

## **An International Perspective on Planned and Systematic Approaches to Workplace Equality**

by

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I personally feel that the ILO has rather a lot to learn from you rather than to tell you. The wealth of your experience will help us to assist countries in making progress to achieve workplace equality on a global level.

In recent years Ireland has taken important steps to promote employment equality at various levels that serves in many ways as an example to the international community. The Employment Equality Acts, the Equal Status Acts, the [Framework] Agreement, and the national equality machinery are at the core of this development.

Today's discussion has impressively shown the commitment of all stakeholders to even go further in order to achieve more progress. It is therefore with pleasure that the ILO is ready to make a small contribution to this process by offering an international perspective based on our comparative experience and relevant international labour standards.

### **Promoting equality: a long-standing ILO concern**

The promotion of equality of opportunity and treatment has been of fundamental importance to the ILO since its very creation. The ILO Constitution of 1919 is the first international treaty which refers to the principle of equal remuneration for men and women workers for work of equal value. The Declaration of Philadelphia, which is now a part of the Constitution, has further developed the principle of non-discrimination, fully recognizing its human rights dimension and its fundamental role in achieving social justice at work.

A range of international labour Conventions and Recommendations promote directly or indirectly equality of opportunity and treatment at the workplace, among them, most importantly, the ILO's two fundamental Conventions in this area, the Discrimination (Employment and Occupation) Convention, 1958 (No 111)<sup>1</sup>, ratified by Ireland in 1999<sup>2</sup>,

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<sup>1</sup> Ratified by 162 Member States.

<sup>2</sup> The Committee issued a first direct on C111 request in 2003. The Government is to submit a report on C111 and C100 again this year.

and the Equal Remuneration Convention, 1951 (No. 100)<sup>3</sup>, ratified by Ireland in 1974. However, it has been widely accepted, that in the area of gender equality, these Conventions cannot be effectively implemented without the two other key equality Conventions, the Convention on Workers with Family Responsibilities, 1981 (No.156) and the Convention on Maternity Protection (No. 183), not yet ratified by Ireland.

In 1998, the ILO's the Declaration on Fundamental Principles and Rights at Work reaffirmed the obligation of its Members to promote, respect and realize fundamental principles and rights relating to the eliminating of discrimination in employment and occupation.

In 2003, the ILO issued its Global Report on Time for Equality at Work. The report stressed that the benefits of eliminating discrimination transcend the individual and extend to the economy and society. Workers who enjoy equal treatment and equal opportunities improve the efficient use of human resources and diverse talents. This improves workforce morale and motivation, leading to better labour relations with positive implications for overall productivity.

In June 2004, the 92<sup>nd</sup> Session of the International Labour Conference adopted a Resolution concerning the promotion of gender equality, pay equity and maternity protection. The resolution recalls that nondiscrimination and equal opportunity and treatment in employment and occupation are basic principles of social justice. These are means to an inclusive society, empowerment of women and economic growth for all.

### **Equality is everybody's business**

Equality at work cannot be achieved by governmental action alone. This is recognized in both Conventions Nos. 100 and 111 which emphasize cooperation with workers' and employers' organizations, and other appropriate bodies, such as your *Equality Authority*, to promote observance of the principle of equality of opportunity and treatment in employment and occupation.

Convention No. 111 speaks about promoting the "acceptance" of equality policies which is a clear indication that promotional approaches are of essence if one was to make progress in achieving equality in employment and occupation. Recommendation No. 111, which accompanies Convention No. 111, emphasizes the responsibilities of workers and employers in this regard. It states that "employers should not practice 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." The Recommendation also stresses the importance of taking measures to ensure respect for the principles of equality in collective negotiations and industrial relations. In addition, it is important to mention that the Workers with Family Responsibilities Convention, 1981 (No. 156) explicitly provides that employers' and workers' organisations shall have the right to participate, in devising and applying measures

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<sup>3</sup> Ratified by 162 Member States.

designed to promote equality of opportunity and treatment of workers with family responsibilities.

It goes without saying that the respective roles of the Government, workers' and employers' organizations are different. The State is required to put in place the appropriate legal and policy framework and provide mechanisms and remedies to deal with cases of discrimination. Workers' and employers' organizations are called upon, inter alia, to promote equality within their own structures, to mainstream equality concerns in their agenda, including in the collective bargaining process, and to promote equality awareness and action among their membership.

### **Choosing the right legal and policy framework**

Important decisions are to be made in choosing the right legal and policy framework to ensure and promote equality in employment and occupation. In the European Union, the relevant equality Directives, together with the ILO's standards in this area, constitute important reference points. While EU and ILO have instruments that provide for a certain number of elements to be followed at the national level, in law and in practice, there remains a considerable margin of appreciation in setting up a system for the promotion of equality at work in line with national conditions and circumstances. A national equality policy in accordance with Convention No. 111 must include appropriate legal, practical and other measures that ensure that progress towards equality is being made.

In the ILO, we see that countries' efforts to address discrimination and to promote equality in employment and occupation usually evolve in stages. A first step is to acknowledge the existence of workplace discrimination. Secondly, legislative measures are taken to prohibit direct and indirect discrimination, for example, by introducing a prohibition clause in the Labour Code or adopting anti-discrimination legislation. Prohibitions of discrimination are increasingly backed-up with specific legal consequences (nullity of discriminatory contract clauses, penalties, employer's liability etc). A third stage is reached with the recognition that merely by prohibiting discrimination the principle of equality of opportunity and treatment in employment and occupation cannot be realized in practice.

The ILO's comparative experience shows that particularly in countries where certain progress to greater workplace equality has been made, further progress is, for some reason, not forthcoming. To give two examples:

- (1) In most European countries considerable progress has been made as regard women's participation in employment, but women continue to face difficulties in accessing management positions and wage inequalities between men and women continue to persist;
- (2) Ethnic minorities might be able to enter the labour market, but still remain overrepresented among the unemployed and concentrated in low pay or low-status jobs.

This is why a growing number of countries have moved away from legal approaches exclusively based on the imposition of the negative duty not to discriminate to a broader one encompassing a positive duty to prevent discrimination and promote equality. The ILO supervisory bodies have been welcoming such developments, as they are consistently emphasizing the need to take *proactive measures* to promote equality in all aspects of employment and occupation.

However, pro-active measures require shifting attention from policy and law making to implementation where discrimination actually happens and where promoting equality can make a difference: at the workplace.

### **Promoting workplace measures for equality**

[As already indicated, an increasing number of countries have decided to adopt legislation setting forth positive obligations to prevent discrimination and promote equality.] One of the fundamental questions that arise with regard to regulating workplace measures for equality is how far the State should go in prescribing and regulating workplace measures for equality. Answers to this question obviously will differ from country to country. Solutions for the public sector may be different as those for the private sector. Likewise measures to be taken by small and medium-sized enterprises may be different from those implemented in large enterprises.

#### *Regulatory approaches*

[In some cases, positive obligations are stated *in abstracto*. A recent example is the 2003 Gender Equality Act of Bosnia and Herzegovina which provides that in section 8 that “the employer shall be obliged to undertake effective measures to prevent harassment, sexual harassment and discrimination based on gender at work or in the employment relationship.”]

[In other cases we see that positive duties are regulated in more detail, for instance, a requirement for the employers to adopt, publish and implement sexual harassment policies with a certain content.] Several countries have adopted such approaches more broadly, covering not only sexual harassment but also other workplace matters that have a direct or indirect bearing on the enjoyment of equality of opportunity and treatment in employment and occupation. Let me briefly refer to three well-known examples:

- Under the *Swedish Equal Opportunities Act* employers must annually analyse gender discrimination and adopt an equal opportunities plan in cooperation with workers’ representatives.
- Similarly, the *Australian Equal Opportunity for Women in the Workplace Act* requires private sector companies and certain categories of employers with 100 or more employees to establish a workplace program to remove the barriers to women entering and advancing in their organization. Enterprises must report annually to the Equal Opportunity for Women in the Workplace Agency on the workplace program and its effectiveness. If the Agency finds that the company does not comply with the

Act two sanctions can be imposed: (1) Naming of the organization in Parliament; and (2) ineligibility to tender for government contracts and industry assistance. Both examples (Sweden and Australia) have in common that what is required is not a certain outcome – e.g. 50 per cent of top management is female – but rather a certain process which includes the making of an equality assessment and developing plan to address problems and to take action to move towards greater equality, in consultation and cooperation with workers. A lack of impact of the measures taken as such does not constitute non-compliance.

- The *Canadian Employment Equity Act* goes yet another step further by establishing proportional representation of women, aboriginal peoples, persons with disabilities and members of visible minorities [“designated groups”] as the target to be achieved by workplace measures. The Act requires employers covered by the Act to institute “such positive policies and practices and making such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer's workforce that reflects their representation” in the Canadian workforce or those segments of the Canadian workforce from which the employer may reasonably be expected to draw employees. Under the Act, every employer “shall ensure that its employment equity plan would, if implemented, constitute reasonable progress toward implementing employment equity.” Employment Equity Plans must include numerical targets regarding workforce composition and timetable indicating expected progress towards achieving representativeness. On the procedural side, the Act, inter alia, provides for equity reporting and compliance audits to be undertaken by the Canadian Human Rights Commission.

### *Collective bargaining*

The question of collective bargaining and gender equality has received considerable attention over past years. Experiences in gender equality bargaining can provide valuable insights to orient social partners in the fight against discrimination on grounds other than sex. The provisions to facilitate access to employment contained the *Irish National Agreement (Programme for Prosperity and Fairness)* has been an internationally leading example of collective bargaining to promote workplace equality on other grounds than gender. This has now been replaced by your landmark Sustaining Progress, Social Partnership Agreement, 2003-2005.

In the European Union, the extent and ways in which gender equality concerns are taken into account varies. Some commonalities exist, however, in respect of the issues subject to negotiation. They generally include positive action, parental leave, flexible working hours, maternity leave and breastfeeding provisions, pay equity, and more recently sexual harassment. Public service trade unions rely on gender-neutral evaluation of jobs to reveal equalities in remuneration and to negotiate more persuasively the inclusion of pay equity clauses in collective agreements (see Global Report, para. 324).

Some positive features of collective bargaining as a tool for promoting workplace equality are its flexibility, acceptability, legitimacy, quicker and less costly enforcement

and the fact that it gives voice to the men and women workers concerned. However, certain problems need to be more adequately addressed such as the gap between women's demands and negotiated clauses and the compartmentalization of gender equality within bargaining. Also, experience from different countries has shown that the level of bargaining may affect gender equality. For example, in the area of equal pay, earning gaps tend to be smaller in countries that have centralized collective bargaining and that emphasize egalitarian wage policies in general (e.g. Australia, Norway, Sweden). It tends to be larger in countries that have decentralized market-oriented wage determination with enterprise-level bargaining (e.g. United States). This also means that wage system decentralization is likely to strengthen the effect of job segregation by sex on pay differentials (Global Report, para. 161).

It cannot be over-emphasized that trade unions have an important role to play in the elimination of discrimination and the promotion of equal opportunities at the workplace level. For example they can encourage management to introduce EEO policies in areas where they do not exist and negotiate the extension of existing policies; cooperate with and assist management to formulate and implement the policy; encourage union membership and election of worker' representatives from the under-represented sex, negotiate the inclusion of a non-discriminatory clause in collective agreements, and initiate information campaigns.

### **What workplace policies should address**

Irrespective of whether or not workplace measures are required under the law, are based on collective agreements or adopted and implemented unilaterally by an enterprise, workplace policies should feature a number of substantive and procedural elements.

- To have a significant effect on employment practices, a *clear policy must be issued, implemented and monitored*. All employees and job applicants need to be informed of its contents and management personnel should become immediately associated with the implementation and monitoring of the policy.
- Equal employment goals should be set, and where necessary, *positive measures* to address disadvantaged groups and groups with special needs such as workers with family responsibilities and disabled workers should be taken.
- The setting up of *workplace committees*, composed of management and employee representatives, could be useful to identify and assist in the elimination of work-related difficulties encountered by employees of a particular group or sex.
- The *substantive elements of the policy* should cover non-discrimination and equality of treatment and opportunity with respect to selection and recruitment criteria and procedures, job interviews and advertisements, promotion, transfer and training, and terms and conditions of employment, including probationary periods, evaluations and appraisals, equal benefits and conditions, protection from (sexual) harassment, dismissal, redundancy and lay offs, and equal remuneration for work of equal value. With respect to the latter, a job classification and pay

structures should be based on objective criteria and programmes and other measures should be adopted to implement the principle of equal remuneration.

- Within the workplace, comprehensive *grievance procedures* for discriminatory employment practices should be established and accessible to all employees. In-house monitoring of equal employment opportunity and treatment should involve both management and trade union representatives.

In this context, it is useful to mention some research undertaken in France, the Netherlands, Germany and the UK with respect to workplace equality approaches to attract and retain ethnic minorities in employment. The case studies actually illustrate the need for an “organizational change approach” based, among others, on the belief that improving access and retention to employment for ethnic minorities contributes in some way to avoiding future skills shortages and enhancing competitiveness. Internal practices designed to deliver such an organizational change approach involve, for example, improving competence based recruitment, communication and recruitment channels that search for potential ethnic minority employees; training and awareness around problems of discrimination for managers; addressing issues of cultural bias, difference and expectations; and providing human and financial resources to carry out the change.<sup>4</sup>

### **The challenges of small and medium-sized enterprises**

While a steadily growing number of large companies and multinational enterprises (e.g. in Australia, Canada, United Kingdom, United States, and Europe in general, are adopting diversity management policies and practices, small and medium-sized enterprises (SMEs) have greater reservations about the effectiveness and cost implications of implementing equal opportunity measures. While some SMEs may have an EEO policy in place, they often lack a system to measure the impact of their policy. Nevertheless, ILO research in Australia and the UK reveals interesting findings on the incidence of enterprise practice in combating discrimination and promoting equal opportunities and their effect on productivity in SMEs.

In these countries, the incidence of written EEO policies is relatively high and the research showed that the existence of a formal policy appeared to enhance the chances of SMEs adopting equal opportunities practices. In the UK, equal opportunity SMEs tend to be more productive, more unionized and have fewer low-paid workers and a more diverse workforce relative to other SMEs. Positive action measures are taken on voluntary basis and companies that have adopted equality plans were already successful in a number of ways. In Australia, equal opportunities policies are more evenly spread among SMEs in different sectors. The law is also more demanding regarding the adoption of equality plans which may explain the even spread of these plans. A major finding, however, was that in both countries there was no evidence that an equal opportunity policy had a negative impact on productivity.

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<sup>4</sup> G. SHAW. 2002. *Ethnic Minority Employment through Partnership. Towards a Model of Good Practice*. The Copenhagen Centre, p. 24.

## **Concluding remarks**

Proactive approaches without certain basic legal requirements that ensure systematic and continuing application are less likely to be sustainable.

However, reporting obligations and other mandatory workplace measures need to be carefully designed. They must be based on tripartite support and be seen as a benefit by all actors involved. Incentives such as “Equality Awards” should preferably be combined with disincentives like “naming”. The Public sector must play a model role.

Focusing only on workplace issues in the strict sense will not be enough. For example, broader measures and campaigns to promote gender equality will need to target stereotypes and prejudices regarding gender roles and promote a more equal sharing of work/family responsibilities in order to achieve real progress.

Thank you very much for your attention.