as a valid KTP is needed for such purposes (notwithstanding the June 2007 Regulation pertaining to marriage and civil administration). Often, couples prevented from registering their marriage or the birth of a child in accordance with their faiths convert to one of the recognized faiths or misrepresent themselves as belonging to one of the six. Those who choose not to register their marriages or births risk future difficulties. A child without a birth certificate cannot enroll in school and may not qualify for scholarships, and individuals without birth certificates do not qualify for government jobs.

Source: US State Department: *International religious freedom report, Indonesia*, (2010).

## 3.6 Political opinion

Convention No. 111 protects persons holding opinions of a political nature. Political opinions play a role in moving social justice forward. The expression and demonstration of political opinion is, therefore, protected by Convention No. 111. Both individual persons and organizations have the right to express and demonstrate their political opinion.

The protection is not limited to differences of opinion within the framework of established principles, but also covers doctrines that are aimed at fundamental changes in the institutions of the State, as long as the propagation of such doctrines does not involve the use or advocacy of violent methods to bring about that result.

Generally, neither membership, nor non-membership of a political party should be grounds to discriminate against job applicants or employees. However, in exceptional circumstances it is permitted to discriminate on the basis of political opinion in employment when a convincing case can be made in relation to protecting the security of the State.  See Section 6.2 for further information.

### Box 18. Political and anti-union discrimination in Fiji

In 2010, the Committee on Freedom of Association (CFA) addressed a case regarding the government dismissal in 2008 of a school principal who was also the President of the Fijian Teachers' Association (FTA). In response to a speech in support of the launch of the Movement for Democracy, given at FTA headquarters by the principal in his capacity as FTA President, the Government terminated his employment contract and charged him with three offences for violating Fiji's Public service code of conduct under the Public Service Act. The Government argued that the dismissal was necessary as the code of conduct stipulates that political participation is not allowed unless the Secretary for the Public Service gives approval. However, in its decision, the CFA noted that workers and trade union officials enjoy the right to protection from acts of anti-union discrimination, including dismissal, demotion, transfer, and other prejudicial measures.

Furthermore, the Committee noted that trade union officials should be protected from dismissal in order to protect the right of workers' organizations to elect their representatives in full freedom. The Committee broadly concluded that trade union organizations may not be banned from political activities, since there is an intersection between the interests of trade unions and government policies, while the right to freedom of expression should be guaranteed in order for workers' and employers' organizations to be able to exercise freedom of association. As it is the duty of the Government to prevent acts of anti-union discrimination, and the school principal was expressing views that fall within protected speech outside the employment relationship, the Committee called on the Government to reinstate the school principal.

Source: ILO: 358th Report of the Committee on Freedom of Association, Governing Body, 309th Session, Nov. 2010, GB.309/8, paras 523–558; ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.41.

### Box 19. Discrimination based on political opinion in Indonesia

For a number of years the Committee of Experts of the Application of Conventions and Recommendations has sought clarification from the Indonesian Government regarding the application of its Government Regulation on the Recruitment of Civil Servants, which provides that civil servants are to be dismissed upon becoming members and/or leaders of political parties. Similarly, Government regulations provide for dismissal of civil servants on the same basis. The Government of Indonesia reasons that the prohibition for civil servants to become or to be members of a political party is necessary due to the need for public servants to remain neutral and fair and independent from politics.

A new Act on Political Parties (No. 2 of 2008) provides that citizens of Indonesia who are 17 years of age or over can become a member of a political party, and that membership of a political party is voluntary, open and non-discriminatory to all Indonesian citizens (section 14). The CEARC found that under Convention No. 111, protection against discrimination based on political opinion also extends to membership in political organizations or parties. The Committee recognizes that political neutrality of Government officials at a very senior level in Government who are directly concerned with implementing government policy may be necessary, however, an outright ban for all members of the civil service is not compatible with the principles contained in Convention No. 111.

Source: ILO: "Individual observation on Convention, No. 111 with respect to Indonesia" in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2011); Government of Indonesia Regulation No. 5/1999 of 26 January 1999 on Civil Servants who are Members of Political Parties; Government of Indonesia Regulation No. 98/2000 of 10 November 2000 on Recruitment of Civil Servants.

### 4. Other grounds prohibited by national and international labour standards

Other common grounds of employment discrimination include: age, maternity, family responsibilities or even family status, health, disability and infectious diseases such as HIV and AIDS and Hepatitis B or genetic origin and status, nationality, sexual orientation, culture, language, birth, name and physical appearance. Countries are increasingly addressing these additional grounds in national legislation.

#### 4.1 Maternity

As mentioned above, women often face considerable employment discrimination on the basis of (potential) pregnancy and marital status. In many countries, women often just do not get a job if they are of childbearing age. Or they have to promise during recruitment that they will not get married or pregnant or face immediate dismissal. It is common for women to face dismissal upon pregnancy or marriage, or to forego maternity benefits in fear of losing their job, even if they are entitled to these benefits.

Convention No. 111 does not directly prohibit discrimination based on maternity. However, considering that only women workers are affected, direct discrimination based on maternity can be considered to amount to indirect discrimination based on sex. However, given that only women become pregnant, the jurisprudence of the European Court of Justice recognizes any pejorative treatment related to maternity and breast feeding as direct discrimination against women.<sup>31</sup>

Employment protection during maternity is guaranteed under the **Maternity Protection Convention, 2000 (No. 183)**, which prohibits termination of women's employment during pregnancy, maternity leave, or the period following their return to work, except on grounds unrelated to pregnancy, childbirth or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate.

#### Box 20. Discrimination on the basis of maternity – Asia

Termination of women's employment during pregnancy or maternity leave is prohibited in law in most Asian countries. Among others,

- In **China**, section 42(3) of the Labour Contract Law prohibits the termination of employment contracts of women workers during pregnancy, post-natal and breastfeeding periods.
- In **Indonesia**, Ministerial Regulation No. PER/03/MEN/1989 concerning termination of employment prohibits dismissal of a “married couple” relating to pregnancy or childbirth. The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has urged the government to revise the regulation to cover all women regardless of their marital status.
- In **Viet Nam**, section 111(3) of the Labour Code prohibits dismissal of female employees for reasons of marriage, pregnancy, taking maternity leave, or raising a child under 12 months old.

However, in practice women continue to face discrimination based on maternity in the Asian labour market. Some recent studies conducted in Asian countries reveal that,

- In **China**, a recent study by the ACWF shows that discrimination due to pregnancy and family status is common: according to the study, 21 per cent of rural women in cities were fired after becoming pregnant or having a child.
- In the **Republic of Korea**, a poll by the job portal Incruit reveals that one-third of pregnant female workers decided not to take maternity leave for fear of discrimination, and seven per cent were told to resign after using maternity benefits.

<sup>31</sup> ILO: “Labour inspection and gender equality - Module 13” in *Training curriculum on building modern and effective labour inspection systems* (Turin, International Training Centre of the ILO, 2011).

- Similar trends of voluntary or involuntary non-use of benefits and cases of termination of employment due to pregnancy are also reported from **Singapore**, where the Ministry of Manpower received 72 maternity and termination-related cases in 2007, occurring mostly in the small and medium enterprise (SME) sector.

Sources: ILO: “Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111)” with respect to Indonesia (2008) & Viet Nam (2010) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); ILO Committee on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to China* (Geneva, 2010); “China improves women’s employment”, in *Xinhua* (China, 7 May 2007); T. Chang: “Employers’ support for female workers key to higher birthrate”, in *Yonhap News* (Republic of Korea, 10 May 2007); N. D. Suhaimi: “Expecting a baby? Expect to be fired”, in *The Straits Times* (Singapore, 5 August 2008).

### 4.2 Family responsibilities

While maternity is a type of family responsibility that women workers are expected to reconcile with their job, a much wider range of family responsibilities affects the ability of both men and women workers to prepare for, enter, participate in or advance in a job or other economic activity. Convention No. 111 does not explicitly prohibit discrimination based on family responsibilities. However, direct discrimination on the ground of actual or possible future family responsibilities is very common in employment practices, predominantly affecting women but increasingly also men in workplaces.

For this reason, the **Workers with Family Responsibilities Convention, 1981 (No. 156)**, requires countries to “make it an aim of national policy to enable all persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.” “Family responsibilities” are defined as responsibilities in relation to dependent children or other members of the immediate family who clearly need their care and support. Countries can decide themselves what constitutes “immediate family.” In the East and South-East Asian region the Workers with Family Responsibilities Convention, 1981 (No.156) has been ratified by Japan (1995) and the Republic of Korea (2001).

Countries in the East and South-East Asian region have different types of family systems and consequently the challenges faced by workers with family responsibilities are different. For example, the UN treaty the bodies have noted with concern that the decreasing fertility rate in the Republic of Korea and Japan could be a reflection of the difficulties women face in reconciling their professional and family life.<sup>32</sup> Positive developments in addressing these challenges include, among others, revision of the Law for Childcare and Family Care Leave in 2010 in Japan to allow a father to take leave on two separate occasions after child birth. Employers are also allowed to shorten a worker’s working hours upon request, if he or she is responsible for the care of a child below three years old, but does not take childcare leave.<sup>33</sup>

#### Box 21. Discrimination on the basis of family responsibility – Japan

A worker refused a transfer order to Osaka because he had to take care of his children (aged three years and one year) who were suffering from serious atopic dermatitis (skin disease). Since his wife was working full-time for another company and their children were receiving special acupuncture treatment in Tokyo

<sup>32</sup> CESCR: *Concluding observations of the Committee on Economic, Social and Cultural Rights: Japan* (Geneva, 2009); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Japan* (2007), Korea (2003) (Geneva).

<sup>33</sup> Ministry of Health, Labour and Welfare (Japan): *Introduction to the revised Child Care and Family Care Leave Law* (Tokyo, 2010), p.36; ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.24-25.



it was difficult for them to accompany him to Osaka. The employer had been prepared to offer considerable economic support if he had accepted the transfer. However, the Court nullified the transfer order, pointing out that these economic measures were not enough to compensate for the disadvantages in this case. The transfer of the worker would have made it extremely difficult for his wife to continue her job because their childcare burden was unusually heavy due to the health problems of the children. The Court therefore found the disadvantage was far beyond normal inconvenience.

The judgment is significant. According to the Court, when an employer fails to try to understand the care situation of a worker and to examine measures to help a worker to cope with care difficulties, this contravenes Article 26 of the Child Care and Family Care Law of 1995 which requires the employer to consider a worker's situation when "a change in the place of work would make it difficult for the said worker to take care of his or her child or a family member."

Source: M. Morozumi: *Special protection, equality, and beyond: Working life and parenthood under Japanese labour law* (2006). See also ILO: "Individual observation concerning Convention No. 156 with respect to Japan" in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2001, 2002, 2004, 2007).

### Box 22. Work-family issues in Philippine enterprises

The Philippines has an extended family system. Relatives help to look after young children and the elderly and can lighten the work and family burden. However, women workers have not completely transcended their traditional domestic roles. Some women workers are therefore reluctant to do overtime, holiday work or to work in faraway places.

Many observers note that the division of labour in the home is evolving for young married couples. Men are often increasingly willing to stay at home. However, when things do not go well in the home, the woman is blamed. When crisis situations occur involving the family, women are often expected to take leave of absence, leave work temporarily or stop working altogether, generally leaving men to move on in their careers. The attitudes of men are, however, evolving, and their engagement in family issues is increasing.

Non-married employees are not spared work-family problems. They often take on the burden of caring for sick or elderly parents or relatives. Older workers are also plagued by work-family issues. With the advent of call centres and other companies requiring night shifts (which often prefer younger workers), older workers are often requested by their children to care for their grandchildren. The fact that a growing number of women are taking jobs overseas is also forcing older workers to increase their role in parenting their grandchildren.

In view of the above situation, Philippine enterprises are confronted with the effects of work-family demands on their employees. The following are some of the work-family issues that they have to address:

- Absence and leave for family reasons, including not only child and elderly care, but also the need for employees to attend family events, such as funerals and baptisms. In unionized firms, as many as 16 different types of leave provisions may be set out in collective agreements.
- "Presenteeism," a phenomenon that is often undetected. To avoid penalties due to unexcused absences, employees go to work even if they are sick or their minds are preoccupied by family matters.
- Turnover/resignations when workers cannot cope with work-family demands or family pressures are too great.
- Greater demands for increased wages and benefits to cover family needs.
- An increase in disciplinary cases because of absences and the inability of workers to meet company targets.
- Stress and fatigue.



Some companies have established labour-management committees (LMCs) to work on projects which may include work-family balance initiatives. The Employers' Confederation of the Philippines (ECOP) encourages its members to develop work and family programmes/initiatives that take into account the varying needs of different workers in balancing work and family responsibilities. These efforts may be costly, of course, but the long-term effects if not addressed properly may be more costly for companies. Action in this field therefore makes good business sense.

Sources: ILO: *Employers organizations taking the lead on gender equality: Case studies from 10 countries* (Geneva, 2005); ECOP: *Cases on business initiatives on work-life* (Makati, 2004).

### 4.3 Anti-union discrimination

Discrimination based on a person's trade union membership, trade union leadership or trade union activities (such as organizing workers; representing workers in grievances with the employer; attempting to bargain collectively with the employer; or calling for a strike in accordance with legal procedures) is generally called anti-union discrimination. The **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)** requires the law to provide workers with adequate protection against acts of anti-union discrimination and obliges the authorities to operate procedures that effectively enforce such protection. The principles laid down in the Convention belong to the fundamental principles and rights at work. The International Trade Union Confederation (ITUC) has reported anti-union discrimination in several East and South-East Asian countries, including Cambodia, Indonesia, the Republic of Korea, Malaysia and Thailand.<sup>34</sup> See Box 18. Political and anti-union discrimination in Fiji.

### 4.4 Age

Discrimination based on age may affect young workers – a serious problem in contemporary times – and elderly workers, such as in the case of a compulsory retirement age. Convention No. 111 does not explicitly prohibit discrimination based on age. The **Older Workers Recommendation, 1980 (No. 162)** recommends, however, that older workers should, without discrimination on the grounds of their age, enjoy equality of opportunity and treatment in employment.

In Asia, national legislation prohibiting age discrimination has been adopted, among others, in the Republic of Korea and Macau, China. The Republic of Korea has also enacted affirmative action legislation under which businesses are required to ensure that at least three per cent of their workers are aged 55 years or older. In Singapore and Malaysia collective bargaining and social dialogue have led to establishment of training funds that finance lifelong learning programmes.<sup>35</sup>

An employer can treat workers differently based on age in cases where the employer can prove that age is an inherent occupational requirement justified by the nature of the job. The exception of inherent job requirements has been raised in a series of occupations for reasons involving the safety or health of the worker or of third parties. Examples include airline pilots, fire-fighters, police officers, bus drivers and school bus drivers, etc. To constitute an inherent requirement of the job, the impact of age on safety or health should be based on scientific evidence.

<sup>34</sup> ITUC: *Annual survey of violations of trade union rights 2010* (2010); ITUC: *Annual survey of violations of trade union rights 2009* (2009).

<sup>35</sup> ILO: *Equality at work: The continuing challenge* (Geneva, 2011); United Nations: *World economic and social survey 2007: Development in the ageing world* (New York, 2007); ILO: *Lifelong learning in Asia and the Pacific*, Report for the ILO Regional Tripartite Meeting, Bangkok 8-10 Dec. 2003, p.14.

### Box 23. Age requirements for police officers and fire-fighters – Republic of Korea

Limiting the age requirements of applicants to under 30 years to apply for selection examinations to become a police officer or fire-fighter is discriminatory, according to the National Human Rights Commission of Korea (NHRCK). The NHRCK issued a recommendation calling on the Commissioner General of the Korean National Police Agency (KNPA) and the administrator of the National Emergency Management Agency (NEMA) to amend their official appointment regulations and to remove the age limit.

According to the NHRCK, a complaint was filed by an applicant identified as Mr Park (34), who claimed that the age criteria on for appointment of fire-fighters is discriminatory. Also, a police officer applicant identified as Mr Uh (31), filed a complaint for the same reason with eight other applicants.

The KNPA explained that the age limit for police applicants is unavoidable considering the physical duties they perform and added that Japan and France also limit the age in appointing police officers. The NEMA also claimed that fire-fighters need to have strong physical strength with technical knowledge, which requires a certain age limit.

The NHRCK indicated to the KNPA that there is no objective proof that people over 30 years old do not have enough physical condition to perform the duties of a police officer. The Commission referred to the United States where the age limit for police officers requires applicants to be over 21 years old but where an upper age limit is not set. It also mentioned that the case of foreign countries can not be a reasonable ground to appoint limitations because it differs from country to country.

Regarding the claim of the NEMA, the NHRCK stated: “It is understandable that fire-fighters should have strength and broad knowledge, but age can not be a standard of judgment for physical or intellectual ability.”

The amended Official Appointment Regulations require that the applicants are above 20 years old to become high-ranking public officials, and 18 years old both for low-ranking public officials and for technical officials. The amended regulations do not include provisions which limit the age of police officer or fire-fighter applicants.

Source: NHRCK: *Age limit on hiring police officers and fire-fighters is discrimination* (4 June 2009).  
<http://www.humanrights.go.kr/> (accessed 16 Sep. 2010).

### Box 24. Good practices in retaining older workers – Singapore Alexandra Hospital

Singapore has one of the world’s fastest ageing populations, with 53 per cent of the economically active residents aged 40 years and older, including 25 per cent who are at least 50 years. According to projections, by 2030, one in five Singapore residents will be aged 65 years and older. By 2050, Singapore may be the fourth oldest population in the world. Given this, Singapore can expect a significant shift in labour force participation demographics in the next 10 years as the number of older workers is likely to increase at a much faster rate compared to the rest of the labour population. To remain competitive, employers need to have practices and processes to ensure that the most suitable people are selected to do the job.

Singapore Alexandra Hospital is a good example of an employer that has made a concerted effort to employ and retain older workers as one of their corporate goals. Alexandra Hospital has been called “the pin up for organizations” for re-employment in Singapore as they retain between 80 to 90 per cent of their staff who turn 62. Instead of shunning older workers, Alexandra Hospital has implemented several initiatives to employ and retain older workers.

At Alexandra Hospital mature workers are seen as assets. Mr Liak Teng Lit, CEO of Alexandra Hospital, explains that the decision to employ older workers stems from the hospital’s experience working with older workers. They are more consistent, are less likely to switch jobs often, and are also more mature and experienced. With their

experience in the industry, they are not just well-versed in taking care of patients, but are also able to empathize with patients – an important aspect of in-patient care. As most of the hospital patients are older people, Alexandra Hospital values mature workers who are better able to deal with older people.

Source: Tripartite Centre for Fair Employment: *Fair employment: Leading fair employment practices handbook* (Singapore, 2009).

### 4.5 Health and disability

Equal rights to employment for persons with disabilities or health conditions are an important workplace issue. The persons with disabilities or health conditions should be allowed to fully participate in the labour market in accordance to their **abilities**, without discrimination or stigma related to their impairment. While particular impairments may be relevant to the normal exercise of particular jobs, they should first and foremost be met with efforts to accommodate the working environment in such a way that the person with the impairment can be regularly employed.

A disability or health condition may be of a physical, sensory, intellectual or psychosocial nature. A person's state of physical and mental health or their health condition may be relevant - but is not automatically - essential for adequate job performance. Discrimination arises when an employment-related exclusion or disadvantage is based on a perception that persons with disabilities or health conditions, such as HIV, are unproductive, unable to perform a job or too costly to employ without such perception being supported by the facts of a particular situation.

#### Disability

Alongside Convention No. 111, the ILO **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)** and the UN **Convention on the Rights of Persons with Disabilities** are the two key international instruments guaranteeing persons with disabilities equal opportunity and treatment in employment.<sup>36</sup> While progress has been made in most East and South-East Asian countries to put prohibit discrimination on the grounds of disability and to promote employment of persons with disabilities in practice many challenges remain. The UN Committee on Economic, Social and Cultural Rights (CESCR) has noted that persons with disabilities continue to face discrimination in employment, among others, in Cambodia, China and Japan. The underlying reason leading to difficulties in finding skilled employment is the deep-rooted inaccurate stereotype that persons with disabilities cannot be productive members of the society.<sup>37</sup>

Positive developments in this field include, among others, the amendment of the Law on the Protection of Disabled Persons in 2008 in China, which improved financial support, medical care and rehabilitation for persons with disabilities. Measures have also been taken to improve access to employment and training for persons with disabilities. In 2008 the government operated 3,713 vocational education and training schools, providing training and job-placement services for 774,000 persons with disabilities.<sup>38</sup>

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<sup>36</sup> In the East and South-East Asian region the ILO Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No.159) has been ratified by China (1988), Japan (1992), Korea (1999), the Philippines (1991) and Thailand (2007). The UN Convention on the Rights of Persons with Disabilities has been ratified by China (2008), Lao PDR (2009), Malaysia (2010), the Philippines (2008) and Thailand (2008), and signed by Cambodia (2007), Indonesia (2007) and Viet Nam (2007).

<sup>37</sup> CESCR: *Concluding Comments of the Committee on Economic, Social and Cultural Rights: Cambodia* (2009), China (2005), Japan (2001) (Geneva).

<sup>38</sup> ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.48; ILO: *Inclusion of people with disabilities in China*, fact sheet (Geneva, 2009); ITUC: *Internationally recognized core labour standards in the People's Republic of China*, Report for the WTO General Council Review of the Trade Policies of the People's republic of China, Geneva, 10 and 12 May 2010, p.11.

**Box 25. Pervasive inequalities in employment of persons with disabilities**

Approximately 650 million people worldwide, or about 10 per cent of the world’s population, have physical, sensory, intellectual or mental impairments of one form or another. Over 470 million of them are of working age.

Even if many persons with disabilities have the potential to earn decent livelihoods, many of them face difficulties in finding employment. When employed, they are also more likely to earn low wages. For example in the Republic of Korea, persons with disabilities earn on average \$18,888 per year, compared to \$28,800 for people without disabilities (34.4 per cent less).

Persons with disabilities frequently do not have equal access to vocational training opportunities. In Viet Nam, for example, there are approximately 1 million persons with disabilities who could benefit from vocational training, but providers are scarce and most are located in urban areas. As a result, each year only 5,000-6,000 persons with disabilities are able to receive appropriate skills development.

Sources: ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.46-47; Republic of Korea, Ministry of Labour: *Statistics on employment for persons with disabilities* (Seoul, 2007); ILO-OHCHR: *Decent work for persons with disabilities in Asia*, Report of the Sub-regional Meeting on Disability Legislation, Bangkok, 23-24 June 2008, p.25.

**Box 26. Disability provisions in national law and policy in selected Asian countries**

| Law/policy                                       | Countries  | Provisions   |
|--|--|--|
| Constitutional law                               | Cambodia, China, Thailand.   | Provisions prohibiting discrimination on different grounds, including disability.  |
| Specific legislation on people with disabilities | Cambodia, China, India, Indonesia, Mongolia, Sri Lanka, Thailand, Viet Nam.                              | Provisions on different aspects (medical, social life, welfare) as well as the rights of people with disabilities, including employment.   |
| Quotas   | Cambodia, China, India, Indonesia, Japan, Mongolia, Thailand.  | Provisions requiring enterprises or a category of companies (e.g. enterprises with more than a certain number of employees) to hire a certain percentage of persons with disabilities. Law may also impose a compensatory payment for non-compliance.  |
| Employment promotion measures                    | India, Indonesia, Japan, Thailand.   | Workplace accommodation and accessibility.   |
|  | Cambodia, India, Indonesia, Japan, Sri Lanka, Thailand.<br>China, Japan, Singapore, Sri Lanka, Thailand. | Employment services through job placement agencies.<br>Financial incentives to compensate employers for any financial burden due to the employment of workers with disabilities: start-up loans for business (China), financial assistance to disabled persons’ self-employment and microfinance services for ex-combatants (Sri Lanka), financial support for training (Japan, Thailand), and tax reduction (China, Singapore). |

Sources: ILO: *Equality at work: Tackling the challenges* (Geneva, 2007), p. 103, table 4.1; Government of Viet Nam: Law Nr.51/2010. QH12 on Persons with Disabilities; Government of Cambodia: Law on the Protection and the Promotion of the Rights of Persons with Disabilities (2009); Government of Indonesia: Law on People with Defects, (No.4/1997) and Ministry of Manpower Decree, No.205/1999.

### HIV and AIDS

The first international legal instrument to address discrimination on the grounds of HIV and AIDS in the workplace was adopted by ILO member States in 2010 in the form of the **Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)**. Augmenting the ILO 2001 Code of practice on HIV and AIDS and the world of work, the Recommendation calls for eliminating discrimination and stigmatization of workers, in particular job seekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection.<sup>39</sup>



#### Quick facts about HIV and AIDS

Discrimination and stigma against persons living with HIV and AIDS is often based on misinformation about the transmission routes of HIV, inappropriate fear of the disease, and prejudices about the morality of people who are infected. Dissemination of correct information on the nature of the disease is key to reducing discrimination and stigma against persons living with HIV and AIDS.

**HIV cannot be transmitted through casual workplace contact**, such as shaking hands, sharing food or using the same work tools, bathrooms or dormitory rooms. The virus can be transmitted through unprotected vaginal or anal sexual intercourse with an HIV-infected partner, transfusions of infected blood or other exchange of blood using infected needles or other piercing equipment, and from mother to child during pregnancy, at birth or during breast feeding.

There is no cure for HIV, but the onset of AIDS can be postponed or even prevented with the appropriate use of medicines. With the increasing availability of antiretroviral therapy people with HIV are living longer and often have minimal or no loss of functional capacity. They may not experience any symptoms and those with access to the right medicines and treatment are able to live healthy and productive lives. However, only about 40 per cent of the 33 million infected people in the world have access to treatment.

#### Box 27. Employment discrimination against persons living with HIV and AIDS in Asia

A study conducted by the Asia Pacific Network of People Living with HIV and AIDS (APN+) in 2001-2002 found that 18 per cent of the total 764 interviewed respondents experienced some form of discrimination within the workplace setting, 63 of those 132 persons who had suffered discrimination were women, and 69 were men. The vast majority of those who experienced AIDS-related discrimination in the workplace said it was not an infrequent event but tended to happen “quite often.”

Most respondents had faced discrimination at recruitment. Of the 63 people who were tested for HIV during recruitment, 43 (68 per cent) said that the reasons for the test were not explained beforehand and 15 said they were coerced into testing. Only nine respondents received pre-test counselling and 17 received post-test counselling. Other forms of discrimination suffered by the respondents included loss of a job (33 per cent), changes in job description or duties (44 per cent), or lost prospects for promotion (21 per cent) because of their HIV status. Of those who worked for an employer at the time of or since their diagnosis, 20 per cent said they had lost their job because of their HIV status. In the Philippines, a much higher proportion of respondents experienced workplace discrimination than respondents in India, Thailand or Indonesia. The vast majority (97 per cent) of respondents had no recourse for action, 20 per cent of respondents, including half of the respondents from the Philippines said that their earning capacity had decreased because of their HIV diagnosis.

<sup>39</sup> ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), Article 14.



**Table: HIV and AIDS discrimination in employment in selected Asian countries (in percentages)**

|  | India<br>(n=291) | Thailand<br>(n=338) | Philippines<br>(n=82) | Indonesia<br>(n=42) | TOTAL<br>(n=753) |
|--|------------------|---------------------|-----------------------|---------------------|------------------|
| Worked for an employer since diagnosis                 | 70               | 48                  | --                    | --                  | --               |
| Experienced AIDS-related workplace discrimination      | 12               | 7                   | 21                    | 15                  | 10               |
| Discriminated by employer because of HIV status        | 8                | 6                   | 33                    | 14                  | 10               |
| Discriminated by colleagues due to HIV status          | 8                | 11                  | --                    | --                  | 10               |
| Lost job because of HIV status                         | 6                | 2                   | 33                    | 2                   | 7                |
| Job description or duties changed due to HIV status    | 3                | 7                   | 44                    | 5                   | 9                |
| Offered early retirement due to HIV status             | 1                | 1                   | 16                    | 0                   | 2                |
| Lost prospect for promotion because of HIV status      | 2                | 1                   | 21                    | 0                   | 4                |
| Experienced harassment or discomfort on job due to HIV | 6                | 6                   | 13                    | 5                   | 7                |

Source: Asia Pacific Network of People Living with HIV/AIDS (APN+): *AIDS discrimination in Asia* (2004).

### Box 28. Action against employment discrimination against persons living with HIV in China

In China, negative public attitudes towards persons living with HIV based on poor understanding of transmission routes of HIV are common. A study conducted by the China Health and Education Journal in 2007 found that 50.6 per cent of respondents would not shake hands with persons with HIV, 53 percent would not take part in recreational activities with them, and 80.8 percent of the respondents would not buy a product made by a person with HIV. These public attitudes lead also to severe discrimination of persons living with HIV in the labour market. A survey conducted by the China University of Political Science and Law in 2007 found that only 47.7 per cent of respondents recognized that persons living with HIV have a right to equal employment opportunity and treatment. Another survey conducted by Xiamen University in 2007 showed that 65 percent of business managers believed that persons living with HIV should not have a right to equal employment opportunity.

In recent years, China has made progress in addressing discrimination on the grounds of infectious diseases, including HIV and AIDS. The State Council Regulations on the Prevention and Control of HIV and AIDS (2006) state "... no company or individual shall discriminate against HIV carriers, AIDS patients or their families. The legitimate rights of HIV carriers, AIDS patients and their families, such as the rights in marriage, employment, hospitalization and schooling, are under the protection of law." Discrimination on the grounds of infectious diseases is also prohibited under the Employment Promotion Law, which came into force in 2008. The first ever HIV discrimination case was accepted by a court in Anhui in August 2010.

However challenges remain. A study conducted by the ILO in 2010 found that persons living with HIV face several forms of discrimination in employment and occupation in China, including:

- mandatory testing as a condition upon recruitment and denial of job opportunities.
- forced or pressured resignation by management or co-workers due to HIV status.
- mandatory shifting and/or downgrading of job positions due to HIV status.
- breaches of confidentiality of health data.
- barriers in access to health insurance schemes for HIV treatment due to concerns about confidentiality.



Existing law and regulations do not protect the rights of people working in certain professions. For example, health qualification tests are required for persons working for the government as civil servants or in any other capacity, including teachers. Similarly “guidelines on public sanitation” prevent persons living with HIV or any other sexually transmitted infection from working in hotels, cafes, bars or beauty salons. Routine medical tests prevent persons with HIV also from working in hospitals, clinics and other health facilities. These recruitment policies and practices are clearly discriminatory and contradict the overall spirit of the Chinese national AIDS regulation adopted in 2006, which prohibits employment discriminations against persons with HIV. The practice of creating exceptions for certain professions is also in direct conflict with the ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No.200).

Source: ILO: *HIV and AIDS related employment discrimination in China* (Beijing, 2011).

### 4.6 Nationality

Nationality refers to the citizenship of a worker. Persons living in a country other than the one of which they hold the nationality or citizenship are usually referred to as international or cross-border migrants while persons who migrate within their own country are known as internal migrants. International migrant workers are referred to as “migrant workers” in the lexicon of international labour standards. The law of some countries in Asia Pacific refers to them as “foreign workers” (Malaysia), “overseas migrant workers” (Philippines) or “alien workers” (Thailand). Prohibiting discrimination on the basis of nationality means that persons lawfully residing and permitted to work in a foreign country must be afforded the same treatment and opportunities as other foreign nationals and nationals of the country in relation to employment and occupation.

Convention No. 111 does not strictly prohibit distinctions on the basis of nationality, that is, nationality itself is not a prohibited ground under the Convention, unless countries have included nationality as a prohibited ground in their national legislation (Republic of Korea). However, both nationals and non-nationals enjoy protection against discrimination on the seven grounds explicitly prohibited by the Convention. For example, Convention No. 111 prohibits both migrant and national domestic workers – a profession traditionally dominated by women – to be paid substantively less than male nationals working in jobs of comparable value. Or the Convention prohibits periodical pregnancy testing for female migrant and national workers alike. Another example is when migrant workers from various countries are paid different wages coinciding with their ethnic origin – a phenomenon sometimes called “shading” in reference to the various complexions of the migrant workers concerned. Irregular or undocumented migrant workers do not automatically acquire rights to residence as a result of their employment, but should be entitled to equal treatment in respect of rights arising out of past employment as regards remuneration, social security and other benefits (Art. 9 of Convention No. 143).

Convention No. 111 requires that ILO member States integrate their domestic labour markets at least in accordance with the free choice of employment of its citizens. It does not require that member States integrate their national labour markets with those of other member States – or, in other words, give foreign migrant workers free access to their labour markets. To promote equal treatment and equal opportunities for migrant workers employed in another country than their own, the ILO adopted the **Migration for Employment (Revised) Convention, 1949 (No. 97)** and the **Migrant Workers (Supplementary Provisions) Convention, 1973 (No. 143)**. Both Conventions have been ratified by the Philippines in 2009 and 2006 respectively.

Discriminatory treatment and abuse of migrant workers has raised concerns in many East and South-East Asian countries. Among the most vulnerable are women migrant workers employed as domestic workers, nurses and care-givers. The ILO Committee of Experts on the Application of Conventions

and Recommendations (CEACR) and the UN treaty bodies have urged governments in both origin and destination countries to develop policies to protect rights of international migrant workers.<sup>40</sup>

### Box 29. Discrimination against migrant workers

Migrant workers living outside their home countries are often subject to discrimination because of their colour and race, or their actual or perceived religion, or a combination of these, and they may also be the target of unfavourable treatment simply because of their migrant status. Women migrant workers, who make up half the total, can be doubly penalized.

The plight of migrant workers is a growing concern, since foreign-born workers represent significant and rising proportions of the workforce in many countries. Estimated at 86 million over the world, and some 32 million in the developing regions, the movement of men and women seeking better job opportunities abroad is likely to increase in the coming years. Ten per cent of the workforce in Western Europe is currently made up of migrants, while in a number of African, Asian or American countries percentages are higher, representing over 50 per cent of the workforce in some Gulf States.

One manifestation of discrimination against migrant workers is their concentration, often regardless of their skill levels, in “3D” jobs (**dirty, dangerous and degrading**) where protection is often inadequate or absent in law or in practice.

On a positive note, trade unions around the world have increasingly taken steps to address the plight of migrant workers. In **Malaysia**, the Malaysian Trade Union Congress (MTUC) Conference on Migrant Workers held in 2005 decided to initiate action and put in place mechanisms to ensure better protection of the 1.5 million documented migrant workers living in the country.

Source: ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); MTUC: *Concluding resolution*, Conference on Migrant Workers (18–19 April 2005).

### Box 30. Discrimination against Myanmar (Burmese) migrants in Thailand

Thailand has a large workforce of mostly low-skilled migrant or foreign workers from Myanmar (Burma), Cambodia and Lao PDR. While many of these workers face difficulties and hardship, among the most vulnerable are the estimated two million workers from Myanmar, many of whom are undocumented. As stated by the State Enterprise Workers' Relations Confederation (SERC, the Thai umbrella organization of state enterprise unions), these workers are in “a social zone of lawlessness” where they are not protected by the laws of Thailand or Myanmar.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has recently noted that the failure of the Government of Thailand to allow Myanmar workers to access to work-related accident and disease compensation under the same conditions as Thai workers constitutes systematic discrimination against migrant workers. While the Thailand Workman's Compensation Act of 1994 grants foreign workers the right to equality of treatment, Social Security Office (SSO) circular RS0711/W751 of 2001 subjects the exercise of this right to fulfillment of certain conditions, which most Myanmar workers cannot meet. SSO circular RS0711/W751 makes compensation for work-related accidents and illnesses conditional on presenting a passport or alien registration documents, which many of the Myanmar migrants cannot obtain. Undocumented migrant workers who do not meet the conditions have to seek compensation directly from their employer which for most is unduly burdensome.

<sup>40</sup> ILO Committee on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Republic of Korea* (Geneva, 2008); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights: Philippines* (Geneva, 2008); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia* (2006) & *Philippines* (2006) (Geneva).

Failure to provide migrant workers equal access to compensation for work-related accidents and illnesses constitutes a violation of ILO Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), which Thailand has ratified in 1968. The CEACR has urged the Government of Thailand to review the policy of SSO and to take positive and urgent measures to lift the restrictive conditions and to facilitate access of migrant workers to the Workman's Compensation Fund irrespective of their nationality.

Source: ILO: "Individual observation concerning Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) with respect to Thailand" in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2010).

### 4.7 Sexual orientation

A person whose sexual orientation or gender identity does not conform to prevailing and established patterns may suffer from discrimination in the workplace. Homosexuals, bisexuals or transgenders can become the target of harassment and violence or may face other forms of exclusion from employment or employment benefits. International and national human rights institutions and mechanisms are attaching increasing importance to fighting discrimination on the basis of sexual orientation and gender identity. In June 2011 the UN Human Rights Council passed a first-ever Resolution on sexual orientation and gender identity. Some countries have adopted legal provisions to prohibit discrimination at work based on sexual orientation.<sup>41</sup> In Asia, a positive development in this field include, among others, ending the ban on gays serving in the armed forces in the Philippines in 2009.<sup>42</sup>

### 4.8 Multiple forms of discrimination

Multiple forms of discrimination relate to the experience of discrimination on more than one ground. For example, discrimination on the grounds of ethnicity, migrant status or disability is often intertwined with sex discrimination, making it very hard for ethnic women, migrant women and women with disabilities to find a decent job.

Persons who experience discrimination on multiple grounds often find themselves in a vicious spiral of cumulative discrimination. Acknowledging the existence of multiple forms of discrimination is important in the promotion of non-discrimination, because all grounds of discrimination have to be tackled at the same time.

## 5. Equality and discrimination at different stages of the employment cycle

As mentioned earlier, Convention No. 111 covers both persons in employment and in occupation. Employment includes formal employment relationships, employment in the informal economy that is carried out under supervision of another person, and temporary or casual employment. Occupation includes a trade, a profession, subsistence farming, shop keeping, managing a self-employed business, or other means of making a traditional livelihood.

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<sup>41</sup> ILO: *Time for equality at work* (Geneva, 2003). For more information on European legislation on sexual orientation, see Council of the European Union: *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*.

<sup>42</sup> ILO: *Equality at work: The continuing challenge* (Geneva, 2011).



### Action against discrimination at all stages of the employment cycle

Action to eliminate discrimination in employment and occupation has to be undertaken at all stages, before, during and after work:

1. Access to education and vocational training and guidance.
2. Access to employment and use of employment services.
3. Access to particular occupations.
4. Conditions of work.
5. Equal remuneration for work of equal value.
6. Career development based on individual character, experience, ability and diligence.
7. Security of tenure.
8. After retirement.

Convention No. 111, Article 1.(3); and Recommendation No. 111, Article 2(b).

### 5.1 Education and training

Skills, knowledge, education and training are some of the most relevant factors that should determine people's opportunities and treatment in the labour market. As a result, it is crucial that people enjoy equal opportunities and treatment when preparing for labour market entry or advancement. Convention No. 111 refers to vocational training in a broad sense and covers any **education or training** that is necessary to obtain access to any given employment or a particular occupation. This also includes skills development and training facilities for workers in the informal economy.

**Vocational guidance** plays a key role in opening a broad range of occupations to all. Assistance in choosing an occupation to young persons or to other persons who may need it should be given based on the individual's abilities and aspirations, without interference of stereotyped and archaic conceptions on what kinds of jobs or occupations are suitable to persons of a particular sex or ethnicity. A number of methods are used for this purpose, such as the dissemination of information about occupations, the preparation of recommendations in the light of personal abilities and social needs, or the joint participation of teachers and parents in fostering children's choice of an occupation.

In the past decades many countries in East and South-East Asia have made great achievements in promoting education for all. Among others, direct sex discrimination in education is becoming less common in most countries, although a preference to invest in boys' education still exists when educational opportunities are scarce. Despite these advantages, there are still significant differences in educational attainment of different groups. Women, ethnic minorities, persons with disabilities and rural populations continue to be disadvantaged in access to education and many of them are illiterate. For example, in Lao PDR women's illiteracy rate was around 40 per cent in 2005. School enrolment for ethnic minorities, persons with disabilities and residents in remote rural areas continues to be low, among others, in China, Cambodia and Lao PDR. Major obstacles to the education and vocational training of persons belonging to ethnic minorities include poor knowledge of the national language and unavailability of bilingual education.<sup>45</sup>

<sup>45</sup> CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women*: Cambodia (2006), China (2006) & Lao (2005) (Geneva); CERD: *Concluding observations of the Committee on the Elimination of Racial Discrimination*: Cambodia (2010), China (2001) & Lao PDR (2005) (Geneva); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights*: Cambodia (2009) & China (2005) (Geneva).

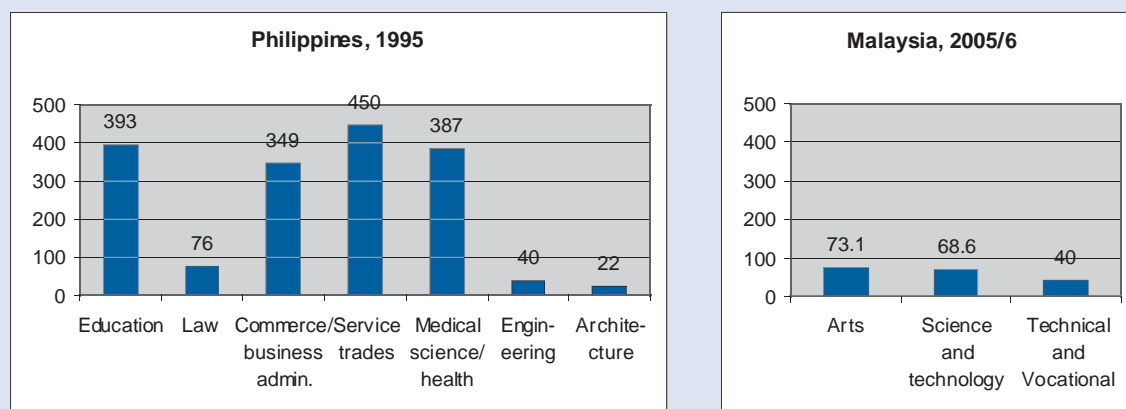
Overall, in East and South-East Asia, the gender gap in education in primary and secondary education has narrowed and a growing proportion of students in tertiary education are women. Despite these advances, there are still significant differences in the fields of study that men and women choose, with both sexes tending to select training in fields that are traditionally dominated by their own sex.<sup>44</sup> This **sex segregation in training** leads later to occupational sex segregation into “**women’s jobs**” and “**men’s jobs**” and a mismatch between women’s educational achievements and their opportunities in the labour market. To repeal these biases in the labour market the ILO CEACR and UN treaty bodies have urged the governments in East and South-East Asia to develop measures aimed at diversification of women’s academic and professional choices.<sup>45</sup>

### Box 31. Data on gender segregation in education – Asia

Country-level data from East Asian countries show increasing gender parity in primary and secondary education in recent decades. The numbers of women enrolled in tertiary education also increasingly surpass those of men in a number of East Asian countries. For example, in Malaysia, the female-to-male enrolment ratio was over 1.35 in 2000, in Thailand it was 1.15 in 2001, and in the Philippines the ratio was 1.2 in 2000. Despite these advances, there are still significant differences in the fields of study that men and women choose.

- In Thailand, the female-to-male ratio was 0.8 in mathematics and computer science (up from 0.6 in 1991), 0.2 in engineering (up from 0.1 in 1991), and 0.4 in both law (up from 0.2 in 1991) and in architecture. In contrast, the ratio was 2.4 in the medical and health services field.
- In the Philippines the ratio of women to men graduates is between 3.4 and 4.5 in education, commercial and business administration, service trades and medical science and health, but 0.76 in law, 0.4 in engineering, and only 0.22 in architecture.
- Data from Malaysia show that women tend to dominate in the arts, but continue to be under-represented in technical subjects such as engineering which usually lead to better-remunerated jobs.

**Figure: Proportion of female graduates by field of study, Philippines and of female students in public higher learning institutes by field of study, Malaysia (No. female per 100 male)**



Source: Asian Development Bank (2004): *Philippines: Country gender assessment*, Table 2.2, p. 13, and Malaysia: Ministry of Women, Family and Community Development (2006), *Statistics on women, family and social welfare 2006*, Kuala Lumpur, Chart 3.3, in N. Haspels; E. Majurin (Bangkok, ILO, 2008).

Source: N. Haspels; E. Majurin: *Work, income and gender equality in East Asia: Action guide* (Bangkok, ILO, 2008).

<sup>44</sup> The family and education and training systems stream youth into making occupational choices that are considered suitable to them. Many young women and men conform to the gender stereotypes in their society and select a “women’s job” or a “men’s job” respectively. Information about or experience with labour market discrimination may also be internalized and shape the training and job choices of women and men. See also Section 2 in Chapter 1 of this Guide.

<sup>45</sup> CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women*: Cambodia (2006), China (2006), Indonesia (2007), Lao (2005) & Malaysia (2006) (Geneva); CERD: *Concluding observations of the Committee on the Elimination of Racial Discrimination*: Cambodia (2010), China (2001), Japan (2010) & Lao PDR (2005) (Geneva); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights*: Cambodia (2009), China (2005) & Japan (2001) (Geneva).



### 5.2 Access to employment and use of employment services

Discrimination occurs more often during the recruitment process than at any other stage of the employment cycle. Therefore, individuals seeking employment need to be protected against discrimination during the recruitment or hiring process from beginning to end. This involves development of non-discriminatory selection and testing criteria, as well as prohibiting discriminatory requirements in job advertisements and scrutiny of hiring decisions.

**Recruitment** refers to the engagement of a person by or on behalf of an employer or making a commitment to a person to provide him or her with employment. This includes any related arrangements such as seeking for and selecting an employee (e.g. job advertisements, job interviews and entrance exams or tests). **Placement** refers to any operations for the purpose of ensuring or facilitating the employment of persons and such services are commonly offered by both public and private employment agencies.

Discrimination in access to employment is one of the most common forms of discrimination also in the East and South-East Asian labour markets. Among the most disadvantaged are women and ethnic minorities. In many countries also persons with disabilities suffer from the inaccurate stereotype that they cannot be productive members of the society, resulting in difficulties in obtaining skilled employment.<sup>46</sup>

As mentioned above, with regards to gender equality, the CEACR and the Committee on the Elimination of Discrimination against Women (CEDAW) have raised concerns, among others, on inadequate protection against discrimination in hiring in law and in practice in many countries and the persistent **mismatch between women's educational attainment and their opportunities** in the labour market. Due to traditional ideas on what kinds of work is suitable for women and men and prevailing prejudices regarding women's abilities employers in many countries continue to prefer male employees for most jobs, and women find their occupational choices limited at the recruitment stage. This discrimination in recruitment leads to and results in **horizontal and vertical job segregation** in Asian labour markets.<sup>47</sup>

As elsewhere in the world, the universal characteristics of the male-female job divide in Asia are:

- Female jobs are found in the lower levels of the job hierarchy, and female-dominated occupational categories commonly reflect traditional female roles in the domestic and sexual spheres. Women are typically found in the care economy and are concentrated in the five C occupations: **caring, cashiering, catering, cleaning and clerical**.<sup>48</sup>
- Women form the majority of workers on short-term contracts and in part-time work, and in many countries a large share of the female workforce is engaged in irregular and atypical work. Their share in informal employment is also considerable.<sup>49</sup>

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<sup>46</sup> See for example, CESCR: *Concluding observations of the Committee on Economic, Social and Cultural Rights: Cambodia* (2009) & *China* (2005) (Geneva).

<sup>47</sup> ILO: "Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111)" with respect to Viet Nam (2010) & the Philippines (2009) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia* (Geneva, 2006). See also CESCR: *Concluding observations of the Committee on Economic, Social and Cultural Rights: China* (Geneva, 2005).

<sup>48</sup> ILO: *Global employment trends for women: Brief* (Geneva, 2007).

<sup>49</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).



- The number of occupations available to women is much smaller than those available to men – known as **horizontal job segregation by sex**. There are around seven times as many ‘male’ as ‘female’ occupations. Women also tend to occupy lower ranks than men in the job hierarchy – known as **vertical job segregation by sex**.
- The types and levels of jobs mainly held by men as compared to those mainly held by women usually have more status, and better employment conditions, including substantially higher pay rates. Women predominate in jobs and economic sectors with lower pay than men and at lower levels of the job hierarchy, irrespective of their individual abilities.<sup>50</sup>

Worldwide, the use of labour market intermediaries has become increasingly common, and discrimination abounds especially in placement services for temporary dispatch workers. Explicit measures against discrimination in the use of employment services are therefore, called for. For example, employment services agencies should not screen or follow discriminatory instructions from organizations or companies using their placement services, and employers have a responsibility to ensure that such agencies do not engage in discriminatory employment practices.

### 5.3 Access to occupation

Discrimination may also affect the ability of self-employed persons to earn a livelihood, and start or sustain a business or work carried out on their own account. It may affect in particular **material conditions necessary for carrying out** an occupation, such as access to land, credit, business premises, operating licenses or permits or relevant goods and services. For example, a country discriminates on the basis of sex if women, or certain categories of women, such as unmarried women without dependants, may not own property or benefit from statutory facilities offered for obtaining access to land.

Convention No. 111 upholds the right of indigenous and tribal peoples to earn their living with respect to the exercise of their traditional occupations. In such cases development and employment promotion programmes often need to be combined with safeguarding indigenous and tribal control over natural and environmental resources in their areas of traditional habitation.<sup>51</sup> The ILO CEACR and the UN treaty bodies have raised concerns about discrimination suffered by indigenous peoples as a result of property disputes and transmigration in several Asian countries. The supervisory bodies have urged the respective governments to guarantee the indigenous groups’ rights in the context of, among others, palm-oil plantation projects in West Kalimantan in Indonesia, granting of concessions on lands traditionally occupied by indigenous peoples in Cambodia, resettling of ethnic groups from the mountains and high plateau to the plains in Lao PDR, population transfers to territories inhabited by indigenous groups in Viet Nam, and mining on indigenous territories in the Philippines.<sup>52</sup>

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<sup>50</sup> R. Anker: *Gender and jobs: Sex segregation of occupations in the world* (Geneva, ILO, 1998); L. Wirth: *Breaking through the glass ceiling: Women in management* (Geneva, ILO, 2001 and 2004 update).

<sup>51</sup> ILO: “Equality in employment and occupation, General survey”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 75<sup>th</sup> Session (Geneva, 1988), para 35.

<sup>52</sup> ILO: “Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Indonesia” in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2008); CERD, *Concluding observations of the Committee on Elimination of Racial Discrimination: Cambodia* (2010), Lao PDR (2005), Philippines (2009) & Viet Nam (2001) (Geneva); CESCR, *Concluding observations of the Committee on Economic, Social and Cultural Rights: Cambodia* (2009) & Philippines (2008) (Geneva).

### 5.4 Conditions of work


The Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) emphasizes the importance of eliminating discrimination in regard of conditions of work. It requires action in the following areas:

- Advancement in accordance with individual character, experience, ability and diligence.
- Security of tenure of employment.
- Remuneration for work of equal value.
- 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 (paragraph 2(b)).

#### Equal remuneration

The principle of equal remuneration between men and women for work of equal value – in brief, **equal pay or pay equity** – was established in the ILO Equal Remuneration Convention, 1951 (No. 100). The principle was later incorporated into Convention No. 111, which broadens the protection to prohibit pay discrimination on all grounds covered by Convention No. 111.

The principle of **equal remuneration for work of equal value** refers to rates of remuneration established without discrimination, and solely based on the nature and actual contents of the job. Remuneration of a worker must not be based on the sex, ethnicity, religion, or any other personal characteristics of the person applying for or filling a job or occupation, but on the intrinsic characteristics of the job, such as the required knowledge, skills and experience, efforts, responsibilities and working conditions.

The gender pay gap continues to be considerable in East and South Asian countries. In 2005, women's income amounted to less than or just half of men's income in Japan, Malaysia, the Republic of Korea and Singapore; to around 60 per cent of men's income in Hong Kong SAR, the Philippines and Thailand; and to around two-thirds of men's income in China and Viet Nam.<sup>53</sup> The CEACR has repeatedly urged the governments in the region to take measures to reduce the gender pay gap and to also address the underlying reasons – including occupational sex segregation and undervaluing of jobs traditionally held by women.<sup>54</sup>  See Box 10. Example of structural discrimination: Wage discrimination.

The CEACR has noted that in order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved.<sup>55</sup> For this reason, it is useful to determine the value of work and eliminate bias through **job evaluations**. These measure the extent to which different jobs are of equal value by analyzing and comparing the following job characteristics:

1. Skills and qualifications gained through education, training and work experience.
2. Duties and responsibilities in terms of using technology, and dealing with people and financial resources.
3. Physical, mental and psycho-social effort.
4. Working conditions (physical, psychological and social).

Equal remuneration for work of equal value should not only apply to the **basic or minimum wage**, but also to any **additional benefits or emoluments** arising out of the worker's employment paid by the

<sup>53</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

<sup>54</sup> See for example ILO: "Individual observation concerning Equal Remuneration Convention, 1951 (No. 100)" with respect to Malaysia (2010) and Viet Nam (2010) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva).

<sup>55</sup> ILO: "General observation concerning Equal Remuneration Convention, 1951 (No. 100)", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 96<sup>st</sup> Session, Geneva, 2007.

employer to the worker, directly or indirectly, and in cash or in kind. This means that all the family and housing allowances, travel and food allowances, bonuses and special pension or health care schemes should be paid to male and female workers in accordance to the value of their work, without any discrimination on the basis of sex or other grounds. The scope of Conventions Nos. 100 and 111 extends to “all workers” and is not limited to wage and salary earners in formal employment, but includes all workers in informal employment, such as the self-employed in agriculture, in small trade or in domestic service.

### Box 32. Problems in understanding the “value” of women’s work in Asia

In its General observation concerning Convention No. 100 published in 2007 the CEACR noted that while the principle of equal remuneration for men and women for work of equal value is widely accepted, the scope of the concept and its application in practice can be more difficult to grasp and apply. Most often the difficulties in applying the Convention in law and in practice result from a lack of understanding of the scope and implications of the concept of “work of equal value.”

According to the CEACR, “work of equal value” includes but goes beyond equal remuneration for “equal”- that is, the “same” or “similar” work – and also encompasses work that is of an entirely different nature, but nevertheless of equal value. The principle is not limited to comparisons between men and women in the same establishment or enterprise, but allows for a much broader comparison to be made between jobs performed by men and women in different places or enterprises, or between different employers. As several other ILO member States that have ratified Convention No. 100, many Asian countries face difficulties in understanding the full scope of the concept of “work of equal value.” The CEACR has noted that national legislation falls short of fully reflecting the principle of equal remuneration for work of equal value, among others, in China, Indonesia, Malaysia, the Philippines and Viet Nam, and has urged the respective governments to bring their national laws into full compliance with Convention No. 100. The Committee on the Elimination of Discrimination against Women (CEDAW) has also urged several governments in the Asian region to recognize the principle of equal pay for work of equal value in accordance with ILO Convention No. 100.


Sources: ILO: “General observation on Equal Remuneration Convention, 1951 (No. 100)” in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2007); ILO: “Individual observation on Equal Remuneration Convention, 1951 (No. 100)” with respect to China (2009), Malaysia (2010), the Philippines (2009) & Viet Nam (2010) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Cambodia* (2006), *China* (2006), *Indonesia* (2007) & *Singapore* (2007) (Geneva).

### Promotion and career development

Workers are fundamentally entitled to “advancement in accordance with their individual character, experience, ability and diligence.” The criteria commonly used, for example, in collective agreements to guide the promotion of workers are performance, qualifications, merit, seniority, experience, past training, and fitness to perform the tasks of the new post.

Structural or systemic discrimination in regard of promotion leads to **vertical job segregation** – the situation in which the higher levels of management in a company or economy are dominated by, for example, persons of a particular sex or an ethnic majority group and lower levels are dominated by persons of the other sex or an ethnic minority group.

The phenomenon of women remaining in low-level positions not reaching the top is known as the **glass ceiling** or the **sticky floor**. The career obstacles leading to women’s low representation in senior positions are often due to biased gender stereotypes, for example, that “men are naturally more suitable

for leadership positions than women.” These kinds of stereotypes are incorrect, and should not be allowed to form the basis upon which promotions are decided.  See Box 4. Female leadership and company profitability.

As **on-the-job training** often gives access to increased responsibility and promotion, it is important to ensure that all capable workers have equal access to training and nobody is discriminated. For example, women are often discriminated in access to training because employers assume that they are less committed to staying in the company and pursuing their career than their male colleagues.

### **Box 33. Vertical segregation deriving from discrimination on the basis of social origin – Republic of Korea**

The Labour Standards Act explicitly prohibits discrimination in employment based on social status and applies to private employers. In the employment setting, anecdotal evidence is available to show discrimination in hiring based on one’s “hahk-buhl” or academic credentials. Although it is difficult to assess how widespread status discrimination is in hiring, retention, and promotion in employment without empirical data, the view persists that top positions in government and industry in Korea are occupied by graduates of the elite universities, with the college attended as the primary, if not the only, qualification for entry.

In the education setting, research reveals that despite egalitarian reforms by the Korean Government, bias and institutionalized discriminatory treatment of primary school students continues to take place in Korea based on the social status of the students’ families. Specifically, research found a significant relationship between teachers’ perceptions of students’ social status and teachers’ actions in denying or providing learning opportunities in the classroom. Such biased treatment has an impact in a society where the college to which one gains admission is a critical determinant of individual lifestyle, and preparations for the college entrance examination begin in the early years.

Examples are also available from “Anti-hakbul,” a civic group against the deep-rooted school ties system in Korea. The Internet site for the group included a posting from a person who candidly acknowledged benefiting from discrimination. The individual majored in engineering at the Korea Advanced Institute of Science and Technology (KAIST) and was recently hired for a computer-related post. The writer, however, hinted that his employment was not fair. “The other applicant . . ., I think, is more qualified for the job than [I]. While I have little knowledge about computers and my GPA is low, he specialized in computers and had a high grade point average,” he said. “I think the company didn’t hire him because he didn’t graduate from a high-level university.”

Source: I. Lee: “Equivalence at law (and society): Social status in Korea, race in America”, in *Vanderbilt Journal of Transnational Law*, 2004. Vol. 37, p. 109 and footnote 195.

### **Working environment**

A good and supportive working environment involves creating a safe working environment free from (sexual) harassment, providing adequate maternity protection and enabling both male and female workers to balance work and family responsibility. Employers should also provide reasonable accommodation to workers with special needs relating to their disability, health condition, religious practice or any other personal need.

### **Job security or security of tenure**

Security of tenure denotes the guarantee that dismissal must not take place on discriminatory grounds, but must be justified by reasons connected with the worker’s conduct, his or her ability or fitness to perform the job functions, or the strict necessities of the operation of the undertaking concerned.

Discrimination may also take place in the context of collective dismissals or redundancies for economic reasons. Recent examples of discriminatory lay-offs include a disproportionately high number of dismissals of persons with disabilities in Japan due to the financial crisis in late 2008 and early 2009, and government policies in Malaysia and Singapore encouraging companies to dismiss foreign workers before terminating employment contracts for nationals.<sup>56</sup> More subtle indirect discrimination may also occur as a result of the criteria selected for determining the order of redundancies. In many cases such selection criteria are specified in collective agreements. For example, collective agreements that stipulate that married women or women who are not heads of household may be declared redundant first when companies have to lay off workers, are discriminatory.

Criteria for selecting redundant workers commonly include age, length of service, number and dependants, and ability to obtain alternative employment. In such situations, cases of inequitable treatment between the sexes may occur if too much weight is given to seniority in so far as, statistically, women have less seniority than men.

Women often have **lower job security** than men. Employment in informal sector and irregular work arrangements such as part-time or other temporary types of work, home-based work or contract labour goes hand in hand with low job security, and women's concentration in these jobs affects them disproportionately. In addition, women's job security in any sector tends to be lower than men's, and in case of retrenchment they are often the first to go. Discriminatory practices in **dismissal, lay-offs and redundancies** are common, often targeting (married) women of childbearing age and middle-aged women.

### Social security after retirement

Several Asian countries, including China and Viet Nam, maintain **different retirement ages** for men and women. The laws and regulations obliging women to retire earlier than men were designed in the past to protect women and to acknowledge their contribution to unpaid household and family care. However, this type of measures is increasingly considered to be outdated as it leads to unintended negative effects on women's income during and after their working life as follows:

- Pay inequities at the end of women's career, as they need to stop paid work and retire earlier than men, and cannot progress into senior, higher-paying jobs.
- Fewer social security benefits, as the level of benefits is usually calculated on the basis of the total number of years in employment or on the income earned during the last three or five years in employment when workers are eligible to enter more senior positions.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has urged governments to repeal the discriminatory provisions and provide an equal retirement age for all women and men.<sup>57</sup>

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<sup>56</sup> ILO: *Equality at work: The continuing challenge* (Geneva, 2011), p.8, 36; Japan, Ministry of Health, Labour and Welfare: *Employment measures in post-financial crisis Japan* (Tokyo, 2009), p.30; M Abella and G. Ducanes: *The effect of the global economic crisis on Asian migrant workers and governments' responses*, technical note for High Level Regional Forum on Responding to the Economic Crisis, Manila, 18-20 Feb. 2009, p.9.

<sup>57</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008); See, for example, ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No.111) with respect to Viet Nam* (Geneva, 2005).



## 6. What does not constitute prohibited discrimination?

### 6.1 Differential treatment based on the inherent requirements of the job

Not all measures that have an effect on a certain group are discriminatory in and of themselves. Such measures are permitted if they are necessary and proportionate to achieve a legitimate objective. For example, employers must always be able to recruit people who match the inherent requirements of the job in question.

**Inherent requirements of the job** refer to the necessary, objective and proportionate requirements that a job applicant or worker needs to have in order to be able to perform the essential functions, duties and responsibilities of the job in question. In exceptional cases a personal attribute such as sex, religion or absence of a specific impairment can be an inherent requirement of a job, if only a person with these characteristics can perform the essential functions of the job in question. For example,

- Sex can be an inherent requirement for male or female roles played in theatrical performances.
- Political opinion can be an inherent requirement for senior positions in government institutions.
- Muslim faith can be an inherent requirement for employment by a butcher producing halal meat.

In order to be acceptable, the requirements which give preference or exclude certain people based on personal characteristics need to be:

- Objective and justifiable.
- Inherent to or necessary for the job.
- Not disproportionate, that is not more restrictive or exclusive than is needed for the job.

If the job requirements do not meet these standards, they will often result in indirect discrimination. A case-by-case approach is necessary to determine whether a certain personal characteristic is a real, genuine occupational requirement for a certain job or not.

A person's level of education, knowledge and skills normally relates directly to his or her performance and productivity on the job. As such, these factors are generally understood to be "inherent requirements of the job." In the course of economic development, labour markets tend to demand higher educational qualifications and more specialized skills which translate into higher-paying jobs for skilled job seekers especially if there are labour shortages. However, when there is an abundant supply of labour, education and skills qualifications can become dissociated from the specific requirements of a particular job and can become discriminatory in their own right. Recruitment procedures and practices which stipulate high educational requirements for low-skilled jobs are a considerable problem for many job seekers in many countries.

### 6.2 National security

Article 4 of Convention No. 111 provides that measures affecting an individual who is justifiably suspected of or engaged in activities prejudicial to the security of the State do not amount to discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Measures affecting the job opportunities or treatment of an individual are not considered to be discriminatory if they relate to violent or harmful activities that a person has actually undertaken, and not merely to his or her membership of a particular group. However, the sole membership of a group bent on peacefully changing the State's institutions is not sufficient to justify exclusion.

### 6.3 Protective and affirmative action measures

Convention No. 111 requires ratifying States to develop and implement a national policy for promoting equality of opportunity and treatment in the labour market through practical action. Article 5 of the Convention states that “**special measures of protection or assistance**” laid down in other international labour conventions or recommendations are not considered discriminatory. Moreover, it provides that measures which are designed to meet the particular needs of persons or groups of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, require special protection or assistance are not considered to be discriminatory. As such, these special measures are a recognized exception to the principle of equality of opportunity and treatment as this type of “positive discrimination” is vital to achieve equality in practice. Two main types can be distinguished:

- Protective measures.
- Affirmative action or positive measures.

#### Protective measures

Protective measures refer to measures provided to, for example, pregnant women, workers with disabilities or health conditions to protect them during their vulnerability. Protective measures to these groups are necessary to protect their well-being and health. For women, the most important of these protective measures is provision of adequate **maternity protection**, consisting of maternity leave, cash and medical benefits, health protection measures, employment protection and support to breastfeeding upon return to work.

Another type of protective measures are **blanket protection measures**, which were a common practice in the past to protect groups such as children, young or older workers and women. The developments in scientific research, work-related technology and demographics have gradually raised questions whether blanket protection measures traditionally afforded to some of these groups actually deny or restrict legitimate employment opportunities.

The question has been raised most notably with respect to women workers who are traditionally “protected” as a group by legal provisions prohibiting or restricting their employment in defined categories of strenuous work. Often, scientific research does no longer support the view that under normal circumstances such work is any more unsuitable for women than for men. As a result, women should no longer be “protected” by denying or restricting their employment in certain jobs or work processes in general, and protection should be **restricted to those circumstances and areas where women are objectively different from men**. As mentioned above, one such key circumstance is maternity and reproductive health, in particular pregnancy, child birth and a period after delivery.

Measures that protect women workers by banning their employment in work and work processes considered hazardous to them, remain to be a subject of heated debate in several countries – defended by some as necessary and criticized by others as contrary to the objective of equality. In many cases, labour law protecting women is often not based on scientifically supported assumptions, but on generalizations based on stereotypes regarding roles of men and women in society and in the labour market. For example, in Viet Nam, women are prohibited from working in workplaces which are not suitable to women’s psychiatric and psychological conditions or to engage in “intensive labor beyond endurance.” In addition, 49 jobs are off limits to female workers of all ages, including driving trains and trucks with a tonnage bigger than 2.5 tons, and uprooting trees with a diameter greater than 40 cm.<sup>58</sup>

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<sup>58</sup> Circular 03/TT-LB dated 28 January 1994 issued by the Ministry of Labour, Invalids and Social Affairs (MOLISA) and Ministry of Health (MOH), in H. Nguyen Thi Dieu: *Unpublished training materials* (Ho Chi Minh, 2011).

In practice, such laws have often become an obstacle to women's right to work:

- Scientific research does not support the notion of a significant difference between men's and women's biological response to physical, biological or chemical hazards.
- Similarly, the average physical strength of men is not so different from that of women and some women can be even stronger than some men.

For example, labour law often prescribes a blanket ban on night work for women. In reality, night work is unhealthy not only for **women** because they are mistakenly perceived to be intrinsically weaker, but also for **men** because of fatigue, disruption of natural sleep patterns, etc. So, if men and women choose to work at night, they both need to be equally protected, while women need to be protected separately only in the aspect of maternity in which they are objectively different from men. The trend in the international community, therefore, is to protect both men and women from work and work processes that may damage their reproductive functions, and in all other cases strive to ensure decent working conditions for all workers.

The United Nations bodies request governments to periodically review laws which protect women in the light of new scientific knowledge or technology to decide whether protective laws are still necessary. The ILO Committee of Experts on the Application of Conventions and Recommendations also requests governments to ensure that employment restrictions for women are exclusively related to maternity and that those that are based on stereotyped assumptions on women's role in society and the labour market are repealed.

### **Box 34. Challenging stereotyped ideas about physical abilities of male and female workers**

Promotion of gender equality at work requires that women and men shall have equal access to training and employment of their own choice, on the basis of individual suitability for such training or employment. Traditional ideas about suitability of certain jobs to women and men should not interfere in the choice made by an individual. The suitability for specific jobs should be assessed with reference to individual characteristics of the person and the inherent requirements of the job in question.

Scientific research on lifting capacity and other physical abilities of women and men workers show that no assumptions on these abilities can reasonably be made on the basis of a person's sex. For example, studies done in the US and Europe based on anthropometric data of white Anglo-Saxon workers show that the capacity range for female and male worker groups were very similar. Also other gender-oriented research on health aspects has demonstrated that differences among working populations are mainly based on individual human variability rather than on biological differences between the sexes.

Source: V. Forastieri: *Information note on women workers and gender issues on occupational safety and health* (Geneva, ILO, 2000).

### **Affirmative action or positive measures**

Affirmative action refers to a wide range of positive measures to improve the status of less advantaged groups in the labour market, or more generally, in regard of their opportunities to secure a livelihood (e.g. as self-employed, as a subsistence farmer, as a nomadic cattle-herder etc). Affirmative action measures most frequently operate in spheres such as employment, education or contracting, but can also target land allocations, access to credit or development programmes. Affirmative action can be geared towards achieving specific targets and legal compliance or rely more on individual or corporate responsibility. Affirmative action may cover different stages and aspects of the employment relationship, and often include setting goals in the form of targets or quota in hiring, training or promotion which allocate a certain share of positions to members of the underrepresented groups.

The adoption of affirmative action measures stems from the recognition that the legal banning of discrimination is necessary but not sufficient in itself to create equity in the world of work. For this reason special measures need to be designed and implemented to redress the effects of past and continuing discrimination against specific groups. These measures are known by many names. Within ILO they are generally referred to as affirmative action or positive measures.

Affirmative action measures comprise special, usually temporary, measures to establish equality of opportunity and treatment in actual labour market practices. They are usually targeted at a particular group, such as one sex, race or ethnic group, which has been subject to discrimination arising out of a history of oppression of one group by another. They aim at offsetting the disadvantages arising from existing attitudes, behaviour and structures based on stereotypes and stigma, and at re-establishing a balance between different groups in the labour market.



Affirmative measures – just like the protective measures referred to above are only justified by the aim of protection and assistance which they are to pursue. Affirmative action measures for most groups (with the exception of some persons with disabilities and health conditions) need to be temporary and should be proportional to the nature and scope of the problem that they intend to redress. They should be reviewed periodically to ensure that their legitimacy has not been overtaken by progress. They should be removed and adjusted once the consequences of discrimination have been rectified.

 See Chapter 3, Section 2.2 Design and implementation of affirmative action below for more information.

### Box 35. Affirmative action to increase women's representation in company boardrooms

As women's representation in senior economic positions continues to be very low, several industrialized countries have started to adopt targets or quotas for ensuring a minimum level of female representation in boardrooms, including Norway (2003), Spain (2007) and France (2011). In Norway, laws require public or publicly traded companies to have a gender balance of at least 40 per cent of women on the boards since 2004 and 2006 respectively. The French parliament gave final approval to a law obliging large companies to reserve at least 40 percent of their boardroom positions for women within six years in January 2011. In Germany, where the government had encouraged the use of voluntary company codes, voluntary quota for gender equality have now been set. The European Union Commission has promoted self-regulation by companies, but has reserved the option of developing quota regulations in the future if self-regulation does not improve current outcomes whereby women represent only 11 per cent of board members.

In Australia, by mid 2010, the Australian Securities Exchange (ASX) introduced a requirement for each entity listed on the ASX to adopt a diversity policy that includes self-imposed targets for staff diversity, and to publicize the proportion of women on staff, in senior ranks and on the board. Initially, the guideline will be voluntary. However, the ASX could consider making the guideline a formal listing rule if objectives are not being met. This means that ASX companies could be suspended from trade if they fail to disclose

their gender policies or meet the objectives set by their board. At present, only 8.3 per cent of ASX 200 board members are women and almost 50 per cent of the top 200 companies have no women at all on their boards. Similarly, the new Corporate Governance Code issued by the Finnish Securities Market Association, which came into effect in January 2010, requires all companies listed in Finland to have at least one woman on the board, or explain why they do not have any female board members.

Source: Norway, Ministry of Children, Equality and Social Inclusion: *Rules on gender representation on company boards*, <http://www.regjeringen.no/en/dep/bld/Topics/equality/rules-on-gender-representation-on-compan.html?id=416864> (accessed 18 Sep. 2011); “France sets quota for women on big companies’ boards”, *Reuters*, 13 Jan. 2011, website: <http://www.reuters.com> (accessed 26 Jan. 2011); ILO: *Equality at work: The continuing challenge* (Geneva, 2011); Australian Securities Exchange (ASX) Corporate Governance Council: *Corporate Governance Principles and Recommendations with 2010 Amendments*.

### Box 36. Use of affirmative action measures in Asia

Many countries in the East and South-East Asian region have adopted affirmative action measures to accelerate the pace towards substantive equality in society and the labour market. Some examples of affirmative policies from the Asian region include:

- Privileged access to public-sector jobs, university places and government contracts for *bumiputras* (Malays and indigenous groups of Sabah and Sarawak) in Malaysia.
- Cambodia State Secretariat of Civil Service Guidelines (2008) providing that female candidates or candidates belonging to ethnic minorities or coming from remote regions may benefit from priority in recruitment. The Guidelines instruct all government agencies to apply temporary measures targeting between 20-50 per cent women among new recruits.
- 30 per cent quota for women candidatures for political parties in the legislature in Indonesia, established in Law No. 12 of 2003 on General Elections.
- Special measures to promote education and employment for native Papuans in the Special Autonomy Law for Papua province in Indonesia.
- Obligation to hire indigenous peoples in proportion to their share in the population established in the Philippines Indigenous Peoples’ Rights Act (IPRA) 8371 of 1997 and its Implementation Rules.

However, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the UN treaty bodies have noted that the use of affirmative measures is still inadequate in many Asian countries. For example, the Committee on Elimination of Discrimination against Women (CEDAW) has urged the governments in Cambodia, Lao PDR, Thailand and Viet Nam to adopt affirmative action policies to accelerate achievement of *de facto* equality for women and men in the society and the labour market. The implementation of existing affirmative action policies is also often lax, due to lack of sanctions or enforcement mechanisms to ensure compliance.

Source: ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); ILO Committee on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to the Philippines* (Geneva, 2009); CEDAW: *Concluding comments of the Committee on Elimination of Discrimination against Women: Cambodia* (2006), *Lao PDR* (2005), *Thailand* (2006) & *Viet Nam* (2007) (Geneva); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights: Cambodia* (Geneva, 2009); Government of Indonesia, Law on Special Autonomy for the Papua Province, No.21/2001.

### Reasonable accommodation

One type of special measure is commonly referred to as “**reasonable accommodation.**” It reflects the idea that employers may be expected to make a reasonable effort to accommodate the needs of a particular group of persons such as people with disabilities, older workers or workers following a particular religion. Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden on the employer. What is reasonable and what is undue hardship will depend on a range of factors, including the nature and cost of the measure



in relation to the size, resources, nature and structure of the employer's operations. The UN Convention on the Rights of Persons with Disabilities considers denial of reasonable accommodation as a form of discrimination and both this Convention as well as ILO Recommendation No. 200 on HIV and AIDS in the world of work indicate that countries should take appropriate steps to ensure that it is provided.

### Box 37. Examples of “reasonable accommodation” for persons with disabilities

The Americans with Disabilities Act requires an employer with 15 or more employees to provide reasonable accommodation for individuals with disabilities, unless it would cause undue hardship. A reasonable accommodation is any change in the work environment or in the way a job is performed that enables a person with disabilities to enjoy equal employment opportunities.

There are three categories of reasonable accommodations:

- Changes to a job application process.
- Changes to the work environment, or to the way a job is usually done.
- Changes that enable employees with disabilities to enjoy equal benefits and privileges of employment, such as access to training.

Examples used by the State of Montana Human Rights Bureau include:

- Making all application processes accessible to persons with disabilities.
- Making existing facilities used by employees readily accessible to and usable by employees with disabilities.
- Offering part-time or modified work schedules.
- Reassigning the employee to vacant positions they are qualified to hold.
- Acquiring or modifying equipment or devices.
- Adjusting or modifying, policies, examinations or training materials.
- Providing qualified readers or interpreters.

Source: United States, Equal Employment Opportunity Commission: *Small employers and reasonable accommodation*, <http://www.eeoc.gov/facts/accommodation.html> (accessed 28 Sep. 2010); State of Montana Human Rights Bureau, <http://erd.dli.mt.gov/humanright/documents/empdiscrimisagainstlaw.pdf> (accessed 15 Sep. 2010).

### Box 38. Practical measures to accommodate religious requirements at work – Canada

Work uniforms and protective gear:

- Workplaces, services and facilities frequently have rules about dress. These may take the form of a requirement to wear a particular uniform or protective gear or a prohibition on wearing a head covering. These rules may come into direct conflict with religious dress requirements. Certain creeds, for instance, do not permit men to cut their hair, while an employer, for health and safety reasons, may require employees to have short hair. An example of a religious accommodation measure is to ask concerned workers to contain their hair with a net or other appropriate head covering.

Working hours and leave:

- Some religions require that their members observe periods of prayer at particular times during the day. This practice may conflict with an employer's regular work hours or daily routines in the workplace. One way of overcoming possible tensions is by a modified break policy, flexible hours and/or providing a private area for devotions. An employee may request time-off to observe a holy day because his/her religion may forbid him/her to work on those days. Flexible scheduling may be a solution, and may include alternative arrival and departure times on the days when the person cannot work for the entire period, or use of lunch times in exchange for early departure or staggered working hours. Where the person has already used up paid holidays to which he or she is entitled, the employer should also consider permitting the employee to make up time lost or use floating days off.

Source: Adapted from ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); Ontario Human Rights Commission, *Policy on creed and the accommodation of religious observances* (1996).

## Chapter 3. Methods of application of Convention No. 111

### 1. What are the State's obligations under the Convention?

Convention No. 111 encourages States to “declare and pursue” a **national policy** to promote equality of opportunity and treatment in employment and occupation. Such a policy normally includes both legal provisions prohibiting discrimination and proactive measures to achieve equality in labour market outcomes in practice.

Convention No. 111 provides that the national policy should be pursued “by methods appropriate to national conditions and practice.” This means that there is ample space for flexibility in designing such a national policy, but also that the policy must be progressive and make a practical and effective contribution to the elimination of discrimination where and when it occurs. The Convention itself lists certain spheres of action in which a national policy should be operational. These include:

- Enacting and enforcing appropriate legislation.
- Repealing discriminatory statutory provisions and administrative practices or instructions.
- Ensuring non-discrimination in public employment, vocational guidance and training, as well as employment services under the government's authority.
- Developing educational programmes.
- Cooperation with employers' and workers' organizations, as well as other appropriate bodies, such as national equality or human rights commissions.

### 2. Promoting and enforcing Convention No. 111 through policies and legislation

#### 2.1 National policy

The approach preferred by most countries in formulating their national policy is to adopt legislation, accompanied by more or less extensive regulations. It should be clear from the spheres of action outlined above, however, that a national policy cannot be reduced to legislation. A national policy may and should manifest itself in:

- Constitutional provisions.
- National plans and programmes, which are particularly useful in setting out budgetary implications as well as respective functions and responsibilities of public authorities, employers, workers and others, in light of the complementary character of such responsibilities and of national conditions and practice.
- Public statements at the highest political level regularly re-endorsing support for the policy.
- Government policy papers.
- Collective agreements.
- The existence of independent equality institutions as well as the guidance they provide (e.g. codes of practice).
- Specific public policies geared at equitable and inclusive economic and social development.

Equality and non-discrimination principles should be incorporated in **active labour market policies and programmes** – ranging from employment promotion, labour contract and social protection measures to training, enterprise development and social finance programmes geared at poverty reduction with application monitored through appropriate mechanisms and procedures.

Governments are generally major employers in terms of employee numbers and they also have an example function as specified in many international legal instruments. **Government can set the example** by applying equality and non-discrimination principles in public sector personnel and human resource policies.

Other examples of policies against discrimination include:

- **Public procurement** policy, for example, make eligibility for contracts involving the expenditure of public funds dependent on observance of the principle of non-discrimination.
- Non-discrimination in **public lending** policies and licensing, for example, make eligibility for grants or tenders to training institutions, or for licenses to operate private employment agencies dependent on observance of the equality principle.

### Objective of the national equality policy

The objective of the national equality policy should be to promote **substantive equality** for all groups of workers in the labour market. This means not just repealing discriminatory provisions and practices, but implementing support measures to assist disadvantaged groups in realizing their full potential. The aim of the national equality policy should be to ensure that differences in labour market outcomes reflect a **free choice** of occupation for all individuals without interference of any discrimination, bias or prejudice.<sup>59</sup>

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized the importance of **effectiveness** when assessing whether a given country has declared a national policy in accordance with Convention No. 111. It has noted that just establishing a policy and taking measures is not enough; the national policy needs to be effective in securing **factual results** in improving labour market outcomes for disadvantaged groups of workers.<sup>60</sup>

The adoption of ILO Conventions No. 100 and No. 111 in the 1950's marked a major shift in the approach to equality promotion – namely the shift away from protection to promotion of equality in law and equality in outcomes. This transition and change in approaches is best demonstrated in the historical development of strategies for the elimination of sex discrimination and promotion of gender equality during the 90 years of ILO history (see below).

While the policy shift to promotion of substantive equality has been consolidated in international standards a few decades ago, understanding of substantive equality is still lacking at national level in some countries. Noting the challenges in tackling *de facto* discrimination, the CEACR has encouraged member States to take further proactive measures to promote substantial equality, including affirmative action, awareness raising, training and coherent policies in areas affecting equality of opportunity and treatment in employment and occupation.<sup>61</sup>



### Shifts in international approaches to gender equality promotion

**Protection:** The first ILO conventions adopted in the early 20th century aimed exclusively at protecting women. Women were perceived as “weak” and more fragile than men, and in need of special protection from work perceived as “unsuitable,” “unsafe” and “inappropriate” for them. Early standards contained provisions on prohibiting the employment of women at night, in underground work and with dangerous substances like lead. In later years, it was found that the protectionist perspective of barring women from certain types of employment or work processes perpetuated sex discrimination in the guise of protection and reinforced the subordination of women. More recently, this type of protection has also become known as “protective equality.”

<sup>59</sup> ILO: *Time for equality at work* (Geneva, 2003), p. 26, para. 83.

<sup>60</sup> ILO: “Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009), para. 107.

<sup>61</sup> *Ibid.* para. 117.

**Equality in law or “formal equality”:** Gender equality was expressed formally and explicitly for the first time in international law in 1948 when the Universal Declaration of Human Rights recognized equality, non-discrimination and equal remuneration as human rights that all human beings should enjoy regardless of their sex. The adoption of **Conventions No. 100 and No. 111** marked a shift in international labour standards from an exclusive concern with the protection of women to the promotion of equality between men and women in employment and occupation. The standards promote the removal of barriers to women’s equality both in law and in practice, and considerable achievements were made in, for example, repealing discriminatory statutory provisions from national laws.

While Conventions No. 100 and No. 111 recognize the importance of special support measures, in some countries equality in law has been understood to mean that men and women are to be considered the same and should be treated in an identical manner, regardless of their biological and social differences. In practice this **“sameness”** perspective has proven to further burden women as male and female realities are not the same.

**Equality in outcomes or “substantive equality”:** By the early 1980s, it had become clear that removal of legal barriers to women’s equality in the labour markets was necessary but not sufficient to realize equal labour market outcomes and substantive equality for women. This led to a renewed emphasis on analyzing possible differences and seeking to eliminate discrimination of disadvantaged groups through corrective, **positive measures**. Within the employment and labour fields, it was realized that achieving full, substantive equality for women in the labour market requires more equal sharing of family responsibilities between women and men, and workers with and without family responsibilities. Thus, in 1981, ILO member States adopted **Convention No. 156** which provides policy guidance for enabling workers with family responsibilities to engage in employment without discrimination.

Since the Fourth World Conference on Women in Beijing in 1995 **gender mainstreaming**<sup>62</sup> forms part of the global strategies to achieve gender equality goals. Many international and national organizations, including governments, have taken steps to institutionalize gender mainstreaming policies and practices within their organizations, but much more remains to be done to achieve equality in outcomes. For this reason, in recent years, women’s advocates have started to call for **“gender justice”** in exploration of new ways to provide redress for the ongoing gender based injustices from which women suffer. Gender justice is about the ending of, and the provision of redress for, inequalities between women and men that result in the subordination of women to men. The gender justice approach pursues gender equality with an emphasis on transforming unequal power relations between the sexes. Priorities include advancing women’s rights and access to resources on an equal footing with men; building women’s voice and “agency,” that is, ability to make choices; creating women’s access and influence in policy and decision making institutions and making social, economic and political institutions responsive and accountable to women.

Sources: ILO: *Women workers’ rights: Modular training package* (Geneva, 1995); ILO: *Gender equality mainstreaming strategies in decent work promotion: Programming tools – GEMS Toolkit* (Bangkok, 2010); M. Mukhopadhyay and N. Singh (eds.): “Gender

<sup>62</sup> Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. The ultimate goal of gender mainstreaming is to achieve gender equality. Gender mainstreaming is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally and inequality is not perpetuated. ECOSOC: *Agreed Conclusions*, e/1997/L.30.

justice, citizenship and development” (2007) in ILO: *Women in labour markets: Measuring progress and identifying challenges* (Geneva, 2010). For more information, see also the United Nations International Development Research Institute, Ottawa, Canada; and the Institute for Development Studies and the University of Sussex, UK.

### Box 39. The different approaches to gender equality in China

**Equality before the law** was interpreted in China for many years as the removal of discriminatory rules and regulations as this was deemed sufficient to realize equality between women and men. Women and men were treated the same, and women were expected to fulfill the same roles in society as men. Typical examples of this approach to equality are the “iron girls combat team” and “women electrician workforce” during the Cultural Revolution.

In China, as in many other countries, the legislation on women workers’ rights is currently geared towards **protecting women**, while special measures for promoting substantive equality are lacking. Several measures reflect the belief that women are weak and “unsuitable” for certain work. A good example of this approach is the list of prohibited occupations in the 1988 Regulations on the Labour Protection of Female Staff and Workers. While protection of women from hazardous work originated from good intention, it has led to excluding women from certain opportunities or restricting their ability to freely choose their occupation in practice. In addition to imposing discriminatory restrictions on women, this protectionist approach also fails to recognize that not just women but also men need to be protected from occupational hazards and unhealthy working conditions.

**Equality in outcomes**, or substantive equality, is a new concept in China, and measures to support equal labour market outcomes for women have not yet been put in place fully in law and in practice. Substantive equality focuses on realizing equality in law and in practice and achieving equal, fair and just labour market outcomes for women and men. This approach recognizes different biological, social and cultural roles of men and women, and protects them in adequate ways (e.g. maternity protection). It also recognizes that achievement of substantive equality requires supportive policies and affirmative action to overcome the impacts of past discrimination.

Source: B. Liu: *Unpublished materials* (Beijing, 2008).



### Changing approaches towards disability: From charity to inclusive workplaces

Over the past 40 years, there have also been significant changes in the approaches towards disability: from the charity and medical approaches towards a rights-based approach which prioritizes the abilities, diversity and rights of persons with disabilities.

#### The “charity” approach to disability

The charity model looked down upon and pitied persons with disabilities (and sometimes also their family). Within this model, the employment of persons with disabilities was considered as a tokenistic, benevolent and charitable act, rather than as a valuable component of workplace productivity and efficiency. Many persons with a disability and their organizations have criticized this model as it promoted a negative, disempowered image of persons with disabilities rather than portraying the abilities of these persons and their right to decent employment.



**The “medical” approach to disability**

The medical model of disability viewed disability as the result of an impairment that is intrinsic to the individual. It classified conditions and disabilities based on medical understandings of the body and mind, and prioritized curing or controlling these conditions within the individual. In the medical model, the focus was on ‘fixing’ the impairment through medical and vocational rehabilitation, rather than optimizing the individual’s capacity to manage her/his own life, given her/his impairment or medical condition.

**The “social and human rights-based” approach to disability**

The social model of disability views disability as the result of the dynamics between individuals with an impairment and a non-inclusive society. It asserts that what constitutes a disadvantage for women and men with disabilities is not their impairments in and of itself, but rather the limitations that are imposed on them by **social, cultural, economic and environmental barriers**. The social model puts the **focus on the removal of disabling barriers** through improving access to the built environment and information and removing discrimination, stigma and negative attitudes. The aim is to enable persons with disabilities to take part in mainstream society, access regular education and training programmes, find decent work and make a valuable contribution to workplace productivity and efficiency.

**2.2 Design and implementation of affirmative action**

As mentioned earlier, an outright ban on discrimination is not sufficient in and of itself to eliminate discrimination in practice. Affirmative action is, therefore, an important strategy to accelerate the pace of improvement of the situation of groups that are at a disadvantage because of past or present discrimination, and, as such, constitutes an important part of a national equality policy. 📖 See Chapter 2, Section 6.3 above for a description of what affirmative action is.

The necessity for, and legitimacy of affirmative action is sometimes controversial. Supporters argue that affirmative action aims to redress a situation of severe disadvantage and puts everyone on an equal footing. Detractors, however, consider that affirmative action constitutes a form of reverse discrimination against the excluded dominant group and an obstacle to rewarding merit. It is, therefore, important to pay adequate attention to both the content of affirmative action and to engage in a broad consultative process to obtain commitment and buy-in of all concerned stakeholders. Otherwise, what is intended as an effective measure to correct long-standing and deep-seated discrimination against certain groups may actually backfire and perpetuate negative perceptions. It is equally important to keep reminding all parties that affirmative action should not be a permanent policy. Once the target groups are in a position to exercise their rights to equality in practice the targets, quota or other preferential treatment should no longer be needed and should be phased out.

**Key components of effective affirmative action**

- Reliable evidence to determine the extent and nature of the problem.
- Specific objectives concerning the group(s) targeted by the programme.
- Specific measures to redress the causes of the discrimination noted.
- A timetable to attain the objectives set and apply the measures.
- A mechanism to monitor progress, assess difficulties and make adjustments.

Source: ILO: *Women workers’ rights: Modular training package* (Geneva, 1995); ILO: *Equality in employment and occupation, General survey* (Geneva, 1988).

In sum, the more significant arguments in favour of affirmative action include:

- The promotion of equality of opportunity and treatment remains abstract without efforts to “level the playing field” first by correcting for historical discrimination and only then to let merit take over as primary criterion.
- Affirmative action expands the pool from which to tap human resources in the future.
- Affirmative action promotes a more diverse workforce which has long-term implications for creativity, problem solving, retaining good employees and developing markets for goods and services – both in the workplace and in society.

Counterarguments to be considered when designing affirmative action measures include:

- The more rigid measures that are more directly targeted at labour market outcomes may cause skills shortages in the short-term.
- Affirmative action can have the effect of stigmatizing meritable individuals from disadvantaged groups.
- It may be more politically difficult to phase out the more demanding forms of “affirmative action,” such as job quotas when no longer required.
- Affirmative action measures are sometimes not adequately “fine-tuned.” For example, training quotas for tribal peoples are not likely to do much good if the territory in which they live does not offer jobs for the skills acquired. Also, affirmative action measures that focus exclusively on e.g. race but not on social origin may have the effect of favouring a “rich” candidate from the racial “minority” over a “poor” candidate of the racial “majority.”

As a result, issues to consider when adopting affirmative policies are as follows.

**Striking a fine balance between considerations of merit and affirmative action.** Merit is an essential consideration in employment decisions. Merit is the primary criterion for recruitment and promotion in societies where all persons have had equal chances to education and training, and employment discrimination does not exist. However, employers need to understand the long-term economic and social benefits of eliminating pronounced inequalities in the workplace and society and this cannot be achieved without businesses investing in short-term positive measures related to their human resources policies.

This does not mean that all merit considerations are waived in affirmative action policies and measures. On the contrary, if merit is entirely excluded from decisions related to employment or occupation, even deserving members of the preferred group or “majority” will continue to suffer from perceptions that their status is purely earned on the basis of their membership of the group. For example, in Europe, quota systems were originally introduced to promote employment for disabled war veterans after the first and second world wars and for people disabled due to industrial accidents. These quotas have been criticized as they were considered as a form of compensation to individuals and gave the impression that persons with disabilities could not be employed on merit.

Merit considerations can be addressed in affirmative action by focusing on special education and training programmes for the disadvantaged or under-represented group(s) because the desired skills and competencies are sometimes scarce among them, exactly because they were discriminated and did not have equal access to education and training. Especially in cases where (it is claimed that) it is not possible to fulfill recruitment quotas or targets, special investment in education and training measures is an essential component of an affirmative action programme.

**Box 40. Female future: Action by the Confederation of Norwegian Employers**

Following the 2003 law requiring boards of all public limited companies in Norway to have at least 40 per cent female membership by July 2005, the Confederation of Norwegian Enterprises (NHO) surveyed Norwegian companies and found that whilst 84 per cent were positively in favour of increasing women's representation at the management and board levels, the same companies considered that there was a lack of female candidates for the leading positions.

Despite its earlier scepticism, the NHO established the internationally acclaimed Female Future, a unique 18-months training and networking programme to identify and fast-track talented women in the Norwegian workforce into leadership positions. Female Future followed a strategy of "pearl diving," where NHO member companies would nominate a minimum of three women candidates for further training and support to reach the NHO's network of boards. Of the 600 women who have successfully completed the programme, 60 per cent have gone on to receive invitations to join Norwegian boards.

Source: R. Lewis and K. Rake: "Breaking the Mould for Women Leaders: Could boardroom quotas hold the key?", a Fawcett Society think piece for the Gender Equality Forum, Oct. 2008, p. 7, in ILO: Equality at work: The continuing challenge (Geneva, 2011).

**Understanding and communicating the rationale and purpose of affirmative action.** The rationale and purpose of affirmative action need to be clearly and widely communicated in society and workplaces to overcome any possible resistance among the dominant group. For example, there is a wide belief among dominant ethnic groups in many countries that preferential treatment of ethnic minorities discriminates against the majority group. Men and sometimes women may have similar feelings when affirmative action targets women. Often, such views are not based on hard facts showing, for example, high poverty levels among ethnic groups or women's under-representation at senior levels. It is, therefore, vital to underpin the rationale for affirmative action with sound evidence on the nature and extent of the disadvantage. The purpose of preferential treatment needs to be set out clearly: It is not to give members of a certain group permanent privileges, but to promote social inclusion and cohesion by temporarily giving them opportunities to reach a level where they can compete on merit with members of the non-preferred groups.

**Ensuring the effectiveness of specific affirmative policies and measures.** When implementing affirmative policies it is important to ensure that the measures do not backfire and further disadvantage the entitled groups. For example, in China, instead of implementing preferential employment policies for ethnic minorities in limited geographical areas from which these minorities originate, affirmative action measures may promote equality more effectively if privileges target the consistent acquisition of knowledge and skills that are both recognized and "marketable" within the country's labour market as a whole.

**Establishing effective enforcement mechanisms.** When designing affirmative policies, legislators need to consider whether the objectives will be achieved most successfully through voluntary or compulsory means as this will impact on the nature of measures developed. In some countries, governments consider voluntary affirmative action policies as a promotional tool for employers who choose to give preferential treatment to persons from the disadvantaged group at the workplace. Such legislation that makes affirmative action possible but not compulsory can protect employers against claims from persons not covered by the affirmative action programmes who may feel they have been wrongly treated. Voluntary measures often involve codes of good practice and sometimes incentives to support employers to recruit from the targeted group. On the other hand, if voluntary measures have

proven unsuccessful, affirmative measures may need to become compulsory. This requires establishing clear sanctions, reporting requirements for employers and effective mechanisms for monitoring of implementation, as well as providing individuals with the right to seek redress through the judicial system to ensure enforcement of employers' affirmative action obligations.

**Affirmative action financing.** It is important to ensure that all relevant stakeholders invest in affirmative action with contribution from both the public and private sector through public-private partnerships. In certain cases it may be justified to expect either the government or companies to shoulder the financial cost entirely. However, if companies are individually liable to foot the entire bill for affirmative action or reasonable accommodation without any practical support or guidance, the result may not lead to more and better jobs for the underrepresented group, but, on the contrary, to even more employment discrimination against them.

Affirmative action is often promoted and enforced through a mix of incentives and deterrents. One way to finance affirmative measures is to impose a levy or fine on employers who fail to meet the set quota levels. Several countries use this kind of measures to promote employment of persons with disabilities and oblige employers to employ a certain percentage of these workers. The levies and fines are paid into a central fund, which is sometimes earmarked for promoting the accessibility of workplaces to persons with disabilities or for vocational rehabilitation purposes. Countries with this type of legislation include many European countries, such as France, Germany and Italy, and several Asian countries, such as China, Japan, and Thailand. Most quota laws make no provision for training of people with disabilities, with the exception of the quota law in France.<sup>63</sup>

However, in Asia the application of these systems is often fraught with difficulties. The levies in place are often regarded as not high enough, since employers in many countries opt to pay the levy rather than employ persons with disabilities. In many countries enforcement of the quota system is also rather lax. Taking into account the need to improve the effectiveness of quotas in promoting employment for persons with disabilities, some countries have introduced reforms that focus on the removal of barriers in the workplace, and offer a wider range of options for employers, including the option of providing on-the-job training like apprenticeships.<sup>64</sup>

### 2.3 Legislation

To eliminate discrimination, there is a need for comprehensive legal coverage and protection. Often broad equality and non-discrimination principles are laid down in countries' constitutions. Courts, however, have difficulty applying principles or laws that do not define what is meant by discrimination. Specific legal provisions need to be formulated to provide definitions of discrimination and to identify the specific grounds of discrimination and situations to which the law applies.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the UN treaty bodies have repeatedly noted that national legislation in many East and South-East Asian countries does not include a clear definition of discrimination. Its absence is noted in the national legislation of, among others, Cambodia, China, Indonesia, Lao PDR, Malaysia, Singapore and Thailand. The CEACR and the UN treaty bodies have urged the governments to include a clear definition of

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<sup>63</sup> ILO: *Achieving equal employment opportunities for people with disabilities through legislation. Guidelines* (Geneva, 2007); ILO: *From disability benefits to gainful employment: Central and Eastern Europe sub-regional conference report* (Budapest, 2005).

<sup>64</sup> ILO: *Achieving equal employment opportunities for people with disabilities through legislation. Guidelines* (Geneva, 2007); ILO: *From disability benefits to gainful employment: Central and Eastern Europe sub-regional conference report* (Budapest, 2005).

discrimination encompassing both direct and indirect discrimination in their national laws. The definition should cover all grounds and all aspects of discrimination in employment and occupation as contemplated by Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).<sup>65</sup>



### Types of instruments that may contain specific provisions against discrimination

- Constitution.
- Generic legislation protecting human rights (e.g. National Human Rights Commission Act).
- Generic legislation outlawing discrimination on all prohibited grounds (e.g. Equal Opportunities Act) or selected prohibited grounds (e.g. Gender Equality Act, Protection of persons with disabilities Act, Equal Pay Act, etc.).
- Generic Labour Laws (e.g. Labour Law, Labour Code).
- Specific Labour Laws (e.g. Labour Contracts Act, Employment Relations Act).
- Executive regulations, directives, guidelines.
- Judicial decisions.
- Administrative decisions.
- Collective bargaining agreements (to the extent national law considers them legally binding).



### Essential elements in legislation

- Definition of prohibited discrimination: Direct, indirect and harassment.
- Explanation of exemptions to what is prohibited discrimination.
- List of grounds of prohibited discrimination – normally expanding with time.
- Scope of protection: employment and occupation at all stages of the employment cycle.
- Designation of supervisory responsibilities to competent national authorities such as labour inspection services.
- Affirmative action, protective measures and reasonable accommodation.
- Employer liability and responsibility.
- Sanctions and remedies.
- Protection against reprisal and victimization.
- Shifting or reversing the burden of proof.
- Adoption and implementation of equality policies or plans at the workplace.
- Collection of relevant information and statistical data at different levels.

To make discrimination prohibitions laid out in the Constitution and national legislation efficient, it is important to ensure that enforcement and promotion mechanisms to redress discriminatory employment practices are put in place. Therefore, real commitment to combat employment discrimination requires establishing clear liabilities and access to legal remedies.

<sup>65</sup> ILO: “Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Indonesia” in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2008); ILO Committee of Experts on the Application of Conventions and Recommendations: “*Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to China*” (Geneva, 2009); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women*: Cambodia (2006), China (2006), Indonesia (2007), Lao PDR (2005), Malaysia (2006), Singapore (2007) & Thailand (2006) (Geneva); CERD: *Concluding comments of the Committee on the Elimination of Racial Discrimination* Cambodia (2010), China (2001) and Lao PDR (2005) (Geneva).



### Box 41. Repealing discriminatory laws in East and South-East Asia

One of the first steps that a member State should take after ratification of Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is to repeal any discriminatory provisions in its national laws or administrative regulations (Art. 3(c)). While many Asian countries have already taken the initiative to align their laws and administrative practices with the Convention, discriminatory provisions can still be found in national and regional legislation in many countries. One type of discriminatory provisions still in force in many Asian countries is blanket bans prohibiting employment of women in certain jobs. These provisions are usually adopted with the intention to protect women, but they have the effect of limiting women's access to and free choice of employment. 📖 See Section 6.3 Protective measures in Chapter 2 above.

The ILO CEACR and the UN Committee on Elimination of Discrimination against Women (CEDAW) have noted that protective provisions continue to limit women's choice of employment in some East and South-East Asian countries. In its recent comments concerning application of Convention No. 111 in Viet Nam and China the CEACR requested the respective governments to provide a list of occupations from which women are barred, any reasons and justifications for such prohibitions, and information on any revisions of these provisions. The CEDAW has also noted that restrictions on women's employment and protective legislation, policies and benefits for women in Malaysia perpetuate traditional stereotypes regarding women's roles and responsibilities, which may undermine efforts to promote gender equality in the society and labour market.

Sources: ILO: "Individual observation on Convention No. 111 with respect to Viet Nam" in *Report of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva, 2010); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to China* (Geneva, 2010); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Malaysia* (Geneva, 2006).



### Definition of discrimination in national law

When ILO member States ratify Convention No. 111 they undertake to gradually but consistently eliminate all practices that are captured by the definition of discrimination provided in the Convention. In some countries, the ratification of the Convention is sufficient for the prohibition of discrimination to be directly applied by judges or directly invoked by persons who feel they have been discriminated against (monism). However, in many countries the principles established in international legal instruments can only be invoked after they have first been incorporated into national law (dualism).

It is important to make sure that the national definition of discrimination prohibits all types of action prohibited under Convention No. 111. One example of a national discrimination definition that follows the logic and structure of the definition given in Convention No. 111 is the discrimination definition included in Article 1(3) of Indonesian Law Number 39 of 1999 on Human Rights. This article defines discrimination as:

“every restriction, degradation, or exception, direct and indirect, based on differentiation of humans on the grounds of religion, ethnic origin, race, ethnicity, group, faction, social status, economic status, sex, language, political belief, that results in the reduction, contravention, or revocation, of the recognition, execution, or application of human rights and basic freedoms in political, economic, legal, social, cultural, or any other aspects of individual or collective life.”

Even if the exact wording of this definition is different from the wording used in Convention No. 111, the same three key elements are present in both: 1) factual difference in treatment, 2) based on a list of prohibited grounds, and 3) negative effect.

### 3. Access to justice and legal protection

Access to legal protection refers to being able to use the law through formal and informal complaint mechanisms. These may range from grievance procedures at company level to filing formal complaints with labour and/or civil courts. In many countries and jurisdictions mediation and arbitration procedures and mechanisms are available to protect against discriminatory employment practices.

#### 3.1 Judicial enforcement and other forms of dispute settlement

Adjudicating discrimination claims through regular court hearings, decisions and judgment is a widely used method of enforcement. The advantages and disadvantages of enforcement through the court are as follows.

Advantages:

- It clarifies the meaning of discrimination in different specific situations.
- The procedure is transparent, which enhances the credibility, visibility and legal character of the legal provisions.
- It has the power to correct an imbalance by compensating the usually weaker party for any damage incurred as the result of discrimination.

Disadvantages:

- Access to judicial procedures can be costly and technically difficult, in particular for victims of disadvantaged groups. Public interest litigation, that is, cases brought before the courts that result in judgments which may serve the public interest may partially address this problem.
- The regular court system is often overloaded, leading to delays that disadvantage the weaker party in particular.
- Regular judges deal with a wide range of issues and often lack insider knowledge and understanding of workplace environments.
- The adjudication process determines right and wrong, complicating reconciliation of the parties.
- The facts of some discrimination cases, such as sexual harassment, call for discretion, which is often ill-served by formal and transparent court procedures.

To overcome these disadvantages, many countries establish alternative dispute settlement procedures that are often administered by specialized mediation or arbitration bodies.

#### 3.2 Burden of proof

Legal systems will commonly place the burden of proof on the party initiating the complaint. The complainant in a lawsuit will then have to substantiate the allegations to a particular level of certainty, producing facts, documents, testimonies, etc. that support the claim. This is recognized as a major stumbling block to enforcement in discrimination cases, because differential treatment can often be explained by illegitimate discriminatory behaviour as well as by legitimate reasons deriving from the

“inherent requirements of the job.” Attempts to overcome this stumbling block have triggered a trend towards a reversal of the burden in discrimination cases.

This trend towards shifting or reversing the burden of proof to the employer is based on the fact that the employer is usually the one in possession of all the documentation or other evidence concerning the taking of employment decisions. Shifting the burden of proof means that once the alleged victim of discrimination has provided evidence of differential treatment that might or might not result from discriminatory behaviour (in legal jargon: has established a “prima facie” case), the employer has the burden of proving his or her actions were not discriminatory, but inspired by objective reasons.

Reversing the burden of proof may also help address unvoiced and often unconscious prejudice in society which makes courts reluctant to draw favourable inferences from evidence which supports a claimant’s position. This has, for example, raised problems in sexual harassment cases. Placing the burden of proof on the employer also takes into account that there is a general lack of understanding of the concept and practice of indirect discrimination, particularly in cases of equal pay.

### Box 42. Examples of the reversal of the burden of proof

Albania: “After the plaintiff submits the evidence on which he bases his claim and on the basis of which the court may presume discriminating behaviour, the defendant is obligated to prove that the facts do not constitute discrimination according to this law.”

European Union: “Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the principle of equal treatment has not been applied to them establish, before a court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.”

Sources: Government of Albania: *Law No. 10 221 on protection from discrimination* (24 February 2010), Art. 36 (6). Council of the European Union: *Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex*, Art. 4(1) (OJ L 14, 20.1.1998), p. 6–8.

### 3.3 Labour inspection services

In most countries, equality legislation is administered by labour inspection services. The labour inspection has the following responsibilities:


- **Advice and information function:** Provides information and practical advice to employers on good HR management practices and the most effective means of complying with the law; trains employers, workers and other stakeholders; raises awareness on law and international standards.
- **Monitoring and enforcement:** Conducts inspection of premises and records to verify that employers subject to their control comply with the requirements of the law, and keep track with compliance levels in enterprises; hears complaints by employees; and (as a last resort) imposes sanctions to enforce compliance.
- **Feedback:** Brings gaps in domestic labour law and regulations to the notice of the competent authorities.

A functioning labour inspection system is essential for good governance in the world of work. Labour inspectors can play a key role in enforcement of anti-discrimination provisions because of their regular contacts with employers and workers, their access to relevant files, and because they can investigate cases

without the need to wait for an individual victim to bring a case. However, the capacity of the labour inspectorate to promote equality and enforce non-discrimination is underutilized in many countries. To be able to take effective action, the capacity of inspectors to identify discrimination needs to be strengthened and clear mandates to enforce non-discrimination need to be set in the law.

#### Box 43. Capacity building of labour inspectors – Czech Republic

The monitoring of compliance with the laws on discrimination and equal remuneration is generally the responsibility of the labour inspectorate. However, the capacity of labour inspectors to check compliance with equality and equal pay principles is in many cases limited, partly due to a lack of understanding of what ensuring equality and non-discrimination, and equal pay for equal work and work of equal value entails.

However, examples from some countries show that the labour inspectorate can play an important role in doing so if adequate capacity building measures are taken. In the Czech Republic for instance, the Ministry of Labour has developed “**Methodological instructions for the inspection of compliance with equal opportunities for men and women.**” The instructions, which entered into force in January 2003, contain the relevant legal provisions with regard to equal remuneration and equal treatment in the workplace (including matters relating to recruitment, training and promotion, working conditions, sexual harassment, and maternity and parental leave). They also give guidance on how gender equality inspections should be carried out, and provide a list of questions to be asked during the inspections.  See Checklist 4 in Chapter 4.

Source: Czech Republic, Ministry of Labour and Social Affairs: *Methodological instructions for the inspection of compliance with equal opportunities for men and women* (Prague, 2003).

### 3.4 Specialized agencies

Many countries have established enforcement agencies with powers to examine complaints of discrimination and monitor implementation of anti-discrimination measures. These agencies can facilitate the filing and resolution of individual complaints and, in many jurisdictions, initiate action on their own to support individual victims. The specialized expertise of equal opportunities commissions has been found crucial particularly in solving pay equity, sexual harassment and other serious discrimination cases.

Specialized institutions to address discrimination and equality matters have been emerging in regions across the globe reflecting a trend of supporting the application of laws against discrimination by promoting equality through practical, institutional measures. An **equality commission** or equal opportunities commission is an effective mechanism for eliminating discrimination and safeguarding equality, provided it is given the mandate and resources to function as an independent, authoritative body, financed by public funds. An equality or equal opportunities commission usually has the following mandates:

- Policy direction and implementation.
- Promotion, awareness raising and training.
- Investigation.
- Complaint resolution.

So far only a few equality commissions have been established in the East and South-East Asian region. The Equal Opportunities Commission in Hong Kong, China is a good example (See below). Another good example of a specialized agency is the National Human Rights Commission of Korea (NHRCK). Established in 2001, the NHRCK provides for investigation and remedies for discrimination based on

18 different grounds. By 2005 it had dealt with 370 cases, most of which concerned discrimination in public employment based on age, sex, disability or social status.<sup>66</sup>

### Box 44. The Equal Opportunities Commission (EOC) – Hong Kong, China

The Equal Opportunities Commission (EOC) was established in 1996 as an independent body funded by the Government to implement equality legislation and combat discrimination on the grounds of sex, family status, disability and most recently race. Anti-discrimination legislation in Hong Kong includes the Sex Discrimination Ordinance (SDO), the Family Status Discrimination Ordinance (FSDO), the Disability Discrimination Ordinance (DDO) and the Race Discrimination Ordinance (RDO).

The EOC has investigation and conciliation powers; issues codes of practice and guidelines on equal opportunities; produces research on discrimination; and builds partnerships with enterprises and governmental and non-governmental organizations alike. A major achievement of the Commission has been the reform of the Secondary School Places Allocation (SSPA) system that for a quarter of a century had led to the systematic lowering of the best girls' scores and scaling up of the best boys' scores, and gender quotas that restricted girls' access to the best schools arbitrarily.

In the field of employment, the SDO protects all workers, including part-time and temporary workers as well as job applicants who are not yet employed. Unlawful acts under the SDO and FSDO include: direct and indirect discrimination on the grounds of sex, pregnancy, marital status, family status, sexual harassment and victimization. There are no specific provisions on equal pay for equal value, but the SDO does prohibit discrimination in pay levels, and can be used for equal pay for work of equal value cases.

Redress mechanisms include facilitating internal company procedures, taking a complaint to the EOC and/or instituting legal proceedings, including grants for legal assistance. When a complaint is taken to the EOC, the Commission starts with investigation, and then moves to conciliation where deemed appropriate. Most complaints under both the SDO and the FSDO relate to employment, in particular pregnancy discrimination and sexual harassment. The success rate of conciliation is relatively high – for instance, conciliation was successful in 71 per cent of sex discrimination cases between 1996 and 2008.

Source: Equal Opportunities Commission, Hong Kong, China, <http://www.eoc.org.hk> (accessed 15 Sep. 2010); C. Petersen: "Implementing equal pay for work of equal value in Hong Kong: A feminist perspective," in Equal Opportunities Commission, Hong Kong SAR China: *Proceedings: Equal pay for work of equal value* (2000).

### 3.5 Employment services

Employment services are a vital component of an active labour market policy. They match persons who are looking for work with persons or companies who are offering work through practical measures. As mentioned earlier, the use of intermediaries in recruitment such as public or private employment services is prone to discriminatory practices that must be outlawed.

The **Private Employment Agencies Convention, 1997 (No. 181)** explicitly prohibits discrimination in employment: "In order to promote equality of opportunity and treatment in access to employment and to particular occupations, a Member shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin, or any other form of discrimination covered by national law and practice, such as age or disability." (Art. 5).

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<sup>66</sup> ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) with respect to Republic of Korea* (Geneva, 2006, 2008); CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: Republic of Korea* (Geneva, 2007)



**Box 45. Employment services with enforcement rights in Taiwan, China**

- **Employment Service Act of 1992 (Taiwan, China)**

[Promulgated by the President on May 8, 1992 and subsequently amended in 1997, 2000, 2002, 2003 and 2007.]<sup>67</sup>

## Chapter I -- General Provisions

Article 5: To ensure equal employment opportunities for the nationals, an **employer shall not discriminate against a job applicant or an employee** he (or she) hires on the grounds of race, class, language, thought, religion, political affiliation, birth place, one's provincial/county origin, sex, marriage (or marital status), appearance, facial features, disability, age, sexual orientation and former membership of a labour union. [..]

Article 6: [...] Competent authorities at the municipal, county (city) level shall have authority to manage the following tasks: (1) **To review and decide employment discrimination** [...]

## Chapter VI -- Penal Provisions

Article 65 : For those who violate Paragraph 1 to Article 5 of the Act, a **fine** of no less than NT\$ 300,000 and more than NT\$ 1,500,000 will be imposed.

- **Enforcement Regulations of the Employment Service Act of 1992**

[Promulgated by the Council of Labour Affairs in 1992 and subsequently amended in 1994, 1996, 1997, 2001 and 2004.]

Article 2: When competent authorities at the municipal, county (city) level are reviewing and deciding employment discrimination complaints, they may invite government entities, units, labour organizations, employer organizations, scholars and experts to **organize commissions on employment discrimination**.

Source: C.K. Chiao: "Employment discrimination in Taiwan," New developments in employment discrimination law, in Japan Institute for Labour Policy and Training: *Report of 2008 JILPT Comparative Labour Law Seminar* (2008) No. 6, Annex 1.

**Box 46. Examples from private employment agencies**

Employment agencies, whether private or public, can either promote equal opportunity and improve transparency in the labour market, or perpetuate discriminatory practice. Through fear of losing existing or potential clients, employment agencies may discriminate in recruitment. Therefore, Adecco, the leading private employment agency for temporary jobs in France, has established a number of measures to promote equal opportunity. These include, a free telephone line for temporary workers alleging discriminatory treatment, training for 2,000 of its 4,700 employees, and the obligation of staff not to accept discriminatory job requirements by employers, under threat of sanctions including dismissal.

Manpower, another international private employment agency, has a proactive diversity policy in the USA. As one of its corporate social responsibility (CSR) policies, Manpower considers diversity in the workplace essential. It defines diversity as differences of race, national origin, religion, cultural background, gender, age, disability, sexual orientation and gender identity, and promotes mutual respect and understanding between people with different personal situations and backgrounds. For example, in 1948, Manpower pioneered creating opportunities for women to engage and thrive in the workforce at a time when it was not socially acceptable for

<sup>67</sup> Marriage (or marital status) was added and disability replaced the formerly used physical and mental handicap when the Act was amended in 2002. Birth place, age and sexual orientation were added in the 2007 amendment of the Act. The original fine ranged from NT\$ 3,000 to NT\$30,000, but was increased to a range of NT\$300,000 to NT\$1,500,000 when the Act was amended in 2002 on the same day that the Gender Equality in Employment Act was passed.

women to work outside the home and develop careers. In the 1960s, which was a pivotal era for racial diversity in the USA, it also played an important role in providing jobs for racial minorities.

Sources: Y. Philippin: “Emploi. Le plus gros procès pour discrimination ethnique à l’embauche s’ouvre jeudi à Paris. L’entreprise prend des couleurs”, in *Le Journal du Dimanche*, 14 mai, 2006, p. 15, <http://www.adecco.com>; Manpower: *Diversity policy in the workplace*, <http://www.manpower.com/mpcom/content>; ILO: *Guide to private employment agencies: Regulation, monitoring and enforcement* (Geneva, 2007), p. 25.

## 4. Practical measures

### 4.1 Research on equality and discrimination

As mentioned earlier, many forms of indirect discrimination remain hidden, and as a result, discriminatory practices may abound, even if employment discrimination is outlawed. Research and statistics on labour market indicators can provide evidence of labour market outcomes for groups who may be subject to employment discrimination, and, thereby, provide the “proof” of the negative effects of indirect discrimination on specific groups. It is important to collect and analyze statistical labour force data disaggregated by the relevant grounds of discrimination and disseminate these through various channels, such as the academic literature, statistical yearbooks and databases, journals and other media.

In addition to creating evidence on hidden forms of discrimination, statistical data is also needed to measure impacts of the national equality policy. The effects of policy measures on labour market outcomes for different groups of workers need to be regularly monitored to assess effectiveness of the policy. For this purpose it is important to collect labour market data disaggregated by sex, ethnicity and any other relevant factors such as disability.

ILO member States have the obligation to report regularly to the ILO on the measures taken to promote equality and non-discrimination in employment and to indicate the results secured by such action. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) regularly calls on States to provide facts on the impact of measures on actual labour market outcomes. Some recent examples of information requests presented by the CEACR to governments in the East and South-East Asian region include requests for:

- Statistical data on distribution of men and women in the different sectors of economic activity, occupational categories and positions (Cambodia, China, Indonesia and Viet Nam).
- Data indicating the percentage of women and men migrating overseas (Viet Nam).
- Statistical information on participation of members of ethnic minorities (Cambodia) and women and men (Philippines, Indonesia) in vocational training courses.
- Statistical information on non-regular employment disaggregated by sex (Republic of Korea).
- Statistical data disaggregated by sex, religion and national extraction on employment in the public service (Philippines).
- Measures taken to enforce the relevant legal provisions on sexual harassment (including statistical information on inspections and complaints) (Republic of Korea).<sup>68</sup>

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<sup>68</sup> See for example ILO: “Individual observation concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111)” with respect to Philippines (2009) and Viet Nam (2010) in *Reports of the Committee of Experts on the Application of Conventions and Recommendations* (Geneva); ILO Committee of Experts on the Application of Conventions and Recommendations: *Individual direct request concerning Discrimination (Employment and Occupation) Convention, 1958 (No.111) with respect to Cambodia (2010) and Republic of Korea (2008)* (Geneva).

## 4.2 Information, education and communication

Advocacy measures and information campaigns, such as advertizing, broadcasting, “special days,” conferences, or “labour inspection campaigns” are necessary to raise awareness and localize understanding on discrimination among the public at large and increase societal acceptance for prohibiting it.

Information should also be provided to the agencies which have specific responsibilities in combating employment discrimination, including government, workers and employers and their organizations, mass organizations, NGOs and CBOs and associations or networks of groups which face employment discrimination, lawyers, legal education and aid centres, the judiciary, the labour inspectorate, etc.

The underlying reason for discrimination in employment and occupation is often **traditional ideas** about the roles of different people in the society (e.g. women, men, ethnic groups) or inaccurate **stereotypes** about the abilities of certain persons (e.g. persons with disabilities or health conditions). Elimination of discrimination and achievement of substantive equality requires changing mindsets and overcoming stereotypical ideas about abilities and roles of different groups of persons in the society and the labour market. For this purpose the UN Committee on the Elimination of Discrimination against Women (CEDAW) and the UN Committee on Economic, Social and Cultural Rights (CESCR) have repeatedly urged the governments in the East and South-East Asian region to design and implement effective **awareness-raising and public education programmes** on issues of equality and non-discrimination among public officials, civil society and the entire population.<sup>69</sup>

### Box 47. The equality at work in China resource platform and website

The equality at work in China online resource platform was set up by the Project “Support to promote and apply ILO Convention No. 111,” a technical cooperation project of the International Labour Office (ILO), the Ministry of Human Resource and Social Security (MOHRSS) of China and the Government of Norway.

The resource platform provides a venue for information sharing and knowledge dissemination on equality and non-discrimination. The resource platform provides regular updates on the latest news and information around the world, such as new developments in non-discrimination legislation and institutional mechanisms, and collects case studies and good practices on equality promotion. The platform also contains China-specific information, including its non-discrimination legal framework and development in national and local laws and policies to promote equality at work.

As an integral component of the resource platform, a Newsletter on Equality At Work In China (EAWIC) is published on a regular basis with information on the latest legislative and policy movements in China, case studies, good practices, sample company equality policies and collective agreements, and recent research findings.

Source: Equality at work in China resource platform, <http://www.equalityatworkinchina.org> (accessed 15 Sep. 2010).

<sup>69</sup> See for example CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women*: China (2006), Indonesia (2007) and Lao PDR (2005) (Geneva); CESCR: *Concluding comments of the Committee on Economic, Social and Cultural Rights*: Cambodia (2009) and China (2005) (Geneva).

### 4.3 Guidelines and codes of practice

Understanding forms of direct and indirect discrimination in a particular context can be complex in first instance. Legislation often prohibits discrimination without providing much further detail, and, importantly, without providing practical guidance as to how to prevent or address it in workplace situations.

Guidelines and codes of practice, often developed by international or national expert committees and independent public commissions with a specific mandate meet the need for authoritative expert guidance that does not come in the form of legally binding obligations.



#### **ILO Recommendation and Code of practice on HIV and AIDS and the world of work**

HIV and AIDS are major threats to the world of work. They affect the most productive segment of the labour force and reduce earnings, and impose significant costs on enterprises in all sectors through declining productivity, increasing labour costs and loss of skills and experience. In addition, HIV and AIDS affect fundamental rights at work, particularly with respect to discrimination and stigmatization aimed at workers and people living with and affected by HIV/AIDS. This is why the ILO adopted a **Code of practice on HIV/AIDS and the world of work** in 2001. The code of practice covers key principles, such as the recognition of HIV/AIDS as a workplace issue, non-discrimination in employment, gender equality, screening and confidentiality, social dialogue, prevention and care and support, as the basis for addressing the epidemic in the workplace.

In 2010 the International Labour Conference adopted a **Recommendation on HIV and AIDS and the world of work (No. 200)** to strengthen the impact and implementation of the code of practice. The Recommendation covers all workers in all economic sectors, including migrants and those in the informal economy. Its key principles related to non-discrimination and promotion of equality of opportunity and treatment are:

- Member States should extend protection under Convention No. 111 to discrimination based on real or perceived HIV status.
- Real or perceived HIV status should not be a ground of discrimination preventing the recruitment or continued employment, or the pursuit of equal opportunities.
- Real or perceived HIV status should not be a cause for termination of employment. Temporary absence from work because of illness or caregiving duties related to HIV or AIDS should be treated in the same way as absences for other health reasons.
- Member States should adapt or put in place effective measures against discrimination based on HIV and AIDS status in the workplace and provide for their effective and transparent implementation.
- Persons with HIV-related illness should not be denied the possibility of continuing to carry out their work, with reasonable accommodation if necessary, for as long as they are medically fit to do so.
- Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by:
  - ensuring respect for human rights and fundamental freedoms.
  - ensuring gender equality and the empowerment of women.
  - ensuring actions to prevent and prohibit violence and harassment in the workplace.

- promoting the active participation of both women and men in the response to HIV and AIDS.
- promoting the involvement and empowerment of all workers regardless of their sexual orientation and whether or not they belong to a vulnerable group.
- promoting the protection of sexual and reproductive health and sexual and reproductive rights of women and men.
- ensuring the effective confidentiality of personal data, including medical data and
- ensuring protection from occupational exposure in vulnerable sectors such as the health sector.
- Workers, their families and dependants should have access to HIV treatment, care and support services and workplaces should ensure access to these services.

Source: ILO/AIDS website <http://www.ilo.org/aids> (accessed 14 June 2011); ILO Recommendation on HIV and AIDS and the world of work, 2010 (No. 200), Articles 9-14.

### **Box 48. Codes of practice on non-discrimination and equality promotion at work – Hong Kong, China**

Hong Kong, China has been gradually expanding its legal framework outlawing discrimination and promoting equality of opportunity and treatment. To date it has adopted a Sex Discrimination Ordinance, a Family Status Ordinance, a Disability Discrimination Ordinance and a Race Discrimination Ordinance. For each of the Ordinances, the Equal Opportunities Commission (EOC) has issued a Code of practice on employment.

The Code of practice issued under the Race Discrimination Ordinance (2009), for example, indicates that it is a statutory code that has been laid before the Legislative Council, that it provides recommendations for good employment procedures and practices; and that, although the Code is not law, it shall be admissible in evidence and the court shall take into account relevant parts of the Code in determining any question arising from proceedings under the Ordinance. If, for example, an employer has followed the Code's recommendations on taking reasonably practical steps to prevent discrimination and harassment, it may help the employer to show that it has complied with the law.

Other noteworthy codes of practice against employment discrimination include:

- The 2008 updated Code of practice for employers on effectively preventing and responding to sexual harassment by the Australian Human Rights Commission.
- The Statutory Code of practice on racial equality in employment, issued by the UK's Commission for Racial Equality in 2006.

Sources: Equal Opportunities Commission Hong Kong, China website: <http://www.eoc.org.uk>; Australian Human Rights Commission website: <http://www.hreoc.gov.au>; UK Commission for Racial Equality website: <http://www.equalityhumanrights.com> (all accessed 15 Sep. 2010).

### **Box 49. Guidelines on Equal Employment Opportunity in Indonesia**

The Department of Manpower and Transmigration of Indonesia issued in 2005 a set of Guidelines on Equal Employment Opportunity (EEO) in order to give the private sector practical guidance on implementing the equality provisions of the Manpower Act (Law No.13 of 2003). The EEO Guidelines were adopted through a consultative process with trade unions and employers' organizations. The three partners adopted the Guidelines in late 2005 and have since engaged in their dissemination.




Initially the tripartite EEO task force established by the Department focused on gender discrimination, but the Guidelines eventually addressed broader concerns, such as unlawful practices based on race, ethnicity and disability. The Guidelines explain the meaning of EEO and the benefits stemming from it for enterprises. The Guidelines provide practical guidance on how to adopt and implement a company-level EEO policy through a consultative process involving workers and their representatives. Step-by-step guidance is also provided on how to ensure that company human resource management practices are free from discrimination starting from recruitment and selection to wages and working conditions.

Source: ILO: *Equality at work: Tackling the challenges* (Geneva 2007); Indonesia, Ministry of Manpower and Transmigration: *Guidelines: Equal employment opportunity in Indonesia* (Jakarta, 2005).

### Box 50. Malaysian Code of practice on sexual harassment

The Malaysian Ministry of Human Resources established a Code of Practice on the Prevention and Eradication of Sexual Harassment in the Workplace in 1999. Intended for implementation on a voluntary basis, the Code serves as a guideline for employers for the establishment of an internal mechanism to handle problems of sexual harassment at the workplace. The Code also acts as a guideline to employees, trade unions and other relevant parties for the protection of the dignity of men and women at work.

The Code encourages the setting up of an in-house mechanism by employers, which should be strengthened by a policy statement prohibiting sexual harassment in the organization. The Code also urges organizations to adopt a clear definition of sexual harassment, a complaint/grievance procedure, disciplinary rules and penalties against the harasser and against persons making false accusations, protective and remedial measures for victims and promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness among employees, supervisors and managers of sexual harassment and its adverse consequences.

The aim of the Code is to ensure that sexual harassment does not occur, and if it does occur, to ensure that adequate procedures are available to deal with the problem and to prevent its recurrence. According to statistics issued by the Ministry of Human Resources, some 4,500 (mostly multinational) companies out of about 400,000 employers registered with the Malaysian Social Security Organisation (SOCSO) had voluntarily adopted the Code in 2001.  See the full Malaysia *Code of practice on the prevention and eradication of sexual harassment in the workplace* in Chapter 4.

Source: ILO: *Employers organizations taking the lead on gender equality: Case studies from 10 countries* (Geneva, 2005).

## 5. Role of social partners and strategic alliances

### 5.1 Employers and their organizations

In a market economy context where most employment takes place in the private sector, employers' organizations are in a key position to promote equality in their member companies. Employers' organizations play a role in providing information and advice to their members on non-discriminatory human resources management practices. Employers' organizations can also deliver training and other programmes to build capacity among their members.

Individual employers have a legal obligation to respect diversity of the employee, prevent discrimination and realize equality in the workplace. All recruitment and employment policies and practices (including job advertisements, job descriptions, and performance and job evaluation policies and practices, etc.) shall be free from discrimination. It is a good practice to adopt and implement an equal opportunities policy at company level. Companies should also adopt non-discrimination as a key value of their company culture, and apply it in all their business practices, including provision of goods and services to clients and dealing with suppliers and business partners. Leading companies include non-discrimination in codes of practice, and require their suppliers and subcontractors to adhere to the equality principle.



#### Practical guidance for employers

In order to avoid discrimination, employers should:

- ✓ Review the procedures related to human resource development and management to remove discriminatory clauses.
- ✓ Implement practical measures such as training job interviewers in non-discriminatory recruitment procedures and processes; and familiarizing managers and staff with the relevant laws and regulations.
- ✓ Adopt an Equal Opportunity Policy to make sure that all employees enjoy equal employment and rights, and make sure that it is implemented.
- ✓ Design and implement affirmative action or positive measures to support and assist groups that have been or are prone to encounter discrimination in the enterprise, such as setting recruitment targets for under-represented groups and reasonable accommodation for persons with disabilities.

An Equal Opportunity Policy (EOP) is a commitment to engage in employment procedures and practices which do not discriminate and which provide equality between individuals with different characteristics, such as sex or ethnicity. The design of such a policy usually includes:

- Full commitment to enforcing legislation to eliminate discrimination.
- Description of the grounds covered, such as sex and disability status, and the coverage of the EOP, listing recruitment and employment decisions to which the equality principle applies.
- Statement on commitment of the company board and senior management to equality, and appointment of one senior manager responsible for implementing the EOP.
- Positive action and other practical measures to, for example, adapt working time and patterns to balance work and family.
- Description of how the policy will be implemented through measures such as an equality audit, information and training and vocational counseling.
- Description of how the policy will be monitored.

When developing a company EOP some important measures are:

- Formulation of a declaration of the company's commitment to the principles of equality at work.
- Involvement of workers and their organizations in the design, implementation and monitoring of the policy through regular consultations.
- Reminder of the relevant national legal requirements which the company will uphold and expect its workers to uphold.
- Statements on the company's expectations, measures, procedures or mechanisms as considered relevant in the consultations.
- Statement that breaching the law or company requirements in respect of equality at work will be a disciplinary offence.

### Box 51. Good practice – Fair employment in Philips Electronics Singapore Pte Ltd

The concept of fair employment is a company-wide philosophy practiced throughout Philips. All employees sign their commitment to a set of General business principles upon joining the company. The principles clearly state the company's focus on its people, merit-based performance, and commitment to equal opportunity and non-discrimination.

**Fair recruitment as a first step.** The company ensures that job advertisements and application forms are non-discriminatory, so that the short listing and selection of candidates is based on merit. Philips has implemented a structured programme to ensure that the focus on merit is propagated throughout the organization, with a special emphasis on hiring managers. Philips also taps its global Diversity and inclusion team for resources and best practices on maintaining a diverse workforce locally. A conscious effort is made during recruitment to achieve diversity.

**Engagement throughout and beyond the organization.** Walking the talk, senior leaders of Philips actively demonstrate their belief and support for principles of fair employment by championing policies to ensure that there is an open inclusive and non-discriminatory environment within the company. Senior management communicates these principles to employees through their actions – by creating an inclusive and high-energy working environment where all employees are aligned to contribute to Philips' success. Mr Wong Lup Wai, Chairman and CEO of Philips Electronics Singapore stated: "We hire and promote based on competences, experience and skills regardless of the person's age, race and gender. Our management team is made up of people with diverse backgrounds and we work well together."

To effectively engage its workforce, Philips conducts an annual company-wide engagement survey in partnership with an external vendor. Employees are able to provide anonymous feedback through this survey, after which the results are analyzed through focus group discussions. Issues surfaced through this platform are discussed and addressed with practical solutions across all levels of management.

Philips' fair employment focus extends beyond the organization. In instances where its services are outsourced, Philips brokers a transition for employees in their outsourced roles to these vendors. Philips also ensures that its vendors observe the same principles, comply with Singapore's employment laws, retain experienced workers and award performance-based service contracts.

**About the organization.** Philips Electronics Singapore was set up in 1951. In 2010 Philips was nominated as one of the ten nominees for the exemplary employer award issued by the Singapore Tripartite Alliance for Fair Employment Practices (TAFEP).

Source: Tripartite Alliance for Fair Employment Practices (TAFEP): *Exemplary employer award 2010* (Singapore, 2010).

**Box 52. Good practice - A Joint Statement on Equal Opportunity in Ford Motor Company**

In 1988, Ford Motor Company, a major private sector company, employed around 44,000 people. At the end of 1988, a joint statement on equal opportunity was signed by the company and its trade unions representing both salaried and hourly-paid employees. It contained a number of innovative provisions:

**Commitment.** The company and the trade unions are committed to the principle of equal opportunities in employment. The company and trade unions declare their opposition to any form of less favourable treatment, whether through direct or indirect discrimination accorded to employees and applicants for employment on the grounds of...marital/parental status or sex.

**Employment practices.** The company will ensure that individuals are recruited and selected, promoted and treated on objective criteria... In particular, no applicant or employee will be placed at a disadvantage by requirements or conditions which are not necessary to the performance of the job or which constitute indirect, unfair discrimination.

**Monitoring and review arrangements.** The successful implementation of this joint statement is dependent on the regular examination of progress towards equal opportunity and the development of local initiatives. To this end, local management and trade unions are expected to set up appropriate joint bodies at plant or equivalent level.

**Grievance and disciplinary procedures.** In addition, both the company and the trade unions will ensure that any employees making a complaint of unfair discrimination will be protected from victimization.

**Training and advertizing.** The company will provide, in agreement with the trade unions, suitable and relevant equal opportunities training, as necessary and a jointly agreed syllabus, for employees and trade union representatives. The trade unions agree to support and participate in such training programmes and to encourage their representatives to attend where appropriate.

**Communications.** The company and the trade unions undertake to bring the principles set out above to the attention of all employees and trade union representatives.

Source: European Foundation for the Improvement of Living and Working Conditions: *Equal opportunities and collective bargaining in the European Union: Selected Agreements from the United Kingdom Phase II* (Dublin, Brussels).

## 5.2 Corporate social responsibility

Corporate social responsibility is often identified with the movement of multi-national companies (MNCs) to voluntarily subject their business practices to internationally recognized standards of rights and ethics. It is a movement that recognizes that the business logic of profit maximization in this age of outsourcing can result in MNCs not following the same high standards of ethical practice everywhere where they operate. It can also result in MNCs benefiting financially from unethical behaviour in their supply chains. Once an MNC has committed itself to an internationally recognized voluntary code of conduct, such as the Global Compact or SA8000, monitoring for implementation is implied and only certified suppliers can do business with these MNCs.

Growing numbers of European and American MNCs are conducting Corporate Social Responsibility (CSR) evaluations and reviews of their global suppliers. CSR requirements are increasingly also added

into the terms and conditions of MNC orders with the result that they have implications for corporate behaviour in developing countries that are used by MNCs as production bases. Suppliers in developing countries are required to meet such conditions in order to enter into MNC supply chains.

CSR norms can also be tools in the hand of governments, trade unions and other organizations in developing countries where they potentially could be used as leverage in negotiating agreements with international investors to better protect local workers' rights. The global CSR standards and codes of conduct usually contain clauses on non-discrimination and diversity in the workplace. Complying with these standards means a company must integrate these considerations into its daily business operation. Since discrimination is often rooted in unconscious and culturally accepted practices, managers and workers alike must often learn to look for and understand how their behaviour and business systems may result in disproportionate negative consequences for certain groups. Training is therefore a necessary step in implementing CSR norms on non-discrimination and other fundamental principles and rights at work.<sup>70</sup>

### **Box 53. Discrimination in social compliance benchmarks – SA8000 and ISO26000**

SA8000 is one of world's most well known voluntary social responsibility benchmarks that many companies use to measure their own performance and responsibly manage their supply chains. SA8000 is issued by the Social Accountability International (SAI), a global multi-stakeholder standards setting organization. SA8000 requires the certified companies to adopt and implement policies and procedures that protect the basic human rights of workers. The SA8000 includes the following criteria on discrimination:

#### 5. Discrimination criteria:

- 5.1 The company shall not engage in or support discrimination in hiring, remuneration, access to training, promotion, termination, or retirement based on race, national or social origin, caste, birth, religion, disability, gender, sexual orientation, family responsibilities, marital status, union membership, political opinions, age, or any other condition that could give rise to discrimination.
- 5.2 The company shall not interfere with the exercise of personnel's rights to observe tenets or practices, or to meet needs relating to race, national or social origin, religion, disability, gender, sexual orientation, family responsibilities, union membership, political opinions, or any other condition that could give rise to discrimination.
- 5.3 The company shall not allow any behaviour that is threatening, abusive, exploitative, or sexually coercive, including gestures, language, and physical contact, in the workplace and, where applicable, in residences and other facilities provided by the company for use by personnel.
- 5.4 The company shall not subject personnel to pregnancy or virginity tests under any circumstances.

ISO26000 "Guidance on Social Responsibility" is a new guidance document published by the International Organization for Standardization (ISO) in November 2010. Unlike other ISO standards it is not a certifiable standard, but a guidance document which provides practical advice on governance of social responsibility issues in company practices. ISO26000 addresses discrimination and vulnerable groups as one of the human rights issues covered in the guidance document. It requires organizations to ensure that they do not discriminate against employees, partners, customers, stakeholders, members and anyone else with whom it has any contact or on whom it can have an impact.

Source: Social Accountability International (SAI): *SA8000: 2008 social responsibility*; International Organization for Standardization (ISO) website. Available at <http://www.iso.org> (accessed 3 Dec. 2010).

<sup>70</sup> See the bibliography for websites on corporate social responsibility.



**Box 54. Monitoring discriminatory practices through Better Factories Cambodia**

On issues of discrimination, a recent Better Factories Cambodia report indicates that 11 per cent of the factories monitored between 1 May and 31 October 2006 engaged in discriminatory practices. These practices typically take the form of dismissal of pregnant workers and changes in the seniority of working mothers after they return from maternity leave. The experience of Better Factories Cambodia shows that men also suffer from discrimination during hiring. The report further indicates that problems with anti-union discrimination were found in six per cent of the factories monitored.

To further explore gender and workplace relations issues that are difficult to monitor, Better Factories Cambodia commissioned CARE International in Cambodia to conduct a survey of 1,000 garment factory workers and 80 human resources and administrative managers. The survey results suggest that verbal and sexual harassment, including rape on the way to and from the factory, may be more common than the monitoring process had indicated, possibly due to differing interpretations of the term “sexual harassment.” The results of the study were shared with trade union and employer representatives, international organizations, NGOs and the Government with a view to remedy these issues.

Source: ILO: *Equality at work: Tackling the challenges* (Geneva 2007); ILO: *Seventeenth synthesis report on working conditions in Cambodia's garment sector* (Phnom Penh, Better Factories Cambodia, 2006).

**5.3 Workers' organizations**

**Trade unions** play an important role in training their members about their right to equality and supporting individual members in resolving discrimination-related problems with their employers. Trade unions can also undertake advocacy campaigns to increase discrimination awareness among their members and the general public.

The fundamental role of workers' organizations is to represent workers so that they can better defend and further their work-related interests. Key functions include:

- Organizing workers without distinction as to race, colour, sex, national extraction, social origin, religion or political opinion.
- Strengthening national and international solidarity among workers.
- Raising awareness of social justice issues such as equality of opportunity and treatment.
- Forging alliances with the community.
- Giving a voice to workers, who face discrimination.
- Collective bargaining with employers to determine terms and conditions of employment.

Trade unions give workers a voice at the workplace. Workers' voice should be heard at the negotiating table, in occupational safety and health committees, in grievance handling and in working committees, in which information on, for example, the economic state of the company is shared.

Workers' organizations can specifically contribute to the promotion of equality of opportunity and treatment in the following ways:

- Negotiating wages and benefits that follow the principle of equal remuneration for work of equal value.
- Negotiating flexible working time arrangements in terms of hours of work and leave that permit a balance between work and family responsibilities.
- Negotiating occupational safety and health arrangements that take account of the needs of workers with disabilities; protect reproductive health and rights; disseminate information on HIV and AIDS, etc.

- Negotiating improved maternity leave and benefits and protection from dismissal.
- Defending the rights of non-permanent (fixed-term, flexible, casual, temporary, seasonal etc.) workers who are vulnerable because they are not covered by labour legislation (e.g. workers in domestic service, migrant workers in many occupations) by organizing and including them in workers' organizations as members and leaders, and representing them in collective bargaining and judicial procedures.
- Defending respect and dignity at the workplace, for example by promoting in-house policies, procedures and practices to address sexual harassment or violence at the workplace.

### Box 55. Model Equal Opportunities Clause of the UK Trade Union Congress

“The parties to this agreement are committed to the development of positive policies to promote equal opportunities in employment regardless of workers' sex, marital status, sexual orientation, creed, colour, race, ethnic origins or disability. This principle will apply in respect of all conditions of work including pay, hours of work, holiday entitlement, overtime and shift work, work allocation, guaranteed earnings, sick pay, pensions, retirement, training, promotion and redundancy.

The management undertakes to draw opportunities for training and promotion to the attention of all eligible employees, and to inform all employees of this agreement on equal opportunities. The parties agree that they will revise from time to time, through their joint machinery, the operation of this equal opportunities policy. If any employee considers that he or she is suffering from unequal treatment on the grounds of sex, marital status, sexual orientation, creed, colour, race, ethnic origin or disability, he or she may take a complaint which will be dealt with through the agreed procedures for dealing with such grievances.”

Source: Trade Union Congress UK: *Working women, A TUC handbook for all trade unionists* (London).

## 5.4 Collective bargaining

Trade unions and employers' organizations should include equality in their **collective bargaining** agendas at different levels. Special clauses on equality and reconciling work and family in collective agreements are an effective way for promoting and securing equality in workplaces.

The democratic structures of trade unions and their mandate to promote and protect workers' rights make unions important vanguards in the fight against discrimination at the workplace, community, national, regional and international levels. Through collective bargaining trade unions have a critical role to play in negotiating with employers and secure better protection for workers who are discriminated.

### Box 56. Agreement on Equal Treatment – Denmark

The Cooperation Board of the Danish Confederation of Trade Unions (LO) and the Danish Employers' Confederation (DA) jointly developed an Equal Treatment Agreement and included it as a supplement to their cooperation agreement of March 1991. The agreement covers the private sector nationally and is applicable to firms organized by LO and DA.

The Agreement's aim is to promote equal treatment of women and men in working life. It lists a number of areas of importance for achieving equality which firms are called on to develop:

- Ensuring equal opportunities for women and men in working life with regard to employment, training, promotion and conditions of employment in general.
- Working to achieve a fairer distribution of women and men in those job types and employment functions in which vocational choices and recruitment decisions have been found to be determined by sex.

- Devising principles for the firm's personnel policy which take proper account of the need for employment to be compatible with the parental role.
- Using personnel policy to secure a working climate free from unwanted behaviour of a sexual nature or any other sex-related conduct which is offensive to women and detracts from the dignity of men at the workplace.

The employer is responsible under the equal status laws for equal treatment in the enterprise. The employer must establish measures on equal opportunities in cooperation with the workforce.

In order to facilitate implementation of the Equal Treatment Agreement and organize equal opportunity activities at workplaces, a number of guidelines and concepts for equal opportunities work have been issued.

Source: European Foundation for the Improvement of Living and Working Conditions: *Equal opportunities and collective bargaining in the European Union: Selected agreements from Denmark, Phase II* (Dublin, Brussels).

### **Box 57. Good practice: Plant agreement on sexual harassment, mobbing and discrimination – Germany**

Volkswagen company and the works council representing employees in its plants in Germany adopted an agreement on preventing sexual harassment, mobbing and discrimination at the workplace in July 1996. At the time Volkswagen employed 95.000 persons in Germany and 12 per cent of these were women.

The Plant agreement was titled "Behaviour on a partnership basis at the workplace." Its preamble states: "A corporate culture which is characterized by partnership at the workplace constitutes a basis for a positive working climate and is therefore an important precondition for the economic success of the enterprise. Sexual harassment which is mostly directed towards women, mobbing towards individuals as well as discrimination according to origin and the colour of the skin and religion presents a serious disturbance of the working peace. They are regarded as violation against human dignity as well as violation against the right to live one's own life. Such patterns of behaviour are incompatible with the provisions of the work's rule book. In the enterprise they create a restricted, stressed and degrading working and learning environment and cause health disturbances. The enterprise is obliged to stop sexual harassment, mobbing and discrimination, and promote and maintain a climate of partnership. This applies also to advertising and public relations."

The agreement obliged all employees to obey the working peace, to contribute to a good working climate, and to respect the personality of each employee. The following disturbances of the dignity of each individual were prohibited under the agreement:

- **Sexual harassment**, as for example:
  - Unwelcome physical contact.
  - Insinuating remarks, comments or jokes on the person.
  - Showing of sexist or pornographic pictures (for example pin-up-calendars).
  - Demanding sexual acts.
  - Hints that sexual concession could result in occupational advantages.
- The agreement further states that what is perceived as sexual harassment is determined by the subjective feeling of the person affected.
- **Mobbing**, as for example:
  - Slandering of employees or their families.
  - Spreading of rumors on employees or their families.
  - Intentional withholding of necessary information for the job or even misinformation.
  - Threats and humiliation.
  - Abuse, wounding treatment, scorn and aggression.

- Degrading treatment by supervisors, as for example assignment of tasks which are hurting, not solvable, without sense, or the assignment of no tasks.
- **Discrimination**, as for example:
  - Being racist, hostile to foreigners or because of religious reasons expressed in talking or writing as well as relating actions directed towards company staff.

The agreement gave employees the right to complain to responsible authorities if they felt they had been mistreated as regards to the above principles. Responsible authorities were defined as the supervisor, the works council, representative for women, the personnel department, and the health department. Confidentiality of the process was also guaranteed. Corrective measures under the agreement included lectures, warnings, reprimands, fines or measures concerning labour law as for example transfer, dissuasion or dismissal. Implementation of the agreement was supported by carrying out in-factory training and information sharing on what actions are and are not acceptable in the workplace, and how to handle problems when they arise.

Source: European Foundation for the Improvement of Living and Working Conditions: *Equal opportunities and collective bargaining in the European Union: Selected agreements from Germany, Phase II* (Dublin, 2006).

### 5.5 Tripartite action

**National tripartite mechanisms** should be mobilized to promote equality at work. In several countries, the labour ministry and employers' and workers' organizations have jointly adopted tripartite declarations and codes of practice against discrimination in employment.

Employers' organizations and trade unions should engage in dialogue with the government and other relevant actors, such as women's organizations, on the adoption and implementation of a national policy and identification of further measures that are needed to realize substantive equality for women and men in employment and occupation.

#### **Box 58. Good practice – Tripartite cooperation mechanism – Singapore**

A Tripartite Declaration on Equal Remuneration for Men and Women Performing Work of Equal Value was issued in November 2002 by the Ministry of Manpower, the National Trades Union Congress and the Singapore National Employers Federation, affirming their commitment to the principle. In addition, to ensure application in practice, employers and trade unions were to include an "equal remuneration clause" in their collective agreements when the agreements came up for renewal. A Code of responsible employment practices was also issued by the Singapore Business Federation, the Singapore National Employers Federation and the National Trades Union Congress in December 2002.

The 2002 Code was replaced in May 2007 by the Guidelines on fair employment practices adopted by the Tripartite Alliance for Fair Employment Practices (TAFEP). The alliance, composed of representatives from government, the private sector and the unions, was formed in May 2006 with a view to root out discrimination in hiring and employment.

The Guidelines cover areas such as recruitment, equal remuneration for work of equal value, job appraisal, promotion, training, dismissals, and grievance handling. Among other recommendations, the Guidelines state:

- The selection of employees and the recruitment procedure should be based on merit and be free from discrimination based on age, race, sex, religion, and family status. Whenever the practical requirements of a job mean employees of a particular sex are needed, this must be supported by an acceptable rationale.
- Remuneration should be based on the value of the job and the performance, contribution and experience of the job holder, regardless of their age, race, sex, religion, and family status.
- Employers should adopt formal appraisal systems which are fair and objective, with measurable standards for evaluating job performance to ensure that employees are assessed and promoted on the basis of merit.

In November 2007, the Tripartite Centre for Fair Employment, was launched as a one-stop centre where workers and employers can provide feedback and seek advice on fair employment practices.

Source: Singapore Ministry of Manpower, <http://www.mom.gov.sg> (accessed 15 Sep. 2010); Tripartite Alliance for Fair Employment Practices (TAFEP), <http://www.fairemployment.sg/> (accessed 15 Sep. 2010).

## 5.6 Mechanisms for consultation of indigenous and tribal peoples

The establishment of appropriate and effective mechanisms for the consultation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the ILO **Indigenous and Tribal Peoples Convention**, 1989 (No. 169). The establishment of processes of consultation is an essential means of ensuring effective indigenous peoples' participation in decision making.<sup>71</sup> Articles 6(1) and 7(1) of the Convention state the following on consultations:

“Article 6(1). In applying the provisions of this Convention, governments shall:

- (a) Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.
- (b) Establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them.
- (c) Establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

Article 7(1). The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.”

### Box 59. Institutional mechanisms to protect indigenous peoples' rights – The Philippines

In the Philippines, indigenous peoples represent approximately 15-20 per cent of the total population. The legal framework for the protection of their rights is provided by the Indigenous Peoples Rights Act (IPRA) of 1997.

#### The National Commission on Indigenous Peoples

The National Commission on Indigenous Peoples (NCIP) was established pursuant to the IPRA as an independent agency under the Office of the President. NCIP is “the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the Indigenous Cultural Communities/Indigenous Peoples (ICC/IPs) and the recognition of their ancestral domains” (IPRA, section 38). The NCIP is composed of seven Commissioners belonging to ICCs/IPs. The Commissioners are appointed by the President of the Philippines from a list

<sup>71</sup> ILO: *Indigenous and tribal peoples' rights in practice: A guide to ILO Convention No. 169* (Geneva, 2009).



of recommended candidates submitted by indigenous peoples. Additionally, it should be noted that Section 16 of the IPRA stipulates that “the State shall ensure that the ICCs/IPs shall be given mandatory representation in policy making bodies and other local legislative councils.”

### **The Indigenous Peoples Consultative Body**

Section 50 of the IPRA provides for the establishment of a Consultative Body consisting of the traditional leaders, elders and representatives from the women and youth sectors of the different indigenous peoples, which will advise the NCIP on matters relating to the problems, aspirations and interests of indigenous peoples. In 2003, the NCIP adopted Guidelines for the constitution and operationalization of the Consultative Body. These Guidelines recognize the constitution of Consultative Bodies at national, regional and provincial levels and, further, at community level when the need arises, to hold more focused consultations (Sec 12). Among other things, the Consultative Body is called to “deliberate on important IP issues and concerns and give inputs or make recommendations of policies for adoption by the Commission”. The Body was established in 2006.

Sources: ILO: *Indigenous and tribal peoples' rights in practice* (Geneva, 2009); R. Stavenhagen: *Report of the mission to the Philippines*, UN Doc. E/CN.4/2003/90/Add.3, 5 March 2003.

### **Box 60. Good practice – Consultation of indigenous people – Norway**

#### **Consultation and participation of Sami people in Norway: Procedures for consultation**

In May 2005, the Government of Norway and the Sami Parliament agreed on procedures for consultation, which were subsequently approved in Cabinet. The consultation procedures are regarded as normative guidelines. Norway ratified ILO Convention No. 169 in 1990.

The agreement recognizes that the Sami, as an indigenous people, have the right to be consulted in matters that may affect them directly. The agreement's objectives are:

1. To contribute to the implementation in practice of the State's obligations to consult indigenous peoples under international law.
2. To achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests.
3. To facilitate the development of a partnership perspective between the State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society.
4. To develop a common understanding of the situation and developmental needs of Sami society.

The agreement establishes that the procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities in matters that may affect Sami interests directly, including legislation, regulations, specific or individual administrative decisions, guidelines, measures and decisions.

The obligation to consult the Sami Parliament includes all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

Matters which are of a general nature, and are assumed to affect the society as a whole are in principle not covered by the agreement, and such matters shall not be subject to consultations. Geographically the Procedures for Consultations are applicable to traditional Sami areas.

In its commentary on individual provisions contained in the agreement, the Government informs its entities that:

“consultations shall take place in good faith, with the objective of achieving agreement to the proposed measures. This means the process of consultations with the Sami parliament is something more than an ordinary public process through which appropriate bodies are invited to consider various proposals (process of hearing), as the parties must sincerely and genuinely seek to reach an agreement on the proposed measures. This also means that State authorities are under an obligation to initiate consultations with Sami Parliament and make all necessary efforts to achieve an agreement even though the State authority concerned may believe that the likelihood of achieving an agreement is limited. However, the agreed procedures for consultations do not dictate that an agreement or consent to the proposed measures must always be reached. The required extent of the consultations may vary in specific situations. The most important requirement is that necessary consultation processes and procedures are established in order to enable the Sami Parliament to exert real influence on the process and the final result. A simple information meeting will thus normally not fulfill State authorities obligation to consult indigenous peoples under ILO Convention No. 169.”

The explanatory commentary provides further explanation about the contents of the consultation obligation:

“Fulfillment of the consultation obligation requires that both parties are informed about the counterpart’s position and assessments. The State party shall ensure that its interests and views are communicated to and understood by the Sami Parliament, and that the State party has understood the position of the Sami Parliament. The Sami Parliament has a corresponding responsibility to communicate its points of view on the matter concerned. If the parties do not reach an agreement, they are expected to consider compromises and possible changes in the original proposal with the aim to narrow the gap between their positions. When necessary, provisions shall be made for further consultations.”

Source: ILO: *Indigenous and tribal peoples’ rights in practice: A guide to ILO Convention No. 169*, Geneva, 2009; J. Henriksen: *Key principles in implementing ILO Convention No. 169* (Geneva, ILO, 2008); Government of Norway and Sametinget: *Prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget* (2005).

## Chapter 4. Practical tools

### 1. Checklist: Identifying discrimination in laws, policies and practices

Discrimination is often hidden and embedded in established practices that are considered natural. For this reason it is not always easy to identify discrimination. Go through the steps below to analyze whether a specific law, policy or practice constitutes discrimination against certain groups of workers.

| <b>Checklist for identifying discrimination in laws, policies and practices<sup>72</sup></b>   |  |
|--|--|
| <b>A. Steps 1-3. Determine whether the law, policy or practice treats a person or group of persons differently, excludes any person or group, or gives preference to a person or group.</b>  |  |
| 1. Identify the person(s) or groups that face differential treatment.  |  |
| 2. Identify the act, omission or process that treats the persons or groups concerned differently or leads to exclusions (a law, administrative regulation, policy, measure or practice).   |  |
| 3. Identify the actor or party, responsible for the act or omission of an act (for example, an administrative body or authority or a private actor, such as a company).  |  |
| <b>B. Steps 4-6. Establish whether the differential treatment is based on a prohibited ground (in ILO Convention No. 111 and/or in national legislation).</b>  |  |
| 4. Do the person(s) or groups that face differential treatment, exclusion or preference have personal characteristics that relate to one or more of the prohibited grounds of discrimination under Convention No. 111 (race, colour, sex, religion, political opinion, national extraction or social origin and any other ground as determined in national legislation, such as disability)? |  |
| 5. Is the treatment due to the person's sex, ethnic origin, religion or any other of the above-mentioned prohibited grounds or possible multiple grounds?  |  |
| 6. In a case of suspected indirect discrimination, do the apparently neutral measures disproportionately affect persons with certain personal characteristics (such as a certain sex, colour, race or religion), as compared to persons without these characteristics?   |  |
| <b>C. Steps 7-9. Establish whether there is a negative effect on equality in employment and occupation.</b>  |  |
| 7. In which ways does the distinction, exclusion or preference have a negative effect?   |  |
| 8. Identify the aspect of employment and occupation that is affected (training, access to particular jobs, occupations or resources, recruitment, remuneration, other terms and conditions of work, dismissal, social protection and retirement, etc.).  |  |

<sup>72</sup> Adapted from ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation. A Guide to ILO Convention No. 111* (Geneva, 2007).

|   |  |
|---|--|
| 9. Examine whether there are differences in how men and women from the discriminated groups are affected.   |  |
| <b>D. Steps 10-11. Establish whether there is a valid and legitimate justification</b>  |  |
| 10. Is the differential treatment justified because it is based on an <b>inherent requirement</b> of a particular job (e.g. a non-ethnic minority job applicant has been preferred over an ethnic minority applicant due to a difference in qualifications that is actually needed for the job)?  |  |
| 11. In case of suspected direct and/or indirect discrimination, the following questions should be examined to determine whether the measure concerned could be justified because it is <b>necessary and proportionate to achieve a legitimate objective</b> : <ol style="list-style-type: none"> <li>Is the measure a temporary affirmative action measure designed to redress the effects of past or continuing discrimination?</li> <li>Is the measure based on respect for the rights and dignity of the affected persons?</li> <li>Has the distinct situation of the group concerned (needs, economic situation, language, health condition, etc.) been taken into account when designing and putting in place the measure(s) concerned?</li> <li>Have the affected groups been consulted and have they participated in decision making on the measure(s)?</li> <li>Have any alternative measures been explored that may be more effective to achieve equality and respect the human and workers' rights of all peoples?</li> </ol> |  |

**Answer key**

(A) *Distinction, exclusion or preference* (B) *based on prohibited grounds* leading to (C) *negative effect* on equality in employment and occupation for the group in question constitutes discrimination:


- **A+B+C = discrimination.**

**Exemption:** The measure is not deemed discriminatory when A+B+C are justified due to existence of (D): there is a *valid and legitimate reason* for the differential treatment:

- **A+B+C+D = justifiable, not discrimination.**

## 2. Checklist: Useful policy measures to eliminate discrimination and achieve equality in employment and occupation

In order to effectively eliminate discrimination at work, the following key measures should be considered in national and local policies.

Check  the measures that have been put in place in your locality. If some measures have not been taken, consider whether you and your organization could take action on this issue.

|   |   |
|---|---|
| Useful policy measures to eliminate discrimination and achieve equality <sup>73</sup>   | ✓ |
| 1. <b>Legislation prohibiting and preventing discrimination</b> in employment and occupation as well as effective enforcement of such legislation.  |   |
| 2. Ensuring <b>access</b> of discriminated groups, such as women, people with disabilities, or ethnic minorities <b>to judicial and administrative procedures</b> .   |   |
| 3. Measures to protect workers from discriminated groups in the <b>informal economy</b> from work-related discrimination, forced and child labour and other exploitative labour practices.  |   |
| 4. Provisions to ensure that both women and men can join the labour force and select and keep jobs of their choice without <b>discriminating against women</b> because of their reproductive functions, household duties and family responsibilities, and encouraging the <b>sharing of unpaid care work</b> between women and men.   |   |
| 5. Provisions to ensure that ethnic minorities can carry out their <b>traditional occupations</b> without undue restrictions and, to this end, recognizing their right to exist and to maintain their culture, traditions and institutions in national law and policies.  |   |
| 6. <b>Social dialogue</b> in workplaces among and between employers, workers and their organizations on persons' equal opportunities to access and secure decent work and social protection.  |   |
| 7. Promotion of public <b>awareness and respect</b> for diversity and difference among all population groups in society.  |   |
| 8. Provision of <b>equal education and training opportunities</b> that lead to productive and gainful jobs and income earning opportunities in the labour market.   |   |
| 9. <b>Mainstreaming the promotion of equal opportunities in employment and occupation</b> in relevant national policies, such as land policies, poverty reduction strategies, rural or local development programmes, training policies, <b>employment policies</b> (including, among others, active labour market, gender and environmental policies).                      |   |
| 10. In cases discriminated groups have (had) less access to education, training, or gainful jobs or income earning opportunities, provision of <b>affirmative action measures</b> to remedy the effects of past or continuing discrimination and create a level playing field to ensure that all persons can develop their potential and earn a living through decent work. |   |
| 11. Consultation with and <b>participation of discriminated groups in the development, implementation and evaluation</b> of measures designed to promote equality of opportunity and treatment in employment and occupation, including affirmative action measures for these groups.  |   |
| 12. Recognition of the <b>right to organize</b> for all workers and promotion of freedom of association.  |   |

<sup>73</sup> Adapted from: ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation. A Guide to ILO Convention No. 111* (Geneva, 2007).



|  |  |
|--|--|
| 13. Enhanced <b>cooperation</b> between government units responsible for development (industry, labour, employment and social protection, equality and non-discrimination, human rights, women's rights, ethnic affairs, etc.).                                    |  |
| 14. Integration of a <b>gender perspective</b> in all measures undertaken to promote equality of opportunity and treatment.  |  |
| 15. <b>Establishment of a mechanism</b> to promote equal employment opportunity and treatment, monitor the situation of discriminated groups in employment and occupation on the basis of reliable data (broken down by sex, ethnicity, etc.) and provide redress. |  |

### 3. Checklist: Key programming steps for coordinated and systematic action to eliminate discrimination and achieve equality

In order to overcome discrimination and ensure that all persons and groups can contribute and benefit on an equal footing in society, the following programming steps should be considered to design and implement national and local policies effectively.

Check ✓ those steps that have been taken in your locality. If some steps have not been taken, consider whether your organization could take action on this issue.

|  |   |
|--|---|
| <b>Simultaneous and complementary steps to implement ILO Convention No. 111</b> <sup>74</sup>  | ✓ |
| 1. <b>Careful analysis and amendment of existing laws, policies and programs</b> in all sectors, <b>in consultation</b> with the concerned groups to ensure that these are in line with Convention No. 111.  |   |
| 2. Enactment of <b>new legislation or regulations</b> where necessary, and in <b>consultation</b> with the concerned groups to make the provisions of Convention No. 111 operational.  |   |
| 3. Establishment of <b>specific institutions to promote, implement and enforce the rights</b> of the discriminated groups, as well as institutions to coordinate the implementation across sectors and levels of governance.   |   |
| 4. Establishment of <b>permanent mechanisms at all levels of governance for the participation of the discriminated groups in decision making</b> , including for: <ol style="list-style-type: none"> <li>Planning.</li> <li>Implementation.</li> <li>Monitoring.</li> <li>Evaluation.</li> <li>Reporting.</li> </ol> |   |
| 5. Establishment of <b>clear priorities and timeframes for implementation</b> to generate collaboration, minimize risk of conflicting interest and promote good governance and accountability.   |   |
| 6. Assignment of <b>budgetary resources</b> for: <ol style="list-style-type: none"> <li>Mainstreaming efforts across sectors.</li> <li>Special measures.</li> </ol>  |   |

<sup>74</sup> Adapted from ILO: *Indigenous and tribal peoples' rights in practice. A guide to ILO Convention No. 169* (Geneva, 2009).

- |   |  |
|---|--|
| <p><b>7. Awareness raising, training and capacity building of:</b></p> <ol style="list-style-type: none"> <li>a. Representatives and communities/organizations of the discriminated groups.</li> <li>b. Decision makers.</li> <li>c. Workplace actors, employers' and workers' organizations.</li> <li>d. Government officials, such as the labour inspectorate.</li> <li>e. Public and private employment service agencies.</li> <li>f. Judges.</li> <li>g. Media.</li> <li>h. The public in general.</li> </ol> |  |
|---|--|

#### 4. Checklist: Guidelines on equal opportunity at the workplace for labour inspectors

##### Questions for desk review by labour inspectors <sup>75</sup>

When labour inspectors do an assessment of equality and discrimination in a workplace, the desk review should contain an analysis of the employee records and other relevant documents of the employing unit or company with a focus on the following aspects:

- ✓ Investigate the labour force statistics in the employment unit or company by sex and ethnic origin of employees and any other relevant prohibited ground (e.g. disability).
- ✓ Investigate the company's employment profile in terms of types of job, the job requirements and the characteristics of employees on duty with an emphasis on analyzing the sex and ethnic origin of employees in different job positions.
- ✓ Check the payment conditions of different positions, and analyze the wage statistics broken down by sex, ethnicity or any other relevant prohibited ground at different job levels.
- ✓ Check the number and proportion of women in decision making positions in the unit or company.
- ✓ Check whether the company has a policy, regulations or rules to ensure equal opportunity in employment, for example, concerning equal pay for equal work and for work of equal value, and equal chances for promotion for employees.
- ✓ Investigate whether there have been any employment discrimination and/or (sexual) harassment cases, and how these were addressed and resolved.
- ✓ Check whether the company has a trade union or another organization representing employees, or a safety and health committee or a gender equality committee, and the composition, responsibilities and activities of these committees.

<sup>75</sup> Adapted from: Czech Republic, Ministry of Labour and Social Affairs: *Methodological instructions for the inspection of compliance with equal opportunities for men and women* (Prague, 2003).

### Questions to ask during on-site labour inspection

When labour inspectors do an assessment of equality and discrimination in workplaces, consider the following questions on the **recruitment practices** of the employing unit or company:

- Does the employer formulate neutral job advertisements, so that the advertisements do not unjustifiably deter members of one sex or ethnic group to apply?
- When recruiting new employees, are the job applicants assessed on their ability and capacity to perform the post or job advertised, and not according to whether the applicant is a man or a woman, or whether he or she is single or married, or belongs to one or another ethnic group?
- Do the job descriptions clearly specify fair and non-discriminatory selection criteria, that are related to the post or job in terms of qualifications, skills, knowledge and experience?
- When an employer requires specific personal characteristics or attributes that could be viewed as discriminatory, does the advertisement specify the inherent requirement of the job that requires this attribute?
- Does the employer use neutral application forms that do not include questions which are unrelated to the job requirements?
- Does the employer use a fair selection process and consistent selection criteria at all stages of the recruitment process, assessing the applicants solely according to their ability and capacity to perform the work described in the advertisement?
- Are the job interviews and placement tests organized in a non-discriminatory manner?
- Have the staff members involved in the recruitment process received training on non-discrimination?
- Does the employer include tests for pregnancy or infectious diseases like HIV during the health checks of job candidates?

Consider the following questions to assess **equal opportunities for career advancement** in the employing unit or company:

- Does the employer inform all the eligible male and female employees when opportunities for promotion or training arise?
- Do all the male and female employees have equal access to educational possibilities and specialist preparation?
- Does the employer use fair and non-discriminatory selection criteria that only refer to the employees' individual character in relation to experience, ability and diligence, when selecting employees for training courses?
- Does the employer use fair and non-discriminatory selection criteria when deciding on promotion?
- Are members of some specific group(s) prioritized when deciding on promotion?
- Has the employer adopted any positive measures of support to proactively enhance the opportunities of underrepresented groups to compete for advancement in employment?

When assessing **equal remuneration** in the employing unit or company:

- Do all male and female employees working in the same employing unit or company and performing the same work or work of equal value receive equal remuneration?

- If some of the employees performing the same work or work of equal value do not receive equal remuneration, has the employer justified these differences through objective criteria that are unrelated to race, colour, sex, religion, political opinion, national extraction or social origin, or any other prohibited ground of discrimination as defined in national legislation, such as disability or HIV status?
- Do the female and male employees have equal access to housing and family allowances, social security and other benefits provided in connection with employment?
- Are the bonuses, incentives and gifts provided to all employees in a non-discriminatory manner?

Consider the following questions for assessing equality and non-discrimination in **employment conditions** in the employing unit or company:

- Does the employer provide men and women with the same employment conditions, in terms of types of labour contract, regular and over-time working hours and breaks, sick leave and leave days, protection against work hazards, such as (protective) equipment and other safety regulations, conditions for termination of the labour contract, etc.?
- Does the company provide maternity protection to women and paternity leave to new fathers? What are the provisions and are these sufficient to guarantee the health of the pregnant woman and the foetus, and the mother and the baby?
- Are workers provided with opportunities to reconcile work and family? What are the arrangements for parental leave? Do these apply to both male and female employees?
- Are female employees treated less favourably on the grounds of marital status or pregnancy? For example, do women have to promise that they will not marry or become pregnant for a certain period or forego employment when they do?
- Has the employer adopted measures to prevent and redress (sexual) harassment, bullying or other violence at the workplace through awareness raising and training?
- Has the company established an internal complaints mechanism to receive and handle complaints concerning discrimination at the workplace?
- Do employees have access to information about equal opportunities for women and men at work?
- What is the role of the trade unions or other type of employee representative groups in promoting equality in the workplace? What is the proportion of women among members and leaders of the trade union?
- When or how often do management-employee consultations on equality in the workplace take place? Are women represented in these meetings?

Consider the following questions for assessing equality and non-discrimination in **security of tenure** in the employing unit or company:

- Are members of some specific group(s) discriminated in terms of duration of the employment contract or the length of the probation period?
- Are members of some specific group(s) prioritized when deciding on dismissals?
- Is the employer making a decision to dismiss a person strictly based on the reasons connected to the worker's conduct, his or her ability to perform the functions or the strict necessities of operation of the enterprise as stipulated in the relevant laws and regulations?
- Is the compensation offered to laid-off employees defined in a non-discriminatory manner?

## 5. Checklist: Equal opportunity guidelines for union negotiators

### Questions to negotiate or review an equal opportunities agreement with employers<sup>76</sup>

Example questions:

- ✓ Do you have an equal opportunities agreement?
- ✓ Do all members and prospective members know about it?
- ✓ Is it published or advertised?
- ✓ Is it monitored?
- ✓ Is it reviewed by management and union representatives? If so, how and how often?
- ✓ Does it deal with job segregation, or lack of promotion for women?
- ✓ Does it commit management to take positive action where the policy is not working? If so, what positive action has been taken and is it showing results?
- ✓ Are management and employees trained on the policy? Is the training regularly updated?
- ✓ Is there a joint union/employer equal opportunities committee? Does it meet on a regular basis?
- ✓ Is there an agreed procedure for investigating complaints about recruitment, appointments and promotions?
- ✓ Can staff get paid time-off to attend union training on equal opportunities?
- ✓ Does the agreement demand that all collective agreements are reviewed to eliminate any sex bias on the grounds of sex, race, colour or any other ground prohibited in Convention No. 111 or in national legislation?

## 6. Checklist: Guidelines for employers on fair recruitment procedures

### Guidelines on equality measures in recruitment procedures<sup>77</sup>

Following is a series of guidelines for an effective application of the principle of equal opportunity by employers in recruitment. It can be considered a non-exhaustive checklist to guide and/or inspire action and reflection to promote equality at work.

#### 1. Advertising

Advertisements should not indicate a preference for applicants of a particular group or sex unless the preference is clearly justified as job-related and necessary:

- ✓ Advertisements should avoid illustrations which suggest that the job is only performed by members of a particular group or sex.
- ✓ In cases where jobs have traditionally been occupied by only one group or sex, advertisements may state that the position is now expressly open to all applicants.
- ✓ Advertisements should, whenever practicable, state that the employing entity is an equal opportunity employer.

<sup>76</sup> ILO: *Promoting gender equality: A resource for trade unions, Book 3. Issues and guidelines for gender equality bargaining* (Geneva, Gender Promotion Programme, 2002).

<sup>77</sup> ILO: *Women workers' rights: Modular training package* (Geneva, 1994); Singapore Tripartite Alliance for Fair Employment Practices (TAFEP): *Tripartite guidelines on non-discriminatory job advertisements* (Singapore, 1999).



- ✓ Advertisements should be placed in locations and publications which will reach the widest range of potentially qualified applicants, particularly those of a particular group or sex under-represented in the workplace.
- ✓ Advertisements should not contain irrelevant job requirements which could preclude individuals of a particular group or sex from applying for the job.

## 2. Selection criteria

Selection criteria should be objective, genuine, related to the inherent requirements of the job and consistently applied to all applicants irrespective of their group or sex. Specifically, it should be ensured that:

- ✓ Non-job-related qualifications and higher than necessary qualifications such as educational degrees and linguistic abilities are not required.
- ✓ Appearance, physical characteristics, length and style of hair, dress and other aspects of appearance, which are common to a particular group or sex, are not considered a basis for refusal or preference to select for employment.
- ✓ The extent of an applicant's academic qualifications is not exclusively considered the best qualification for the job, particularly where on-the-job training and experience would provide an applicant with the most appropriate skills to perform the job.
- ✓ Any qualification or condition, which would effectively restrict a position to applicants of a particular group or sex, must be clearly justified as a necessary job-related requirement.
- ✓ Qualifications required for a position should be based on a current job description which accurately identifies the nature, purpose and functions of the job without regard to preconceived notions of who should be performing it.
- ✓ Job descriptions should not be adapted to meet the qualifications of any particular individual whose application is anticipated.
- ✓ Job descriptions should be made available to all potential job applicants and to staff members involved in the recruitment and selection process.

## 3. Selection tests

The content and evaluation of selection tests should be free from bias against any particular group or sex:

- ✓ The content of selection tests should be reviewed to ensure that they are job-related; and that differences in test performances do not correspond to particular group or sex differences.
- ✓ The administration of the selection tests should be consistent and, as far as possible, should consider the needs of any particular group or sex under-represented in the workplace.
- ✓ Test instructions should be clearly given, test locations should be accessible, e.g. in close proximity to public transport, and other relevant measures should be considered.

## 4. Interviews

The scope of job interviews should be job-related and the interview should cover each applicant's relevant qualifications:

- ✓ The same or similar questions should be asked of each applicant.
- ✓ The applicant's responses should be evaluated on an objective basis. It may be helpful if more than one person evaluates an applicant's responses to avoid individual bias.
- ✓ Wherever questions are asked which are not obviously related to the job, the applicant should be informed of the reasons why such questions are necessary and job-related.

- ✓ The interview atmosphere should be free from patronizing approaches and intimidation for all applicants irrespective of their particular group or sex and irrespective of the position for which they are applying.
- ✓ Records of interviews, where possible, should be kept in a systematic manner and should be available for retrieval.

## 5. Recruitment

Potential applicants from all groups should be encouraged to apply for positions:

- ✓ The equal employment opportunity policy should be emphasized in the recruitment process.
- ✓ Employment agencies and other recruitment sources should be instructed to refer applicants from all groups and both sexes for positions at all levels.
- ✓ Recruitment should be undertaken from a wide variety of sources, including schools, universities, training institutions or programmes, and workplaces.
- ✓ Measures should be taken, where appropriate, to encourage the recruitment of qualified personnel from any under-represented group or sex in the workplace, to help adjust prior disproportionate hiring practices.
- ✓ Recruitment practices which exclusively use informal procedures such as “word of mouth” should be avoided so that, for example, recommendations from employees and associates do not constitute the main source of potential candidates.

## 6. Criteria which should not be in job advertisements

### Age

- ✓ Employers should not stipulate age as a requirement for employment. Words or phrases that suggest preference for job candidates of a particular age group should also not be used in job advertisements. Examples include “young,” “youthful working environment” or “fresh school leaver/or graduate.”
- ✓ If the nature of the job is physically demanding such as the handling of heavy cargo, the required physical attributes or other job-related criteria should be clearly described in the job advertisements, rather than indicating an age cut-off.

Examples:

- “Candidates are required to load and unload sacks of rice of at least 10 kg each.”
- “Candidates are required to handle heavy equipment.”

### Race

- ✓ Race should not be a criterion for the selection of job candidates as multi-racialism is a fundamental principle in the country and selection based on race is unacceptable. Job advertisements featuring statements like “Chinese preferred” and “Malay preferred” are therefore unacceptable.

### Language

- ✓ If a job entails proficiency in a particular language, employers should justify the need for the requirement. This would reduce ambiguity and minimize incidence of misunderstanding between the job seekers and the recruiting party. Examples:
  - “Chinese language teacher for Pre school centre, fluency in Mandarin Chinese required.”
  - “Translator for a leading Malay language sports magazine. Proficiency in Malay is a must.”
  - “Tour Guides to take Chinese/Japanese/Indian tourist groups. Knowledge of Mandarin/Japanese/Indian dialects is essential.”

### Sex/gender

- ✓ Where practical job requirements dictate the need for employees of a particular sex, this must be supported by valid reasons. In addition, words or phrases that suggest preference for job candidates of a particular sex such as “female working environment” or “waitress” should not be used in job advertisements. Example:
  - “Women’s Fashion Boutique requires salesgirl to model clothes while on the job”.

### Marital status

- ✓ Marital status is an irrelevant criterion in employment, as jobs can be performed equally well by either married or single persons.

### Religion

- ✓ Religion is unacceptable as a criterion for recruitment EXCEPT in cases where employees have to perform religious functions as part of the job requirement. In such cases, the requirements should be clearly and objectively presented.

## 7. Checklist: Guidelines on equal opportunity and treatment for employment agencies

### Equality guidelines for employment agencies<sup>78</sup>

Employment agencies, whether they are under the control of a national authority, independent statutory authorities or privately operated, should promote equal employment opportunities in their services to clients, and not condone or follow discriminatory practices. Specifically, employment agencies should:

- ✓ Encourage the registration of all eligible individuals, irrespective of a particular group or sex, and review regularly the records of recruitment concerning particular groups and both sexes.
- ✓ Ensure that job advertisements do not indicate, or can not be understood to indicate, that applicants from any particular group or sex will not be considered or will be treated more or less favourably than others.
- ✓ Discourage discriminatory instructions from employers.
- ✓ Where necessary, educate employers on the principles of equal employment opportunity laws and policies. As a last resort, break off cooperation with employers who refuse to withdraw discriminatory instructions.
- ✓ Provide adequate training and guidance to agency staff on their duty not to discriminate and on the effect which generalized assumptions and prejudices can have on their treatment of individuals of a particular group or sex. In particular, staff should be instructed to:
  - Avoid restricting the range of job opportunities to applicants by making assumptions about abilities on the basis of a particular group or sex or by sending such applicants only to employers who are believed to be willing to employ a particular group or sex.
  - Avoid drawing attention to such matters as ethnic or social origin or sex when recommending applicants, unless the employer has specified, justifiably, that the job requires applicants of a particular group or sex.
  - Inform applicants of their right to equal employment opportunity before they are put into contact with prospective employers.

<sup>78</sup> ILO: *Women workers’ rights: Modular training package* (Geneva, 1994).

## 8. Checklist: Guidelines for developing an Inclusive workplace disability strategy

### Guidelines for developing an Inclusive workplace disability strategy<sup>79</sup>

An Inclusive workplace disability strategy should be an integral part of a human resources development strategy because it relates to how you accommodate the needs of various workers. The strategy should also be linked to a health and safety policy as many of the policy issues will relate directly to workers with disabilities. For example, if you provide a canteen service it should be laid out so that people with visual impairments or physical limitations can move around easily without encountering any potential hazards that may cause harm.

The major steps to developing an Inclusive workplace disability strategy include:

- Assess the current situation.
- Determine the need for a disability strategy.
- Consult workers, supervisors, managers and people with disabilities and draft the disability strategy.
- Evaluate and update the strategy.
- Implement the strategy: Promote the strategy.
- Implement the strategy: Adapt the workplace.

Your disability strategy should include provisions for:

- Equal opportunity and non-discrimination for employees with disabilities, and medical conditions such as HIV and the Hepatitis B virus (HBV).
- Job retention by employees who acquire a disability.
- Recruitment of employees with disabilities.

#### **Assess the current situation:**

- Find out how many workers with disabilities or impairments you currently have in your workforce. Are they involved in the workplace communications process?
- Determine if senior management is interested in recruiting workers with disabilities. How could you eliminate potential hesitations to do so?
- Conduct an initial workplace assessment to identify potential areas for adjustments (wheelchair access, improved signage – make sure that everything is labeled and easy to read for someone with a visual impairment, use flashing lights in addition to bells and sirens for workers with a hearing impairment).

#### **Determine the need for a disability strategy:**

- Identify the reasons for preparing this strategy:
  - To comply with national laws and international conventions?
  - To accommodate the workplace for workers with disabilities currently in the workforce?
  - To recruit workers with disabilities in the future?
  - To prepare in case one worker gets injured or contract an illness or disease, and acquires a disability?

<sup>79</sup> ILO: *Disability in the workplace: Trainers' guide* (Bangkok and Geneva, Factory Improvement Programme, 2006).

- To build employee morale and demonstrate positive business traits?
- To comply with codes of practice and union agreements?
- To ready the workplace for all types of workers who can contribute?

**Consult workers, supervisors, managers and persons with disabilities and draft the disability strategy:**

- Determine what the disability strategy should cover and how it can link to existing policies and guidelines.
- Involve workers, especially those with disabilities, in the strategy consultation process to ensure a more effective response.

**Draft an Inclusive workplace disability strategy that covers:**

- Guidelines for existing workers who become disabled or impaired.
- Enterprise's responsibilities towards workers with disabilities.
- Benefits if a disabling accident occurs in the workplace or if a worker contracts an occupational illness or disease.
- Job retention measures to facilitate gradual resumption of work. This could include:
  - Early intervention and referral service to medical and vocational rehabilitation services.
  - Measures for resumption of work.
  - Flexible working arrangements such as part-time work or flexible hours.
  - Opportunity to have a trial work period or obtain experience in an alternative job if unable to resume previous job.
  - Job accommodation.
- Recruitment guidelines for hiring workers with disabilities:
  - Publicize job vacancies in various formats: In print, radio, on the internet.
  - Contact local organizations of and for persons with disabilities.
  - Make reasonable adjustments to the workplace and working conditions to maximize the candidate's ability to perform required tasks.
  - Include a statement stressing that the enterprise is an equal opportunity employer and that employment is given solely on the basis of merit.
- Identify financial incentives and support services that may be available for employers who hire workers with disabilities in your location:
  - Tax concessions.
  - Wage subsidies.
  - On-the-job training subsidies.
  - Grants for reasonable accommodation.
  - Technical advisory services such as advice on adaptations and technical aids, or job and work analysis.
  - Placement service including follow-up after recruitment.
- Relevant universal precaution procedures to be adopted within the workplace.
- Universal access strategies and means to implement these strategies.
- Review and update any existing human resources policies, such as promotion, induction and training, to ensure that they are not discriminatory against people with disabilities, including medical conditions such as HIV and HBV.



**Evaluate and update the inclusive workplace disability strategy:**

- Distribute the strategy to all workers and managers and request feedback.
- Ensure the strategy complies with national legislation and international non-discrimination instruments, such as Convention No. 111 and the Code of practice on managing disability in the workplace.

**Implement the strategy: Promote the strategy:**

- Disseminate the strategy to all workers and managers.
- Provide additional information about disability in the workplace and on adaptations that may be required to enable workers with disabilities to optimize their performance (e.g. reorganize the workstation and make the work schedule more flexible).
- Encourage workers' organizations to:
  - Include workers with disabilities in their group as members and leaders.
  - Represent the interest of workers with disabilities in any work council, or meeting.
  - Train their members on disability and health conditions in the workplace.
  - Discuss with senior management how to link the new disability strategy to existing health and safety regulations. For example, does your fire safety policy accommodate workers with disabilities?
  - Participate in disability information and prevention programmes.

**Implement the strategy: Adapt the workplace:**

- Adapting your enterprise for workers with disabilities goes beyond the physical changes that can be seen in the workplace. Accommodating some types of disabilities does not mean physical changes, but perhaps changes in work hours or in the way information is communicated.
- Work on social attitudes will probably have to take place. The management and workforce need to be aware that having workers/colleagues with disabilities benefits everyone and improves working conditions for all.
- Keep in mind that persons with disabilities are the experts about what they need. Consult with them and listen to their requests and suggestions.
- Adapting the workplace ranges from addressing accessibility issues to human resource tools. Steps to adapt the workplace include:
  - Review and adapt the workplace to better integrate workers with disabilities. Ask questions such as: Are the corridors wide enough? Is the environment accommodating for a worker with a physical, sensory, intellectual or psychiatric disability?
  - Make signs in the workplace easy to read.
  - Convey information by sound.
  - Assess the cleanliness of your workplace. Are workstations tidy? Are materials kept in an organized manner?
  - Assess the individual's workstation. Ask questions such as: Does the worker need more light? More space between desks? Are tools adapted?
  - Pay attention to specific areas such as resting/eating areas, and toilets.

- Ensure the emergency plan takes into account workers with different disabilities.
- Review and adjust any job descriptions, keeping in mind an individual's disability. In the case of a newly acquired disability, the workers may not be able to perform tasks they used to (for example, heavy lifting, standing up behind a machine). This function may have to be given to another worker. The job description should only consider the essential tasks to be accomplished for the job by the worker.
- Revise work schedules to accommodate the worker's needs.
- Introduce special support measures such as additional training time for slow learners.
- Adapt the performance requirement in line with the individual's capabilities.
- Arrange induction and training events that may be necessary such as:
  - Awareness raising for all new employees.
  - Training for current workers and managers.
  - Mentoring system to ensure the integration of new employees with disabilities if they want it.
- Training in disability management for those who will coordinate the strategy.

### 9. Code of practice on action against sexual harassment at work

#### Code of practice on the prevention and eradication of sexual harassment in the workplace, Malaysia<sup>80</sup>

##### **Aim**

1. The aim of this Code of Practice is to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace.

##### **Rationale**

2. [The] Sexual harassment problem arises out of general workplace relationships involving personal behaviour of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at workplace itself so that it can be confronted on the spot and nipped in the bud.
3. The best approach to combat sexual harassment in the workplace is through the establishment of preventive and redress mechanism at the enterprise level. A decision has been made that this approach will form the basis of our national policy and practice in dealing with sexual harassment in the workplace.

##### **Meaning of sexual harassment**

4. For the purpose of this Code, sexual harassment means: Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:
  - That might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment.
  - That might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment.

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<sup>80</sup> Malaysia, Ministry of Human Resources: *Code of practice on the prevention and eradication of sexual harassment in the workplace* (Kuala Lumpur, 1999).

5. Based on the definition in Article 4 above, sexual harassment may be divided into two categories, namely sexual coercion and sexual annoyance.
  - **Sexual coercion** is sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.
  - **Sexual annoyance**, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. Sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.
6. Within the context of this Code, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationships. Situations under which such employment-related sexual harassment may take place includes, but is not limited to:
  - At work-related social functions.
  - In the course of work assignments outside the workplace.
  - At work-related conferences or training sessions.
  - During work-related travel.
  - Over the phone.
  - Through electronic media.
7. It is essential to emphasize that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient. It is also a sexual conduct which is imposed on and unsolicited or unreciprocated by the recipient.

#### Forms of sexual harassment

8. Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:
  - Verbal harassment, e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning.
  - Non-verbal/gestural harassment, e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting.
  - Visual harassment, e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure.
  - Psychological harassment, e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy.
  - Physical harassment, e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

### **Outline of in-house mechanism to combat sexual harassment in the workplace**

9. A comprehensive in-house mechanism that employers are encouraged to establish at the enterprise level to prevent, handle and eradicate sexual harassment in the workplace should include at least the following elements:
- A policy statement prohibiting sexual harassment in the organization.
  - A clear definition of sexual harassment.
  - A complaints/grievance procedure.
  - Disciplinary rules and penalties against the harasser and against those who make a false accusation.
  - Protective and remedial measures for the victim.
  - Promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences among the company's employees, supervisors and managers.

### **Policy statement prohibiting sexual harassment**

10. A policy statement on sexual harassment is a documented message from the management to the employees expressing the company's policy, philosophy and commitment to prevent and eradicate sexual harassment in order to create a positive and conducive working environment in the organization.
11. The policy statement should come from the top management to ensure its acceptance and compliance by the shop-floor employees, supervisors and managers throughout the organization.
12. The policy statement should contain at least the following matters:
- A declaration prohibiting sexual harassment in the organization.
  - A caution stating that sexual harassment constitutes a breach of the company's policy and will incur disciplinary actions up to and including dismissal.
  - A directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

### **A clear definition of sexual harassment**

13. A clear definition of sexual harassment constitutes a vital component of an in-house mechanism for dealing with the problem. A detailed definition is necessary to ensure that employees as well as the management have a clear idea of conducts that constitute sexual harassment.
14. The main objective of the definition is to make individuals in the organization fully aware of certain conducts and attitudes that can be regarded as unwelcome and offensive to others, and therefore prohibit such conducts in the organization.

### **Complaint/grievance procedure**

15. Although an effective preventive action and programme may be successful in deterring sexual harassment, but problems are bound to arise. Therefore, there is a necessity for the establishment of a complaint or grievance procedure to deal with each problem as and when it arises.
16. Due to the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaint.
17. A complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.

18. A complaint procedure should contain at least the following elements:

- A step-by-step procedure for reporting and processing of a complaint with a suitable time-limit for each steps.
- An investigation procedure.
- An appeal procedure to enable dissatisfied party to appeal against the outcome of an investigation to a higher authority.

#### **Disciplinary rules and penalties**

19. To ensure that a policy and a mechanism to prevent sexual harassment are effective, it is essential that offenders be disciplined.
20. The disciplinary rules should set out the penalties to which the harasser will be liable if the offence is committed. The nature and type of penalty should depend upon the severity of the offence.
21. Since sexual harassment is a form of misconduct, any disciplinary action against the accused employee should be preceded by a proper domestic inquiry.
22. To defer false and fabricated accusation against any person, the rule should also set out disciplinary penalties against those who make such accusations.

#### **Protective and remedial measures for the victim**

23. To encourage victims to report sexual harassment, there should be adequate measures to ensure maximum confidentiality so as to minimize embarrassment to the victim especially at the time of reporting and in the course of investigation into the complaint.
24. In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.
25. The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.
26. Where the complaint is found to be unjustified and baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

#### **Promotional and educational programmes**

27. Prevention is the most effective tool an employer can use to eradicate sexual harassment in the workplace. Preventive action includes:
- Communication.
  - Education.
  - Training.
28. Merely developing a corporate policy and preventive mechanism on sexual harassment is not sufficient. It is the dissemination of the policy and mechanism among the employees in the organization that is of paramount importance.
29. In addition to the need for communication, the employer should provide a programme by which employees and supervisors could be educated in the area of sexual harassment.
30. The employer should also provide special training sessions for supervisory and managerial staff to train them to recognize potential problems and learn how to deal with them as and when they arise. The necessity to provide training is much greater for those who are assigned to function as investigators and counselors.



**The involvement and role of the trade union**

31. Sexual harassment can be prevented, handled and eradicated most effectively if there is joint employer/trade union action.
32. In the formulation and establishment of an in-house mechanism to prevent, handle and eradicate sexual harassment, the employer should adopt a consultative approach by involving the trade union. The involvement of the trade union can pave the way for a stronger commitment by the employees to accept and comply with the in-house mechanism.
33. Trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Trade unions can contribute to the prevention of sexual harassment through awareness and sensitivity towards the issues among the members and by ensuring that the standards of conduct of their members do not cause offence.
34. Trade unions should also cooperate with employers in carrying out promotional and educational programmes towards creating a work culture that will ensure a safe and healthy working environment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.

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### Useful websites on discrimination and equality

ILO APPLIS: Database on the application of international standards  
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>

ILOLEX: Database of International labour standards and recommendations, <http://www.ilo.org/global/statistics-and-databases>, select ILOLEX, select Universal Query Form

ILO Programme for Gender Equality

<http://www.ilo.org/gender/lang--en/index.htm>

ILO Programme for International Labour Migration

<http://www.ilo.org/public/english/protection/migrant/>

ILO Programme for International Labour Standards

[http://www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/lang--en/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/lang--en/index.htm)

ILO Programme for the Promotion of the Declaration on Fundamental Principles and Rights at Work

[http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static\\_jump?var\\_language=EN&var\\_pagename=ISSUESDISCRIMINATION](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=ISSUESDISCRIMINATION)

ILO Programme on HIV/AIDS and the World of Work

<http://www.ilo.org/aids/lang--en/index.htm>

ILO Regional Office for Asia and the Pacific: Equality and discrimination

<http://www.ilo.org/asia/whatwedo/publications/>

Office of the High Commissioner for Human Rights

<http://www2.ohchr.org/english>

Office of the High Commissioner for Human Rights: Treaty Bodies database

<http://tb.ohchr.org/default.aspx>

United Nations Treaty Collections

<http://treaties.un.org/>

Website and resource platform of the ILO/MOHRSS Project “Promote and apply ILO Convention No. 111 in China”

<http://www.equalityatworkinchina.org>

### **Useful websites on corporate social responsibility**

Business and Human Right Resource Center

<http://www.business-humanrights.org>

Business for Social Responsibility

<http://www.bsr.org>

Ethical Trading Initiative

<http://www.ethicaltrade.org>

Global Reporting Initiative

<http://www.globalreporting.org>

International Organization for Standardization on ISO 26000, the voluntary guidelines for social responsibility

<http://www.iso.org/sr>

## Annexes

### 1. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

#### 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 reports 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.

(Final Provisions)



## 2. Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight, the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958:

The Conference recommends that each Member should apply the following provisions:

### 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.

### 3. Glossary of terms

#### **Affirmative action**

Special - usually temporary - measures to redress the effects of past or continuing discrimination in order to establish equality of opportunity and treatment between population groups in society.

#### **AIDS**

Acquired Immune Deficiency Syndrome. AIDS occurs at the late stage of HIV infection when the immune system is unable to function normally.

#### **Arbitration**

A method of dispute settlement in which an independent third party (usually an administrative tribunal) considers the arguments of both sides and then takes a decision binding on the parties in the dispute.

#### **Bias**

Opinion or feeling that strongly favours one side in an argument or one item in a group or series; predisposition; prejudice. Bias naturally makes up for gaps in information or education in the human mind. Bias is often embedded in the way society organizes social life. However, once bias starts to inform decisions that directly affect people's livelihood – such as whether to find or hold employment for which one is qualified – it produces negative effects that reverberate far beyond the life of an individual.

#### **Caste**

Any of the hereditary Hindu social classes.

#### **Casual worker**

A worker who works occasionally and intermittently. Such workers are employed for a specific number of hours, days or weeks. They are not normally entitled to the same terms and conditions of employment as ordinary workers (e.g. they would not usually get sick or holiday leave). Whereas temporary workers are employed to replace permanent workers who are, for example, sick or on maternity leave, casual workers have traditionally been employed to cope with a sudden increase in work (e.g. for seasonal reasons) or to undertake a particular (perhaps unforeseen) work task.

#### **CEACR (Committee of Experts on the Application of Conventions and Recommendations)**

The ILO committee which examines the performance of countries with regard to the application of ILO conventions and recommendations. It convenes yearly and issues both general observations on trends in the application of conventions as well as country-specific “observations” and “direct requests” to governments. See also **Direct Request** and **Observation**. The reports and other documents issued by the CEACR are available online at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> (APPLIS database) and <http://www.ilo.org/ilolex/english/> (ILOLEX database).

#### **Collective bargaining**

The process by which an employer or a group of employers and one or more workers' organizations or representatives voluntarily discuss and negotiate mutually acceptable terms and conditions of employment which are valid for a given period of time.

#### **Compensatory justice, see Affirmative action**

#### **Convention of the ILO**

International treaty that is legally binding after ratification.

**Decent work**

Productive work performed in conditions of freedom, equity, security and human dignity to which men and women have access on equal terms.

**Declaration**

A formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated. In ILO practice, this kind of act appeared, firstly, with the Declaration of Philadelphia, which was incorporated into the Constitution on the occasion of the constitutional amendments of 1946. In 1998 the Declaration on Fundamental Principles and Rights at Work emphasized the renewed relevance and importance, in the context of globalization, of fundamental rights, the principle of which is already enshrined in the Constitution and the Declaration of Philadelphia. The third major statement of principles and policies, the 2008 Declaration on Social Justice for a Fair Globalization, reflects the consensus among ILO constituents for a strong social dimension to globalization in achieving improved and fair outcomes for all.

**“De facto” discrimination**

A legal expression meaning the existence of discrimination in fact (in reality and in practice). For example, the practice of not hiring women to fill jobs considered to be “men’s jobs” when the law requires equal opportunity between men and women in employment.

**“De jure” discrimination**

A legal expression meaning the existence of discrimination in laws, regulations and administrative instructions. For example, a Civil Code provision restricting women’s right to enter into legal contracts or a Labour Code regulation providing that a rural migrant worker should receive less pay than a city resident.

**Differential treatment**, see **Affirmative action**

**Direct request**

Comment made by the Committee of Experts on the Application of Conventions and Recommendations to governments, seeking more information or clarification on specific issues regarding the implementation of a ratified convention.

**Disability**

Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

**Discrimination**

Defined in ILO Convention No. 111 as “any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which nullifies or impairs equality of opportunity or treatment in employment or occupation.” Discrimination can be direct or indirect:

- **Direct discrimination** exists when unequal treatment between workers of different race, colour, sex or any other ground covered by the Convention or national legislation stems directly from laws, rules or practices making an explicit difference between workers on these grounds. For example, laws which do not allow women to sign contracts; a labour law stipulating that



internal rural migrants shall receive less pay in cities than the residents of these cities; or, job advertisements which specify the appearance, age and sex of the candidates.

- **Indirect discrimination** means rules and practices which appear neutral but are not job related and in practice lead to disadvantages primarily suffered by persons of one sex, race, colour or any other characteristics. For example, setting requirements for managerial or secretarial jobs which are irrelevant to the job such as height or weight levels that typically only people of one sex, race or colour can meet.

### **Employers' organization**

An organization whose membership consists of individual employers, other associations of employers or both, formed primarily to protect and promote the collective interests of members, to present a united front in dealing with organizations and/or representatives of workers, as well as to negotiate for and provide services to members on labour-related matters.

### **Empowerment**

Empowerment implies people taking control over their own lives: Setting their own agendas, gaining skills (or having their own skills and knowledge recognized), increasing self-confidence, solving problems, and developing self-reliance. It is both a process and an outcome. For example, women's empowerment implies an expansion in women's ability to make strategic life choices in a context where this ability was previously denied to them. Women's empowerment has five components: (1) women's sense of self-worth; (2) their right to have and to determine choices; (3) their right to have access to opportunities and resources; (4) their right to have the power to control their own lives, both within and outside the home; (5) their ability to influence the direction of social change nationally and internationally.

### **Equality**

Equality and non-discrimination refer to the enjoyment of equal rights, opportunities and treatment within all spheres of life and work for all people regardless of characteristics such as sex, race, ethnicity, religion, disability or health status. Equality implies that all people are free to develop their personal abilities and make choices without the limitations set by stereotypes, assumptions and prejudices about their sex, colour, race, ethnicity, religion, social or national origin, disability or health condition. It does not mean that all people have the same abilities or have to be treated in the same way. It means that the different behaviour, aspirations and needs of people are equally considered, valued and favoured, regardless of characteristics such as sex, race, ethnicity and health or disability status.

### **Equality at work**

A fundamental value and principle enabling workers to claim a fair share of the wealth which they help generate through employment or occupation.

### **Equal Opportunity Policy (EOP) or Equal Employment Opportunity Policy (EEOP)**

Commitment to engage in (employment) procedures and practices which do not discriminate and which provide equality between workers with different characteristics, such as sex or ethnicity.

### **Equal opportunity in the world of work**

The principle of equal opportunity aims to ensure that people can develop their economic potential to the fullest, and can allocate their time and energy where reward is the highest. Equal opportunity between men and women at work refers to equal chances to apply for a particular job to be employed, to attend educational or training courses, to be eligible to attain certain qualifications and to be considered as a worker or for a promotion in all occupations or positions, including those dominated by one sex or the other.

**Equal treatment in the world of work**

The principle of equal treatment intends to ensure that people's work performance is rewarded according to their productivity and merit, taking into account the objective characteristics of a job, such as skills and knowledge, and without interference of considerations unrelated to merit. It refers, for example, to equal entitlements in pay, working conditions, security of employment, reconciliation between work and family life, and social protection.

**Equal remuneration, see also Remuneration**

- **Equal pay for equal work.** The same pay for performing the same, identical or similar work. Equal pay for equal work is more limited in scope than "equal pay for work of equal value."
- **Equal pay for work of equal value.** The principle of equal pay for work of equal value applies when men and women perform work that is different in content but equal in terms of skill and qualifications, efforts, duties and responsibilities, and working conditions.

**Equity**

Is about achieving equality of outcomes and results, that is, all persons have an equal chance not only at the starting point but also when reaching the finishing line. Equity is about equal, fair and just chances, opportunities and treatment that takes into account and addresses the different needs and interests of all women and men, cultural or other barriers and (past) discrimination of specific groups.

**Ethnicity**

A sizable group of people that has a common cultural and livelihood tradition.

**Ethnic minorities**

Groups of persons who have the right, in community with the other members of their group, to enjoy their own culture and livelihood, to profess and practice their own religion, and/or to use their own language.

**Female-to-male earnings or wage ratio**

The ratio of women's to men's earnings or wages. This is calculated by dividing women's earnings or wages by men's earnings or wages, and is often expressed as a percentage (the ratio multiplied by 100). For example, if women's average monthly wage in a country is three units, and men's is five units, the female-to-male wage ratio is three divided by five (3:5) which amounts to 0.6, or 60 per cent when expressed as a percentage. In this example, the **gender pay gap** (see below) would be 100 minus 60 is 40 per cent.

**Femininity and masculinity**

Ideas and expectations about the characteristics, attitudes and likely behaviour of women and men.

**Gender**

Social differences and relations between men and women that are learned, vary widely among societies and cultures, and change over time. The term "gender" does not replace the term "sex," which refers to the biological differences between men and women, for example, statistical data are broken down by sex. The term "gender" is used to analyze the roles, responsibilities, constraints, opportunities and needs of women and men in all areas and in any given social context.

**Gender discrimination**, see **Sex discrimination**

### **Gender analysis**

Research examining similarities, differences and relations between women and men, girls and boys in all spheres of life and work. It looks at their specific activities, the division of labour, access to and control over resources, as well as their needs, constraints and opportunities as well as access to development benefits and decision making at the micro, meso and/or macro levels or the larger natural, social, economic and political environment with a view to identify possible gender gaps and means of rectifying these.

**Gender-blind**, see also **Gender neutral**

Describes measures and actions, such as research, analysis, policies, advocacy and training materials, programme and project design and implementation that do not recognize and ignore possible differences between the position, needs, constraints, opportunities and interests of women, men, girls and boys.

### **Gender equality or equality between men and women**

Enjoyment of equal rights, opportunities and treatment by men and women of all ages in all spheres of life and work. It implies that all human beings are free to develop their personal abilities and make choices without the limitations set by stereotypes and prejudices about gender roles or the characteristics of men and women. It means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men are the same or have to become the same, but that their rights, responsibilities, social status and access to resources do not depend on whether they are born male or female.

### **Gender gap or gender imbalance**

Differences in any area between women and men (or girls and boys) in terms of their levels of participation, access to resources, rights, power and influence, remuneration and benefits.

### **Gender justice**

The ending of, and if necessary the provision of redress for, inequalities between women and men that result in women's subordination to men. The gender justice approach pursues gender equality with an emphasis on transforming unequal power relations between the sexes. Priorities include advancing women's rights and access to resources on an equal footing with men; creating women's access and influence in policy and decision making institutions and making social, economic and political institutions responsive and accountable to women. The term "gender justice" is increasingly being used because of the growing concern and realization that terms like "gender equality" and "gender mainstreaming" have failed to communicate, or provide redress for, the ongoing gender-based injustices from which women suffer.

### **Gender mainstreaming**

Main strategy to accelerate progress towards equality between women and men. A two-pronged approach is applied: firstly, by explicitly and systematically addressing the specific and often different needs and concerns of both women and men in all policies, strategies and programmes; secondly, by targeted interventions when analysis shows that one sex – usually women – is socially, politically and/or economically disadvantaged. Empowerment initiatives, such as affirmative action measures, are essential to achieve equality and are an integral component of the gender mainstreaming strategy.

**Gender-neutral**, see also **Gender blind**

Describes measures and actions, such as research, analysis, policies, advocacy and training materials, programme and project design and implementation that are not affected by and do not affect the

different situations, roles, needs, and interests of women, men, girls and boys. In reality, very few policies, measures and actions are gender-neutral, because they have different effects on women and men.

### **Gender pay gap or gender wage gap**

The percentage difference between average female and average or wages. For instance, if women earn 70 percent of what men earn, the gender pay gap is 30 percent. See also **Female-to-male earnings or wage ratio**.

### **Glass ceiling**

Invisible artificial barriers, created by attitudinal and organizational prejudices that block women's access to decision making and managerial positions.

### **Hepatitis B virus (HBV)**

The HBV is a virus which infects the liver and causes an inflammation called hepatitis. It is transmitted through contact with the blood or other body fluids of an infected person. It is not transmitted through the digestive tract and not through casual contact in the workplace. It also does not spread through contaminated food or water. About 90 per cent of healthy adults who are infected with HBV will recover and be completely rid of the virus within six months.

### **Hepatitis B**

Liver disease that may result from infection with HBV and ranges in severity from a mild illness lasting a few weeks to a serious, lifelong illness. Symptoms include tiredness, yellow eyes, pain around the liver area, dark urine and fever. Hepatitis B can be either acute or chronic. The likelihood of acute or chronic infection depends upon the age at which someone becomes infected. The younger a person is when infected with Hepatitis B virus, the greater his or her chance of developing chronic Hepatitis B. Approximately 90 per cent of infected infants will develop chronic infection. The risk goes down as a child gets older.

### **Harassment**

Unwelcome comments or conduct related to a person's sex, race, ethnicity, political opinion, religious belief, or perceived social status, occupational or educational background or family descent, that violate a person's dignity and/or create an intimidating, hostile, degrading or offensive working environment.

### **HIV**

Human Immunodeficiency Virus, a virus that weakens the body's immune system and, if not properly treated, ultimately causes AIDS in most cases.

### **Human rights**

Basic and absolute rights agreed and defined at the international level that each person has because he or she is a human being.

### **Human rights-based approach to disability**

This approach views disability as the result of interaction between individuals with an impairment and a non-inclusive society. Disability results from social, cultural, economic and physical environmental barriers, rather than the person's actual impairment. Most contemporary international policy about disability reflects this social model of disability.

### **Indigenous peoples**

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

**Indirect discrimination**, see **Discrimination**

### **International Labour Organization (ILO)**

The ILO was founded in 1919 to advance social justice and better living conditions throughout the world. In 1946 it became the first specialized agency associated with the United Nations. It is a tripartite organization: Workers' and employers' representatives take part in its work with equal status to that of governments. The number of ILO member States is 183 as of 18 February 2010. The International Labour Office serves as the secretariat to the International Labour Organization.

### **International labour standards**

International agreements such as conventions and recommendations adopted by the International Labour Conference which lay down the minimum provisions or guidelines covering a broad range of matters in the field of employment and labour.

### **Job evaluation, free from gender bias**

A process which allows different jobs to be compared within an organization, company or sector in order to determine appropriate wage rates. This is done by breaking down the duties and skills of jobs into different factors of value (usually skill, effort, responsibility, and working conditions). Job evaluation methods which are free from gender bias assess jobs objectively through criteria which are equally applicable to both female- and male-dominated jobs and ensure that the skills required for jobs typically performed by women, such as manual dexterity or human relations skills, are not undervalued.

### **Mediation**

Assistance provided to disputing parties by an independent third party (the mediator). In mediation the third party is more actively involved than in conciliation and attempts to suggest proposals and methods for actual resolution of the problem so that a solution acceptable to both parties can be found.

### **Medical approach to disability**

The medical model of disability views disability as the result of an impairment that is intrinsic to the individual. The medical model defines the problems associated with disability as inherent to the person who has the impairment. It specifies lists of conditions and a classification of disability based on medical understandings of the body and mind and prioritizes curing or controlling these conditions within the individual.

### **Member States (of the ILO)**

Countries that are members of the ILO and are bound by the terms of the ILO Constitution.

### **Migrant worker**

Person who left his/her place of origin and moved to another destination to work. "International" or "external" or "foreign" migrant workers refer to workers who left their country of origin, crossed a national border and work in another country. "Internal" or "domestic" migrant workers are workers who moved from their place of origin to another place within their country to work.



**National extraction or origin**

Discrimination in employment and occupation based on national extraction covers distinctions made on the basis of a person's place of birth, ancestry or foreign origin. The ground of national extraction includes national ethnic or linguistic minority groups. It often concerns a distinction made between citizens of the same country on the basis of the foreign birth or origins of some of them.

**Observation**

Comment made by the Committee of Experts on the Application of Conventions and Recommendations. Individual observations for specific countries are generally used for serious or long-standing cases of a government's failure to fulfill its obligations under a Convention it has ratified. General observations on specific conventions are issued whenever there is a need for additional guidance.

**Occupational segregation by sex**

Refers to a situation in which women and men are concentrated in different types of jobs and at different levels of activity and employment. Segregation can be either horizontal (when a group is confined to a different, narrower range of occupations than another group) or vertical (when one group works in different, usually lower job grades as compared to another group).

**Placement**

Refers to any operations for the purpose of ensuring or facilitating the employment of persons. Such services are commonly offered by both public and private employment agencies.

**Parental leave**

Is leave granted to either parent in order to care for a child. It generally follows a period of maternity leave, to which the mother is entitled. In some countries, parental leave is granted in the event of adoption as well. Parental leave is different from "paternity leave," which is leave for the father at the time of the birth (or adoption) of his (a) child.

**Pay equity, see also Equal pay (remuneration) for work of equal value**

The same as equal remuneration for work of equal value. The term pay equity underlines that something extra needs to be done to redress the gap and enable women to earn the same as men for work of equal value, while equal remuneration has a stronger connotation with the fundamental and inalienable right of women to earn the same as men for work of equal value.

**Positive action, discrimination, or measures** also known as **Preferential policies, or treatment, see Affirmative action**

**Prejudice, see Bias**

**Prima facie**

Legal term referring to the reversal of the burden of proof. In several jurisdictions, once the complainant or alleged victim has provided evidence of differential treatment, the employer has the burden of proving that his or her actions are not discriminatory but based on objective reasons.

**Protective measures**

Measures aiming to protect specific groups such as children or women. In the case of women, protective measures may be broadly categorized as those aimed at protecting women's reproductive and maternal capacity and those aimed at protecting women because of gender perceptions and stereotypes about their capacities and appropriate roles in society.

- The international consensus is that measures which explicitly or implicitly aim at protecting the reproductive capacity of women such as maternity protection, are vital for the achievement of true equality.
- Protective measures may also include laws which perpetuate a bias against women as the “weaker sex”, and denies them employment opportunities. UN bodies request governments to review such measures regularly to decide whether this protective laws are still necessary.

### **Proxy**

Substitute. In case information on a certain indicator is not available, another variable is selected as alternative measurement. For example, in pay equity studies, age is often a proxy indicator for years of work experience.

### **Public interest litigation**

A case brought before the courts that results in a judgment which may serve the public interest.

### **Race**

Any of several large subdivisions of humankind sharing physical characteristics, e.g. colour of skin, colour and type of hair, shape of eyes and nose.

### **Racial harassment, see Harassment**

### **Ratification**

An act by which a State formally agrees to be legally bound by a Convention’s provisions. It usually requires the approval of the State’s legislative body (or bodies, in the case of federal states), which is in many cases the parliament.

### **Reasonable accommodation**

Necessary and appropriate modification and adjustments to a job or to the workplace not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that people with disabilities, health conditions or specific religious requirements have the same fundamental freedoms as other persons and have access to and can participate and advance in employment and occupation.

### **Recommendation of the ILO**

Guidelines that provide authoritative guidance but are not legally binding and can not be ratified. Recommendations usually supplement conventions and provide more specific guidelines as to how the conventions they accompany may be effectively applied. Some ILO recommendations are not linked to any convention.

### **Recruitment**

Refers to the engagement of a person by or on behalf of an employer or making a commitment to a person to provide him or her with employment. This includes any related arrangements such as seeking for and selecting an employee (e.g. job advertisements, job interviews and entrance exams or tests).

### **Remuneration**

Wages or earnings payable by an employer to an employed person according to a written or unwritten contract of employment for work or services performed or to be performed. Includes not only the basic wages but any additional benefits or emoluments arising out of the worker’s employment paid by the

employer to the worker, directly or indirectly, and in cash or in kind.

**Reversal of the burden of proof**, see **Prima facie**

**Reverse discrimination**, see **Affirmative action**

**Sex discrimination**, or **Gender discrimination**

Any distinction, exclusion or preference based on sex or gender values, norms or stereotypes, which has the effect of nullifying or impairing equality of opportunity and treatment in life and at work.

**Sexual harassment**, see **Harassment**

**Sexual blackmail**

Refers to conduct which makes a job benefit – such as a pay rise, a promotion, or continued employment – conditional on sexual favours, known as “quid pro quo” in legal circles.

**Social model of disability**, see **Human rights-based approach to disability**

**Social origin**

An individual's belonging to a widely recognized “class” in society. This social stratification may take the form of socio-economic origin, a socio-occupational category, a caste, social condition or status, criminal conviction and also household registration if privileges are attached to this registration.

**Special measures of protection or assistance**

Refer to measures which are designed to meet the particular needs of a person or groups of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, require special protection or assistance. These measures are not considered to be discriminatory. They are legitimate, recognized exceptions to the principle of equality of opportunities and treatment as this type of “positive discrimination” is vital to achieve equality in practice. Two main types can be distinguished: protective measures and affirmative action or positive measures.

**Standard**

An international agreement such as a convention or a treaty which lays down the minimum provisions or guidelines on a specific subject.

**Stereotype**

Fixed, standardized and simplified conception or image about specific social groups or types of individuals based on some prior assumptions. For instance, gender stereotypes refer to the ideas that people have on what boys and men, girls and women are capable of or should be doing, for example, women are better housekeepers and men are better leaders. While stereotypes may sometimes be true, they are often proven to be false.

**Trade union**

An association of workers organized to protect and promote their common interests.

**Tripartite/tripartism**

Defining characteristic of the ILO structure, referring to three parties, namely governments, representatives of workers' and employers' organizations. The three parties are represented on the ILO's main bodies and participate in the decision making, including the formulation of international labour standards and supervision of their implementation.

**Temporary special measures**, see **Affirmative action**

**Work of equal value**

Refers to work which may be different in terms of content, but is valued as equal in terms of criteria such as skill, effort, responsibility and working conditions. **Job evaluation** (see above) is commonly used for determining equal value.

**Tripartite consultation**

The ILO is based on the principle of tripartism – dialogue and cooperation between governments, employers, and workers – in the formulation of standards and policies dealing with decent work, that is employment, labour, social protection and social dialogue matters. Through regular tripartite consultations, governments can ensure that ILO standards are formulated, applied and supervised with the participation of employers and workers. ILO standards on tripartite consultation set forth the framework for effective national tripartite consultations. Such consultations can ensure greater cooperation among the social partners and stronger awareness and participation in matters relating to international labour standards, and can lead to better governance and a greater culture of social dialogue on wider social and economic issues.

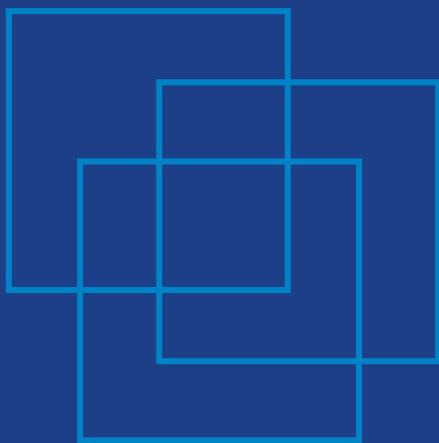
**Xenophobia**

Unreasonable fear, distrust, or hatred of strangers, foreigners or anything perceived as foreign or different.

## Equality and non-discrimination at work in East and South-East Asia: Guide

The principles of equality and non-discrimination are embedded in universal notions of decency, dignity and respect, and are fundamental for promoting social justice and economic development both within and across countries. This guide is part of a training package on equality and non-discrimination at work in East and South-East Asia, issued by the ILO to support the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the region. The training package contains:

- A guide introducing the concepts and approaches to eliminate discrimination and promote equality at work for those working in the fields of law, economics, employment and social policy, enterprise development and workers' rights.
- An exercise and tool book for trainers with different types of learning activities and electronic training tools to facilitate interactive training delivery on equality and non-discrimination in employment and occupation.



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