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

Exercise and tool book for trainers



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

Exercise and tool book for trainers

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

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11. Introduction to adult training methodologies
12. Design and planning of a training workshop

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Introduction

This *exercise and tool book for trainers* is part of a *training package on equality and non-discrimination at work in East and South-East Asia*, which was developed and issued by the ILO to support the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the region. The purpose of Convention No. 111 is to protect all persons against discrimination at work. In the East and South-East Asian region, governments in Cambodia (1999), China (2006), Indonesia (1999), the Republic of Korea (1998), 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.

The *training package on equality and non-discrimination at work in East and South-East Asia* includes:

- A *guide* explaining the internationally recognized concepts, standards and approaches to eliminate discrimination and promote equality of opportunity and treatment in employment and occupation.
- An *exercise and tool book for trainers* to facilitate interactive training delivery on equality and non-discrimination at work.

The Exercise and tool book for trainers is designed for organizations and individuals in charge of providing training on equality, non-discrimination and protection of the rights and interests of groups of workers prone to experience employment discrimination. The materials included in the Exercise and tool book for trainers are suitable for addressing discrimination on the grounds of sex, race, national or social origin, disability and health condition or any other ground prohibited by national or international legislation.

The *exercise and tool book* contains four parts:

- I. *Guide to successful equality training* provides practical guidance and tips for trainers on planning and implementing participatory training.
- II. *Exercises* contains 42 action-oriented exercises introducing key concepts and strategies to promote equality and non-discrimination in employment and occupation. The total duration of exercises is around 25 hours. Trainers can select suitable exercises and make a training agenda tailored to the specific needs and interests of their training audience.
- III. *Training aids* includes practical checklists and tools to support trainers and training organizers in designing, organizing and conducting training on equality and non-discrimination at work. The training aids include model training programmes illustrating how the exercises can be combined in training for different audiences, such as trainers, labour officials, employers or workers and their organizations, or zooming in on specific grounds of discrimination like sex and gender, national or social origin or health status.
- IV. *Electronic training tools* on DVD provides slide presentations for introducing or concluding sessions or exercises, as well as video presentations for use during the sessions or breaks.

I. Guide to successful equality training

Promotion of equality and elimination of discrimination in employment and occupation requires action by many actors in the labour market. The key players include government officials in charge of labour and social affairs, education and economic and national planning, representatives of employers' and workers' organizations, the judiciary, businesses, as well as various non-governmental organizations and associations representing the interests of specific groups. Extensive advocacy, capacity building and knowledge sharing are needed to change mindsets and to enable these key stakeholders to play their part in promoting equality.

Trainers on equality and non-discrimination need to tailor the training contents to the specific needs of the audience in question. This section provides guidelines and tips for planning and delivering successful training on equality and non-discrimination in employment and occupation to adult audiences. It introduces the following issues:

- What makes an effective adult training?
- What makes a good trainer?
- What and who to train?
- How to promote gender equality in training?
- How to plan a training workshop?
- How to organize a training workshop?
- How to measure the effectiveness of training?

1. What makes an effective adult training?

Respect and involve your audience

Adults learn in different ways than young learners. Capacity building of adult professionals should always build upon their existing experience and expertise. Involve all participants in sharing their experiences and reflection on the application of newly introduced concepts and strategies in their daily work. For this purpose adult training is most effective when participatory training methods are used.

It is useful to remember that adults:

- Come to training with established values, beliefs and opinions based on years of experience.
- Compare new knowledge and information with previously learned experiences.
- Tend to have a problem-solving orientation to learning. They relate the training to their own life and work, and find it most useful if they can use it immediately.
- Have a deep need to be self-directing.
- Have pride, are sensitive to treatment and need to be given respect.
- Need a break frequently as adults' style and pace of learning may have changed. They tend to concentrate less than children because the subjects are not completely new to them.
- Finally, individual characteristics and differences among people increase with age.

Keeping the above points in mind makes a good basis for planning and delivering a successful adult training workshop!

Select the right training methodology

Different people learn in different ways and at different rates. Some learn best by reading, others by listening and again others by involvement in activities. In adult training it is often most useful to combine different training methods to take the needs of different learners into account. Regardless of each trainer's personal style, good communication and free exchange of information through a process of open dialogue should be at the heart of all training and human resources development.

Many methods of instruction can be used during training. Traditional teaching most frequently relies on **lectures**, often in combination with visual aids and question and answer (Q&A) sessions. This type of training is content rich and strong in the cognitive learning domain. Lectures are most effective when the trainer is both an expert in the technical subject and able to deliver with a dynamic presentation style. When planning lectures it is however important to remember that the attention span of adult learners generally starts to waver after 20 to 30 minutes. For this reason, lectures need to be kept short and complemented with other methods to make learning more effective.

Participatory learning or dialogue education covers a range of **interactive methods** varying from brainstorming ideas, to discussion and analysis of case studies, to doing role-plays or games and analyzing their outcome. These methods are especially suitable for adult education as they use the learners' own experience as a starting point and engage them to feel, think and act by applying the new content in their own context.

No single method is better than the others. Each method has advantages and disadvantages and is appropriate at different stages of the training. It is best to use a combination of training methods and to alter the tempo of the training to keep trainees interested and to achieve the learning objective(s) in a systematic and logical flow.

 The example training programmes on equality and non-discrimination at work in Training aid 4 show how to combine presentations, practical exercises and Q&A sessions in training workshop agendas for different audiences.



Experiential learning cycle

Participatory training can also be described as “learning by doing” or “experiential learning.” Action and “experiencing” by participants form the starting point of their learning. The “theory” provided by the trainer in the form of lectures and presentations is kept brief: a short introduction of the session aims and instructions for the activity at the start of a session and a summary of the key learning points at the end of a session. The group first participates in an action by discussing a case study or doing a role-play or other practical exercise. Secondly, they share their feelings and observations on what they did. Then they move to the third step of analyzing the experience and the fourth step of drawing learning points and conclusions from the exercise with the trainer. The last step takes place after the training when participants apply what they have learned in their own situation. See the Figure below for the process.

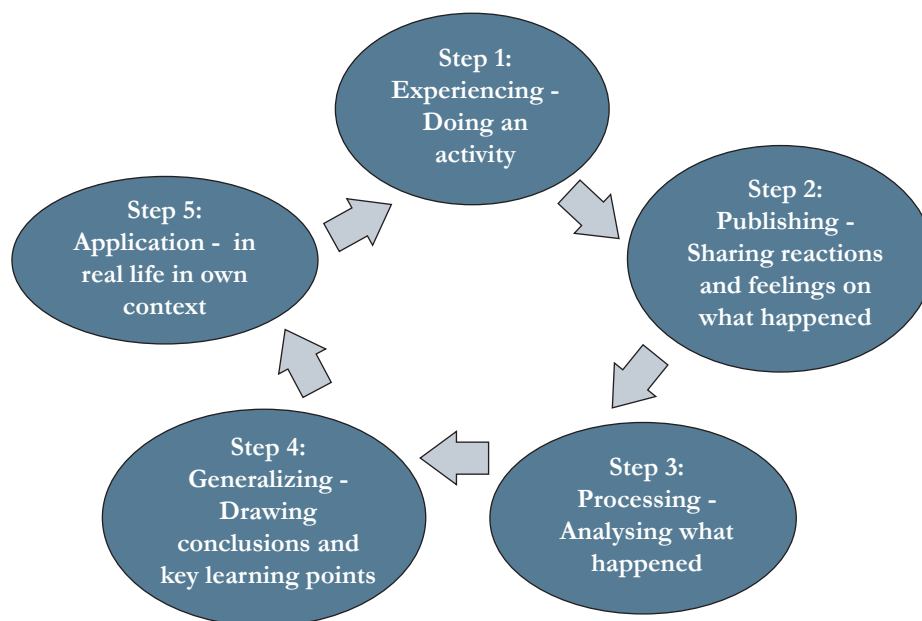
“Learning by doing” methods have powerful learning effects because participants use all their skills and learn at many levels. During the ‘doing’, when playing a game or solving a riddle or problem, participants use their “mind”, “heart” and “body,” that is, all their intellectual, emotional and acting skills.

Key content and process of some main participatory methods are:

- Brainstorming is about discovering and listing new ideas, comments and opinions. It can be done in smaller or larger groups. The main aim is to generate and create ideas in a free flow without judgments.
- Buzz groups of two to three persons facilitate exchange of ideas, feelings, opinions and analysis allowing everybody to express their views in a small setting.
- Role-plays enable participants to act out an experience and solve a problem as in real life. They can increase self-confidence and have an empowering effect on the role-players if done voluntarily by the players and facilitated well by trainers.
- Case studies involve the presentation and analysis of a scenario or series of events, such as in a court case, that has happened or could happen, resulting in defining an opinion on how to go about solving a problem and developing recommendations.

For training that emphasizes active participation and open dialogue, it is essential that trainers use a style of training that is consistent with the values of participation. These comprise an open-minded and sharing attitude, respect for others, interest in diverse experiences, and willingness to change and engage in a critical review of opinions of self and others.

Figure 1. Experiential learning cycle



2. What makes a good trainer?

The roles of the trainer are to teach and share their knowledge and skills, to facilitate the learning process of the participants, and to act as role model and change agent. A good trainer has both teaching and facilitation skills, expertise on the subject and capacity to create an enabling and safe training environment.

Trainers do not need to be ‘experts’ in all topics discussed during the training workshop. It is often useful to invite external **resource persons** to join the sessions on specific subjects. When external experts are invited it is however important that the trainer remains in charge of the session. Ensure that enough time is reserved for practical exercises which allow participants to apply what they learned to their own work, and interaction between the participants and the external specialist, e.g. in the form of asking questions.

Trainers need good communication skills. They need to know how to:

- Listen well.
- Use easy language and vocabulary that participants can understand well.
- Use non-verbal cues such as appropriate body language (e.g., how to stand and move around the room) and make eye contact with participants.
- Be fair and respectful to participants.
- Encourage diverse points of view and participation from everybody.
- Be alert, notice and respond to participants’ changing needs.
- Take control and let go as necessary.

Trainers also need to have good **organizational skills**. Successful training requires careful preparation, organization and time management.



The role of the trainer at the different stages of the experiential learning cycle:

- At the start of training – both in the training as a whole and in each session – the trainer takes control because participants are unfamiliar with the training contents and methods, and the group dynamics are not yet formed. Some participants may feel uncertain, apprehensive or shy about participating. At this stage the trainer’s role is to direct the training and make participants feel at ease by creating a friendly and supportive learning environment.
- When the participants are comfortable, the trainer stimulates more active participation and encourages them to take the lead. At this stage, the trainer is mainly a facilitator.
- After participants have carried out a task, contributed and shared their experience, the facilitator returns to the trainer’s role to help them switch from action to reflection and analysis, and finally, to draw the key learning points for application in real life.

The trainer also has a “**sign posting**” role, showing the participants how to learn and give them directions on where to go. In a knowledge economy and organization, participants need to learn how to find new information by themselves.

3. What and who to train?

Assess training needs

To ensure the relevance of training it is important to tailor the training contents and methodology to suit the specific needs of each training audience. For this reason the first step in planning a training workshop is to agree on what you want to achieve, who you want to train and on what, and for what purpose. The key questions to ask when deciding on the training strategy and assessing the needs of the target audience include:

- How does training on equality and non-discrimination fit into the larger objectives and mandate of the organization(s) and what are the priorities?
- What are the end results expected from the trainees after the training?
- Who will benefit most from the training, which organizations or persons will most likely actually use the training and take further action measures?
- What are the skills and competencies of the trainees before the training?
- Do the training organizers and trainers have experience with organizing similar types of training? What are their strong and weak points and how can these be built on or overcome respectively in future training?
- What in-house capacity on financial education and gender equality promotion exists and what expertise and resources are required from the outside?

After answering the above questions it is useful to prepare a one-page information or strategy note with a summary of the rationale for training a specific audience, their training needs, and the objectives, subjects and expected results of the training. This note is useful for resource mobilization and further planning. The training designer can also use the note to validate the identified needs, objectives and training subjects with the organizations initiating the training to ensure that all organizers agree on them.

 See Training aid 1. Information note – Equality and non-discrimination at work in East and South-East Asia: Training package and 2. Checklist for trainers: Training preparation.

Select the right participants

After formulating the training strategy and assessing the training needs, the next step is to decide on the selection criteria that the nominating organizations should apply and on the profile of participants to be nominated. Be clear and specific about the selection criteria, profile and number of nominees to nominating organizations. If possible, ask for a number of candidates so that the most suitable candidates can be selected on the basis of individual merit and the desirable group composition during the training.

It is advisable to ensure a balanced representation among participants in terms of sex, age, type of organization and other criteria, as appropriate, such as ethnicity, social or national origin or health status, cultural, religious or political background. This is to allow for effective voice and representation of views and perspectives of all and to avoid domination of one group over the other in the training:

- Generally the male/female ratio of representation should range between 40 and 60 per cent in mixed groups to allow for sufficient voice and balanced representation of both sexes.
- Ensure a representation rate of at least one-third of participants from the under-represented, minority or disadvantaged group. Otherwise it will be difficult for them to have sufficient voice.
- Avoid tokenism, in other words, inviting only one or two persons of the under-represented group to make it look as if the training provides “equal opportunities and chances” for all.
- If capacity building among the under-represented group is part of the training aims and strategy, set aside more training places for them; for example, two-thirds women and one-third men when the capacity of women needs to be built to redress the effects of (past) discrimination or for role-model purposes.

4. How to promote gender equality in training?

Selection of trainees and trainers

- Try to attract both women and men trainees in sufficient numbers. Consider who needs to be trained as a matter of priority and set targets for the participation and representation of women among the training team and the participants.
- Be sensitive to practical obstacles to women's participation, such as their family responsibilities or concern for personal safety and security. Provide practical and logistical arrangements to facilitate their participation, such as selecting times and training venues that are convenient, and ensuring safe transportation, venues and accommodation.
- Decide whether male and female participants can be trained together or require separate training. If separate trainings are needed for women-only and men-only groups consider whether these trainings could be followed by mixed-sex training.

Training content

- Identify participants' perspectives on gender equality promotion at the early start of the training by carrying out a quick scan of participants' gender perspectives and set the scene for effective gender training in an attractive and non-threatening way.
- Avoid creating a divide between women and men, for example, do not stereotype all women as victims and all men as aggressors as this is misleading and not true.
- Resist making sweeping generalizations and ensure respect for everybody. Draw out the women's perspective and respect the men's perspective, and vice versa as appropriate.
- Design and use training materials that are relevant to the day-to-day experience of female and male participants and highlight gender problems from the perspective of women and men. Use language that addresses and appeals to both sexes.
- Address concerns about different forms of discrimination simultaneously (i.e. sex, age, race, ethnicity, social or national origin and migrant status), as it is not convincing and ineffective to address only gender inequalities but not other forms of inequalities that workers may face on the grounds of their race, ethnicity, origin or health status.

Training process

- Ensure enough 'speaking time' for both sexes and voice for the minority. Men are generally more used to public speaking and tend to talk longer. If this happens, let the speaker finish but ask him to be brief. Women are often shy and need to be encouraged to speak. However, when a woman is too talkative, the same rule applies.
- Actively involve men in gender discussions.
- Do not assume that all women have the same understanding of gender issues. Keep in mind that women are not a homogenous group and will usually be more loyal to men of their own socio-economic or religious and cultural group, than to women from other backgrounds.
- Address sexist jokes proactively. If men or women feel threatened by the subject they may start to make sexist jokes, use derogatory language about women (or men). It is important to make it understood (politely but firmly) that disrespectful behaviour is not tolerated.

 See Training aid 3. Checklist: How to address the gender dimension in training on equality and non-discrimination.

5. How to plan a training workshop?

Design the training agenda

The design of the training programme will differ upon the priorities and resources of the training organizers, the training objectives and the size, make-up and needs of the target groups.

 See Training aid 4. Example training programmes on equality and non-discrimination at work for training programmes for various audiences. These training programmes are examples, **not blueprints** and need to be adapted and tailor made to the needs of the participants and the situation at hand for every training.

 See also 'Training aid 5. Checklist for organizers: Planning of training.



Tips on time management

- Time the training in a period that suits the trainees.
- Allocate an appropriate amount of time for each session and each activity, and provide a break every 1.5 to 2 hours.
- Set a realistic timetable for the training. Effective learning is intensive, so keep the total training hours to six hours per day (generally four sessions of 90 minutes each spread over the day) and allow for sufficient breaks. This enables participants to informally discuss the training with each other.
- Stick to the time. Make sure that a lecture is not longer than 20-30 minutes maximum. Cut lectures short if necessary. If you know you tend to speak longer than planned, set a strict time limit for yourself and use your watch for each presentation.
- Provide for a variety of training methods in each session because people concentrate better for longer periods if they can participate actively. Ask open questions during every presentation.
- The time of day also has effects on the concentration of your participants. Generally, people are fresh and ready to learn in the morning and are less concentrated right after lunch.
- If the time is up before you can finish an active session or a lively discussion, ask for a collective decision from the participants whether and for how long to continue. Do not keep people hungry because they will not learn on an empty stomach.

Plan your training sessions

Every trainer needs to prepare a session guide for each training session. A session guide is like a cooking recipe: It tells you what training content and materials you need at every step of the training process and for how long.

When preparing the training content, materials and process, it is helpful to ask: “**What participants must know** and could know?” It is always tempting for trainers to give participants as much information as possible. However, people cannot absorb too much information and will stop listening if lectures are too long. Smart trainers construct their session plan around what participants **must know** and build up the training step by step in a logical way.

There are three basic components in a typical training session as follows:

1. **Welcome, introduction and objectives** – Always briefly explain the objectives for each session to participants.
2. **Actual training:**
 - Select an exercise to start or do during each session. Keep in mind that after two weeks people generally tend to remember 20 per cent of what they hear, 50 per cent of what they hear and see, and 90 per cent of what they say and do.
 - Ensure that all have equal opportunities to participate in the process. Gently encourage shy and quiet participants in the group to participate and tell those who are too dominant to give others opportunity to speak.
3. **Conclusion** – Always finish a session with one to three key messages and start every session with a brief summary of the previous session.

Prepare your training materials

Every trainer needs to prepare for every session beforehand. The action-based exercises require knowledge about the training content and preparation of the training aids which usually include a wide range of things, from basic stationery like pens, papers, markers, scissors and tape, to handouts, case studies, pictures and other visual aids. Sometimes it requires preparing resource persons to give a specific technical input.

 See Exercises 1-42 in this book. The exercises include both instructions for trainers as well as handouts for participants. Use the training materials or adapt them to suit the needs of your target audience.

Before each training session, consider other details such as:

- Are the language, types and quality of the visual aids appropriate for everybody?
- Do you have enough copies of all training materials for all participants?
- Make sure you have a few alternative exercises in reserve in case the need arises to change the training programme.

6. How to organize a training workshop?

Training venue

Choosing an adequate training location is important because the type and set-up of the room(s) affect your participants' ability to learn. Action-oriented and experiential learning needs physical space to move around, because it involves “talking” and “doing.”

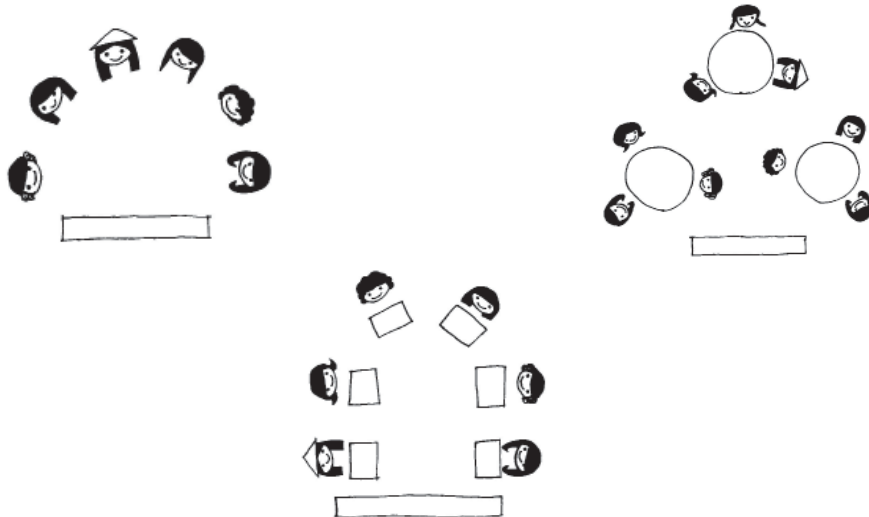
When selecting the training venue, you should:

- Find a venue that is convenient for participants, for example, is it safe for female participants?
- Visit the training venue **in advance** to make sure that it is suitable for the types of training activities you are planning to do. Ensure that the space is large enough to accommodate all participants. If not, find a better alternative.
- Walk around the training venue and inside the training room(s) before the training, sit in various seats to check the view and change the seating arrangements if necessary.
- Allow for enough space to enable participants to move around and for easy repositioning of chairs, tables or mats.
- Check and try to eliminate possible distractions and make sure:
 - The training place is away from noise and traffic.
 - There is no blockage of view: Everyone can see everyone else in the room.

- The sound system works and persons sitting the farthest from the trainer and one another can hear the trainer and each other talking.

Seating arrangements

Regarding the seating arrangements, the standard class room arrangement of chairs and tables in a row is not suitable for this type of training. Seating participants in smaller circles around tables or in a U-shape arrangement is recommended.



7. How to measure the effectiveness of training?

Measure the impact of your training

It can be useful to measure changes in the knowledge, skills and attitudes of participants by asking them to fill in a questionnaire before and after the training. 📖 See Training aid 6. Pre- and post-questionnaire.

Evaluations should be done during and at the end of every training workshop. A workshop that spans over several days should include daily evaluations as well as verbal and written evaluation exercises at the end of the course.

- A daily evaluation is an immediate and simple assessment of participant's feelings and views about the training at the end of each day to check whether the training is on the right track and to get ideas for fine-tuning the training for the next sessions.
- An end-of-the course evaluation is more comprehensive. It seeks participants' views on their satisfaction with the training, what they have learned, their reactions on the training contents and process in the entire course, and seeks their suggestions to improve future training workshops on equality and non-discrimination.

📖 See Training aid 7. Evaluation form and Exercise 42. Workshop evaluation.

Report on results achieved

Writing a report about the training is usually part of every training to serve as a reference for future action, for the record, for superiors or for donors. Preparing and writing a report is usually a team effort. To ensure that the work will be done, clearly identify the persons who will take responsibilities for what. The process of report writing involves the following steps:

1. **Collect information:** Keep notes about the training and summarize group work outcomes during the training.
2. **Organize the information:** Decide how to organize the information: by topic, objective or day of the workshop and make an initial outline of the report.
3. **Analyze the information:** Identify key issues in the workshop, participants' learning process (how they learned and what they were particularly or least interested in), key findings and lessons learned.
4. **Write-up the report:** A good report should be clear and concise and cover only important information. Writing in chronological order by listing all the workshop activities and who did them is not recommended since this results in very long reports.
5. **Check and review the report:** Once drafted, the report should be checked, reviewed (and usually edited for better reading) by one of the trainers to make sure that the information is correct and no important information is left out.

II. Exercises

1. Exercises to start a training workshop

Exercise 1. Jigsaw puzzle: Self introduction exercise (Icebreaker)

Instructions for trainers



Aim – To allow participants to introduce themselves and to break the ice at the start of the training.



Time – 30 minutes.



Seating arrangements – Small group seating at round tables with space to stand and walk around the training room.



Training materials and preparation – Prepare two-piece jigsaw puzzles with as many pieces as there are people in the training, including participants, trainers and organizers. For example, if there are 20 participants and two trainers, prepare 22 pieces of jigsaw pieces that will make 11 pictures. Alternatively, pairs of different coloured candies or similar items can be used.



Steps.

- Walk around the room with the bag of jigsaws or candies and ask each person to take one piece. When all in the room have a piece, ask everyone to get up and find their “other half” with the matching piece of their jigsaw or candy. If the time does not allow forming the pairs by using the jigsaw puzzle pieces, divide people into pairs by asking them to form a pair with their neighbour.
- When the pairs are formed ask them to interview each other and to introduce themselves to one another by giving their name, the organization they represent and/or the province or city they come from. Give the pairs five minutes in total for discussion.
- 💡 If the training has a specific focus on gender equality promotion, ask participants to also imagine themselves in the role of the opposite sex. Ask women to complete the sentence: “If I were a man, I could/would ...”; and ask men to complete the sentence: If I were a woman, I could/would ...” The outcome of these discussions in the round of introductions will give a good indication of the levels of gender awareness in the group.
- After five minutes, ask each participant to briefly introduce his/her partner in plenary.

Exercise 2. Inventory of participants' expectations and contributions



Aim – To find out what participants expect from the training course and what they can contribute.



Time – 10 minutes.



Training materials and preparation – Prepare stickers or pieces of paper in two colours (for example blue and yellow) and a marker pen for each participant.



Steps.

- Share the objectives of the exercise with the participants.
- Give each participant pieces of paper in two different colours and a marker pen. Tell them that one colour, for example, **yellow**, stands for expectations and the other colour, for example, **blue**, stands for contributions. Ask them to write:
 - Things they hope or expect to achieve during the training on a piece of yellow paper
 - Things they can contribute or share with others on a piece of blue paper. Their expectations and contributions can relate to content, training process, meeting people or any other aspect of the training.
- Ask the participants to write clearly in big letters and be clear and specific. They do not need to write their names on the cards, and trainers may show examples while explaining as needed. Give the participants about five minutes to complete their cards.
- The trainers start collecting the cards as soon as they are ready and cluster them by topic on a flipchart, board or wall space. The cards should be left on the wall for the participants and trainers to read during the training workshop. They can be used during the last session to review with participants to what extent the training aims were met.

2. Exercises to initiate discussion on discrimination

2.1 Exercises to discuss stereotypes

Exercise 3. Be aware of your own bias

Instructions for trainers¹



Aim - To recognize that personal biases may lead to discrimination of certain groups.



Time - 20 minutes.



Training materials and preparation – Photocopy the worksheet, one copy for each participant. Fold the worksheets in half to make sure that participants will not start reading before instructed to do so.



Steps.

- Tell participants that they will receive a sheet of paper with characterizations of 12 persons, and they will be asked to describe each of these persons. Explain the rules of writing the descriptions on the worksheet:
 - Write down the first characteristics that come to your mind regarding each person.
 - Take only five seconds to come up with your response. If you cannot think of anything by then, move on to the next category.
 - Your first thought can be about a positive or a negative characteristic.
 - Resist the urge to edit or second-guess your response.
- Explain to participants that they should not hesitate when writing the descriptions. They will not be asked to hand in their worksheets or to show their list to anybody. They should also not jump to conclusions about what their responses mean and try to control them.
- Hand out the folded worksheets to participants. Make sure nobody is opening the folded paper before you allow them to start. When everybody has received a worksheet, repeat the instructions shortly. Then ask people to open their sheet and START. Give participants maximum five minutes to fill in the whole worksheet.
- After participants have finished writing down their answers start a discussion on the exercise:
 - Point out certain characters in the worksheet, e.g. “a person in a wheelchair” or “a 50-year old man in an expensive business suit,” and ask some volunteers to share how they described these persons, and what jobs are suitable for them.
 - Ask participants also to comment on each other’s answers. When you get conflicting descriptions on abilities of certain characters, encourage further discussion on whether we actually can make any assumptions based on the information given on the worksheet.
 - Point to the “single mother with children” and the “single father with children” and ask participants whether they assigned these characters the same or different kinds of abilities, and the same or different occupations. Ask participants to reflect on why their responses were the same or different.

¹ Adapted from S. Thiederman: *Making diversity work: Seven steps for defeating bias in the workplace* (Kaplan Publishing, 2008) Revised updated edition.

- When no new points are emerging, end the discussion by pointing out that in this exercise the best answer is no answer. In other words, leaving the worksheet blank can be considered the best answer. Not being able to quickly describe a person based on just one personal characteristic due to membership of a group could indicate that the person filling in the sheet is less likely to hold a bias against certain groups of people, or is more conscious about his or her bias.
- Round-up the exercise with the following conclusions:
 - All human beings have biases or prejudices. Having bias is natural, as it enables human beings to quickly jump to conclusions when faced with new information.
 - Biases become problematic when we allow them to influence our thinking so that we negatively judge persons not on their actual abilities but on preconceived ideas about the group they belong to. If allowed to go unchecked, bias easily leads to discrimination in the society and labour market.
 - It is important to recognize our natural bias and learn to control it. The point of this exercise is not only to become aware of our specific responses, but also to introduce the habit of “watching” our first thoughts, and “checking” whether we disadvantage an individual or group without objective reason. The goal is to make this “watch-and-check” eventually become automatic.

Exercise 3. Be aware of your own bias



Handout. Exercise worksheet

Person	What is this person like? What are his/her personal characteristics and abilities?	What would be suitable jobs for this person?
1. A person in a wheelchair		
2. An ethnic minority man wearing a traditional outfit		
3. A 50-year old man in an expensive business suit		
4. A single mother with three children		
5. A construction worker wearing a helmet		
6. A young, attractive woman		
7. A young, attractive woman		
8. A woman wearing a Muslim headscarf		
9. An immigrant		
10. A single father with three children		
11. A young man wearing a T-shirt with the slogan: "Stop the spread of HIV/AIDS"		
12. A woman who is 1.90 m tall and weighs at least a 100 kg		

Exercise 4. Gender stereotypes: Debate

Instructions for trainers



Aim – To reflect on the difference between opinions/stereotypes and facts about gender equality and non-discrimination.



Time – 20 minutes.



Steps.

- Distribute **Handout 1** to participants and introduce the aims of the exercise. Explain that this exercise helps in reflecting on different ideas and views about the roles, characteristics, capacities and likely behaviour of women and men. Tell participants that you will read out a few statements and ask whether these are right or wrong.
- Read out the first statement in plenary and ask who thinks this is right and who thinks this is wrong, and why they have the view that they have. After a few responses, provide the right answer, as given in the responses in Handout 2. Do the same for the other three statements. In the end, distribute **Handout 2** to participants.
- After going through the questions round up the discussion as follows:
 - Everybody has the right to their own opinion. However, there is a difference between opinions and facts. Opinions and prejudices about the roles of men and women and what they can and cannot do are common in all societies, but they are often not based on facts. Common examples are: “Women are weak and not so good workers and men are better leaders.” While such stereotypes may sometimes be true they are often proven false. They are harmful because they help to create and perpetuate gender inequalities and discrimination.
 - Promotion of equality and combating discrimination requires legislation and effective policies. We need to find out what are the facts, what are harmful opinions and what aspirations have been set by law to promote a fair, just and equal workplace for all workers.

Exercise 4. Gender stereotypes: Debate



Handout 1. Questions

Are the following statements right or wrong?

1. “Gender equality at work means that women and men participate in the labour market in jobs that are most suitable to the physical and psychological characteristics of each sex.”
2. “Women are vulnerable, and for that reason need to be protected from hard and dangerous jobs such as working at night, underground and at high heights.”
3. “Both women and men can be victims of sex discrimination.”
4. “Women are less suitable for leadership positions in the society, because they cannot dedicate themselves 100 per cent to a job due to their family responsibilities.”

Exercise 4. Gender stereotypes: Debate



Handout 2. Responses

1. “Gender equality at work means that women and men participate in the labour market in jobs that are most suitable to the physical and psychological characteristics of each sex.”
 - **Wrong!** Gender equality means that both women and men have equal access to any job of their own choice on the basis of their individual suitability and merit, and enjoy equal treatment at work.
2. “Women are vulnerable, and for that reason need to be protected from hard and dangerous jobs such as working at night, underground and at high heights.”
 - **Wrong!** Both women and men need protection against occupational hazards. Protective measures targeting only women workers may discriminate both women (exclusion from certain job opportunities) and men (less protection from occupational hazards).
 - **Note:** Pregnant and nursing women do need special protection.
3. “Both women and men can be victims of sex discrimination.”
 - **Right!** Both women and men may face sex discrimination in the labour market. For example, job segregation limits the choice of employment for both men and women.
 - **Example:** In China, companies prefer to employ women for textile work or as travel guides. Men are excluded from opportunity, that is, discriminated.
4. “Women are less suitable for leadership positions in the society, because they cannot dedicate themselves 100 per cent to a job due to their family responsibilities.”
 - **Wrong!** Suitability for leadership positions depends on individual characteristics, experience, ability and diligence of the person, not on his or her sex.
 - **Note:** Equal sharing of family responsibilities between women and men is the key to realizing equality for women in employment and occupation.

Exercise 5. Different approaches to multiculturalism: Game

Instructions for trainers



Aim - To recognize the importance of respecting cultural diversity and to discuss different approaches to multiculturalism.



Time – 15 minutes.



Room arrangement – Make space in the room so participants can stand in one large circle and move around.



Training materials and preparation – Write names of fruit salad ingredients in your country on coloured cards: One ingredient per card and three to four cards of the same colour for the same ingredient, for example, mango, papaya, cucumber, pineapple, bean sprouts, salt and pepper for a group of 21 to 28 people. Make sure you have as many cards as there are participants in the game.



Steps.

Step 1 – Game – 10 minutes

- Share the aims of the exercise with participants. Give each participant one card and ask them to stand in a large circle. Ask everybody to put their card on the floor, and make sure that persons with the same ingredient are not standing next to one another.
- Announce the rules of the game:
 - The facilitator will call out the names of the ingredients written on the cards. When the name of an ingredient is called, all the persons standing behind a card with that name must run and change places with one another.
 - When the facilitator calls “rujak” (fruitsalad), then everybody must change places. However, the “mangos” can only go to a “mango” place and “pineapples” can only go to a “pineapple” place etc. The participants cannot change the type of fruit or ingredient they have, but must change place with another person who has the same ingredient.
- Start the game by calling out the first ingredient. Repeat the same procedure. Finish when everybody has changed places at least a few times.

Step 2 – Discussion – 5 minutes

- After finishing the game ask the participants whether any of them can guess why this exercise is used to initiate discussion on equality and multicultural societies. Take a few guesses and facilitate discussion before explaining.

- Explain the rationale of the exercise:
 - Rujak or rojak is a fruit salad popular in Indonesia, Malaysia and Singapore. Apart from being a local favorite dish, rujak is also commonly used as a metaphor for a multicultural and multi-ethnic society. Singaporeans and Malaysians call their societies with people of Malay, Chinese, Indian and many other ethnic origins “a rojak society”.
 - Similar metaphors are used elsewhere to describe a multicultural society. For example, in the United States (US) over the past 40 years there has been a shift from the traditional “melting pot” approach to a “salad bowl” approach to multiculturalism. The US has traditionally referred to its society as a large melting pot, where all immigrant groups are melted together and all people become primarily “American.” This approach has a nationalist flavour and it emphasizes assimilation, that is, making the heterogeneous elements become more homogenous.
 - The melting pot approach has been strongly criticized in the US from 1970s onwards as multiculturalists consider that it hurts minority cultures because the majority culture tends to dominate and be the norm.
 - The multiculturalists suggested a new metaphor for a multicultural society, the salad bowl (or a “mosaic”). This approach values cultural differences in the society and seeks to preserve them. In this approach, the different cultural elements are mixed together, but they remain distinct and differences are respected.
- Give the round-up points as follows:
 - Like in the wider society, respect for each other’s differences is an essential precondition for establishing good working relationships and a healthy work environment.
 - Respect for cultural diversity is an essential element for promoting ethnic, gender and religious equality in employment and occupation. Conduct such as giving preference to persons belonging to one’s own ethnic group or telling racist or sexist jokes should never be tolerated at the workplace.

Exercise 6. Identifying discrimination: Group work

Instructions for trainers



Aim – To recognize workplace discrimination on various grounds and discuss the definition of discrimination as given in Convention No. 111.



Time – 30-40 minutes.



Seating arrangements – Small group seating.



Training materials – Prepare flipchart papers and marker pens for each group.



Steps.

Step 1 – Group work – 20-30 minutes

- Share the aims of the exercise and split participants into small working groups by “ground of discrimination,” **sex, ethnicity/race/colour, religion, social origin, and disability/health condition.**
- Give the groups five minutes to discuss as follows:
 - In your group, give two to three examples of discrimination that your target group may encounter at the workplace. Describe situations that are most commonly faced by these workers, and the effects. If possible, distinguish between visible and hidden forms of discrimination.
 - List one or more measures taken by your organizations to combat such discrimination. If your organizations have never addressed workplace discrimination, brainstorm on which measures could be taken.
 - Write the results of discussion on the flipchart provided to each group.
- After the groups have finished discussion, ask one person from each group to present their views.
- **Optional:** If you do not have much time, you can pose the questions in plenary and elicit ideas from participants by asking them to write examples on coloured cards, which you will post on a flip chart for discussion.

Step 2 – Presentation of key concepts and discussion – 10 minutes

- Explain the key concepts related to discrimination and equality:
 - Referring to examples raised by participants clarify the definition of discrimination under Convention No. 111, emphasizing the three types of action that constitute discrimination.



Discrimination is:

1. **Distinction** in treatment ...
 - E.g. different pay for women and men for work of equal value.
2. **Exclusion** from an opportunity...
 - E.g. rejecting a job applicant who has a health condition that does not impair his/her ability to perform the job.
3. **Preference** given...
 - E.g. giving preference to persons belonging to certain ethnic groups in recruitment of civil servants.

...on the basis of race, colour, sex, religion, political opinion, social origin or national extraction, or other personal characteristics...

...that **impairs equality** of opportunity and treatment at work.

- Recall that the Convention does not only call for action against discrimination but requires promotional action towards **equal opportunity and treatment at work**: the other side of the same coin (= exactly the opposite of discrimination):



Equality of opportunity and treatment at work means:

Decisions at all levels of the work cycle (from access to training and employment to retirement) are made on the basis of the inherent job requirements related to:

- Qualifications, skills and work experience.
- Responsibility.
- Effort.
- Working conditions.

.... **without interference of discriminatory bias and assumptions** based on the applicant's/worker's sex, race/ethnicity/colour, religion, political opinion, social origin or national extraction.

- Ask participants for further comments or questions, and round up the discussion.

2.2 Role-plays to experience discrimination

Exercise 7. “Do I have a chance to get the job?” Role-play

Instructions for trainers



Aims – To experience discrimination in access to employment, and to discuss how discrimination can cause human and financial losses to both employers and workers.



Time – 20-40 minutes.



Room arrangement – Make space in the room so the full group can stand together and move around for Step 1 and be seated in plenary for Step 2.



Training materials and preparation – Make a copy of the **Handout**. Give each character a name and cut the identity cards, one for each participant in advance.



Steps.²

Step 1 – Role-play – 20-35 minutes

- Give each participant one card with the description of a new identity. Tell participants to read them carefully as they will have to behave as if they are the person described on their card. Ask a few participants who they are and make sure everyone understands the scenario.
- Ask participants to take their cards and stand, forming a big circle in the room. The facilitator should stand in the centre of the circle.
- Announce the rules of the game:
 - You will hear a series of requirements for applicants to a job, they will be read out one by one.
 - Based on the characteristics of your new identity, answer YES or NO to each requirement after it is read out. If your answer is YES, move one step forward. If your answer is NO, move one step backward.
 - Those who have stepped backward once cannot answer future questions (they should stay in the back).
- Start the role-play:
 - Start the recruitment process by stating: “Thank you very much for participating in the staff selection for the ‘Business Associate’ post in the XX Branch of XX Group, based in XX city (usually venue of the training). Recruitment criteria have been set for the post, and I will read them aloud.”

² Adapted from ILO: “Module 4. Promoting equality and diversity in the workplace”, in *The labour dimension of corporate social responsibility: From principle to practice* (Turin, International Training Centre, 2007).

- Read the following criteria one by one. After each statement, allow some time for participants to move accordingly:

Recruitment criteria:

- (a) University degree or above in economics, international business, management or other related fields, MBA preferred.
- (b) Age 25-30, healthy and pleasant appearance.
- (c) Minimum three years of relevant working experience.
- (d) Valid residence and work permits required.
- (e) Full command of local language required.
- (f) Be able to work irregular hours and overtime (after 7pm).
- (g) Be able to travel frequently.
- (h) Driving license desirable.

- Thank the participants who have moved to the back for their participation and dismiss them as they do not meet the criteria – they can take a seat and observe.
 - Congratulate the qualified applicants and announce that interviews will take place in the company's meeting room today at 7.30 pm. Ask the participants who qualified for the interview to confirm their participation, and ask those who cannot attend the interview at 7.30 pm to step out. If instructions are correctly interpreted, participants with family responsibilities (young children, disabled relatives) will not be able to attend. Ask those who gave up to announce why they are giving it up and allow them to voice their reasons, justifications, etc.
 - Note to the facilitator: If the instructions were followed correctly, there should be no more than **five** persons (numbers 8, 11, 13, 14 and 25) who are able to participate in the final interview. If more participants chose to stay, some of them probably did not respond according to the characteristics of their new identity.
- Ask some of the participants who stepped backward to read their ID cards aloud, and explain why they were rejected (education, new graduate, disability, sex, family responsibility, etc.), and whether they suffered any type of discrimination in the recruitment process. After soliciting a few responses from participants, point out that some of the requirements are discriminatory, while others are related to the inherent requirements of the job.

Step 2 – Round-up – 5 minutes

- Reconvene in plenary and conclude by asking: Was it really in the employers' interest to exclude these applicants. Highlight the merit and ability of excluded candidates. Emphasize that discrimination may cause a waste of human resources as talented people may not get the opportunity due to factors that are not actually required for a job.

Exercise 7. “Do I have a chance to get the job?” Role-play



Handout. Identity cards

Mr _____, male, 28, unmarried, migrated to this city in 2007, has no valid residence and work permit, college diploma in related field, has worked in a trade company in this city over the past three years, no driving license. (1)	Mr _____, male, 34, migrated to this country in 2007, limited knowledge of the local language, has a valid residence and work permit, senior high school education, has worked in a local company on business development over the past three years, has a good network of clients. (2)
Ms _____, female, 23, unmarried, transmigrated to this province in 2008, limited knowledge of the local language, no university degree, has no valid residence and work permit, no driving license. (3)	Ms _____, female, 28, local, BA in related field, five years of relevant experience; married, one three-year-old child who should be picked up from kindergarten on working days before 7pm; her husband frequently works overtime. (4)
Ms _____, female, 30, local, MBA, three years of relevant experience, divorced, has one child who needs to be picked up from primary school before 7 pm every day, with driving license. (5)	Ms _____, female, 29, local, married, no children, bachelor's degree and five years of experience in a related field, husband working in another city, has a paralyzed mother-in-law to look after, the day-time helper leaves at 7 pm. (6)
Mr _____, male, 29, single, local, bachelor degree in marketing, fluent in the local language, lives with disabled mother who is looked after by a day-time helper until 6 pm every day, has driving license. (7)	Mr _____, male, 26, local, single, bachelor's degree in a related field, has worked three years in sales in an enterprise, speaks the local language, lives with parents, has driving license. (8)
Ms _____, female, 25, unmarried, local, bachelor's degree in trade, minor disability on the left leg. (9)	Mr _____, male, 30, has a valid residence and work permit, speaks the local language, bachelor degree in related field, three years of working experience, divorced, lives with his primary-school daughter who is looked after by a day-time helper until 7 pm, no driving license. (10)

Mr _____, male, 30, has a valid residence and work permit, speaks the local language, five years of relevant experience, with driving license. (11)	Ms _____, female, 28, has a valid residence and work permit, speaks the local language, bachelor degree in business field, three years of relevant experience, married, husband is very busy, and does not want her to travel much. (12)
Mr _____, male, 30, single, has a valid residence and work permit, speaks the local language, bachelor degree in business management, five years of business experience, no family responsibility and is able to travel frequently, no driving license. (13)	Ms _____, female, 28, single, has a valid residence and work permit, speaks the local language, MBA, three years experience as a business assistant in a foreign company, with driving license. (14)
Mr _____, male, 28, has a valid residence and work permit, speaks the local language, MBA, five years of relevant experience, divorced, one child who needs be picked up before 7 pm every day, has driving license. (15)	Mr _____, male, 33, bachelor degree, migrated to this country in 2007, has no valid residence and work permit, five years of relevant experience, with driving license. (16)
Mr _____, male, 28, speaks the local language, has a valid residence and work permit, master degree, four years of relevant experience, married, has a six-months old baby, living with parents, wife returned to work after maternity leave, no driving license. (17)	Ms _____, female, 30, speaks the local language, has a valid residence and work permit, master degree, four years of relevant experience, married, a five-month old baby, no driving license. (18)
Ms _____, female, 29, speaks the local language, married, has a valid residence and work permit, no children, bachelor degree in relevant field, six years of relevant experience, husband works in another country, no driving license. (19)	Mr _____, male, 27, migrated to this country in 2006, has a valid residence and work permit, limited knowledge of the local language, single, obtained MBA recently, bachelor's degree in food hygiene, has done technical work in a food company since MBA graduation, has driving license. (20)
Mr _____, male, 28, local, 6 years of relevant experience, no university degree, married, has a five-year old child who needs to be picked up from the kindergarten every day, a busy wife who doesn't want him to work overtime or travel a lot, has driving license. (21)	Mr _____, male, 27, has a valid residence and work permit, speaks the local language, bachelor degree in relevant field, five years of relevant experience, 156cm, no driving license. (22)

<u>Ms</u> _____, female, 33, speaks the local language, has no valid residence and work permit, bachelor degree in relevant field, five years of relevant experience, married, no child, no driving license. (23)	<u>Mr</u> _____, male, 34, has a valid residence and work permit, speaks the local language, bachelor degree in relevant field, five years of experience in business, married, no child, no driving license. (24)
<u>Mr</u> _____, male, 27, has a valid residence and work permit, speaks the local language, married, no child, bachelor degree in related field, five years of relevant experience, has driving license. (25)	<u>Ms</u> _____, female, 28, single, speaks the local language, has a valid residence and work permit, MBA, three years of relevant experience, lives with a disabled brother who needs care, the day-time helper works from 8 am - 7 pm. (26)
<u>Mr</u> _____, male, 40, speaks the local language, has a valid residence and work permit, married, bachelor degree, has relevant experience, has driving license. (27)	<u>Mr</u> _____, male, 26, unmarried, has a valid residence and work permit, migrated to this city in 2009, limited knowledge of the local language, bachelor degree in related field, five years of relevant experience, no driving license. (28)
<u>Ms</u> _____, female, 38, local, unmarried, bachelor degree in related field, 12 years of relevant experience, has driving license. (29)	<u>Mr</u> _____, male, 29, local, master degree in related field, unmarried, four years of relevant experience, is the only child in the family, father is paralyzed who needs care every day, day-time helper leaves at 7 pm, no driving license. (30)
<u>Mr</u> _____, male, 26, has a valid residence and work permit, speaks the local language, unmarried, bachelor degree in related field, five years of relevant experience, harelipped, has driving license. (31)	<u>Mr</u> _____, male, 29, local, married, bachelor degree in related field, five years of relevant experience, daughter needs to be picked up from kindergarten before 7 pm, wife finishes work at 8 pm. (32)
<u>Ms</u> _____, female, 28, local, married, master degree in related field, 4 years of relevant experience, has a six-months old baby, no parents living nearby, day-time helper leaves at 6 pm, no driving license. (33)	<u>Ms</u> _____, female, 26, MBA, speaks the local language, has a valid residence and work permit, unmarried, bachelor degree in related field, five years of relevant experience, harelipped, has driving license. (34)

<u>Ms</u>_____, female, 28, local, MBA, four years of relevant experience, divorced, has one child who needs to be picked up from kindergarten before 7 pm every working day of the week, has a driving license. (35)	<u>Ms</u>_____, female, 30, unmarried, migrated to this city in 2008, limited knowledge of the local language, has a valid residence and work permit, college diploma in related field, has worked in a trade company over the past three years, no driving license. (36)
<u>Mr</u>_____, male, 38, speaks the local language, has a valid residence and work permit, single, college diploma, over 10 years of relevant experience, has a driving license. (37)	<u>Mr</u>_____, male, 30, local, bachelor degree in related field, two years of relevant experience, divorced, lives with a son in primary school age, day-time helper leaves at 7 pm, no driving license. (38)

Exercise 8. Rules of the game: Role-play³

Instructions for trainers



Aim – To experience power and powerlessness, and discuss discrimination on the basis of social origin.



Time – 30 minutes.



Seating arrangements – Make space in the room so that participants can move freely during Step 1 and be seated in plenary for Step 2.



Training materials and preparation – Prepare labels or batches in two different colours (e.g. green and yellow) for all participants. Write the rules of the game for each colour group on a flipchart.



Steps.

Step 1. Role-play – 20 minutes

- Give each participant randomly either a green or yellow label and ask them to wear the label at all times during the game. Tell participants that in this game they will have to behave according to the rules established for the colour of their label.
- Hang the flipchart listing the rules of the game on a wall in a place where participants can see it when moving around the training room, and announce the rules of the game:

People with green labels:

- May not sit on chairs and may not drink anything.
- May not be together in one place with more than one other person.
- May not refuse to obey a “yellow”, nor argue.
- May not talk to a “yellow” unless spoken to.

People with yellow labels:

- May sit on chairs and drink anything.
- May join others freely.
- May give orders to a “green.”
- May talk to anyone in the room freely.

³ Adapted from ILO: *The labour dimension of corporate social responsibility: From principle to practice, Module 4 Promoting equality and diversity in the workplace* (Turin, International Training Centre of the ILO, 2007).

- Start the role-play and instruct participants to move around and interact with each other in accordance with the rules of the game. During the exercise monitor the behaviour of the “greens” and the “yellows” and take note of differences (e.g. domineering – submissive, loud – silent, arrogant – insecure).
- After 10-15 minutes stop the game and ask participants to return to their seats.

Step 2. Discussion – 10 minutes

- Ask participants how they felt about the game and what they learned. Ask for example:
 - How did it feel to be a “yellow” or a “green”?
 - What was the best/worst thing about being a “green” or a “yellow”?
 - What do you think of these rules?
- Briefly share your own observations on the behaviour of “greens” and “yellows” during the exercise with the group.
- Share the aims of the exercise with the participants. Explain that in many societies people from a certain social origin, that is, a social group, caste or class may find themselves treated differently in life, at school, in training, at work and in other social and economic activities. In this exercise, participants experience how it feels to be part of a superior class (“yellow”) or an inferior class (“green”). Ask participants to further comment on the exercise. Ask them also whether there are any divisions like this in their society. Encourage participants to share their views and facilitate the discussion.
- Round up the discussion as follows:
 - In many societies, people are “labeled” according to their social origin, that is the social group, caste or class they belong to. People are generally treated differently depending on their social origin. People from the “inferior” social group face many types of prejudice and discrimination in life and at work. They are often excluded from equal opportunity and treatment, sometimes due to bias and prejudice of the majority population, sometimes due to laws or other rules set in the society.
 - Convention No. 111 prohibits discrimination on the ground of social origin and requires ratifying States to take active measures to promote equal opportunity and treatment in employment and occupation for all workers, regardless of their social origin.
 - Most Asian societies have some form of social stratification based on social origin. The most visible form of discrimination on the grounds of social origin is the caste system in India. Other examples include the situation of the Burakumin in Japan and the household registration system in China and Viet Nam which classifies people either as “rural people” or as “urban people”.
 - To tackle discrimination and promote equality, it is important to be aware of the effects of discrimination on the basis of social origin and take active measures to remove discriminatory laws, rules and practices and promote equal opportunity and treatment for all.

Exercise 9. Blind walk

Instructions for trainers



Aim – To experience what it is like to be a person with an impairment, to build respect and trust between persons with and without disabilities, and to recognize the abilities of people irrespective of their disability or health condition.



Time – 30-40 minutes.



Seating arrangements – This exercise is more easily organized outside the class room ideally in a large site with various obstacles along the route, for example outdoors, or two or more floors in a building.



Training materials and preparation

- Select a suitable and safe route for the walk in the training venue or outdoors. Hang signs indicating the route along the way, so that the “guides” can see which way to go. Draw a roadmap on a flipchart paper to show to the guides when explaining the procedures and rules of the game before starting the walk.
- Ask participants to bring blindfolds, such as scarves or shawls for use during the session (one blindfold per pair).



Steps.

Step 1 - Blind walk – 20 minutes

- Briefly share the aim of the exercise with the participants. Explain the rules of the exercise.
 - Ask all participants to select a partner. Explain that one of the persons will first be the “guide” and the other one will be blindfolded and be in the position of a “blind person.” After the first round the “guide” and the “blind person” will switch roles.
 - During the game, only the blindfolded person can talk. The guide can only use body gestures or motions to help the blindfolded person finish the walk. The guide should ensure the safety and well-being of his/her partner.
- Start the exercise. Tell the guides to help blindfolding their partner and help the partner to walk along the predefined route, pass all the obstacles with the help of the guide and return to the starting point. After finishing the first round, tell the participants to change roles and do the walk again.

Step 2 - Discussion – 10-20 minutes

- After the exercise, involve the participants in a plenary discussion with the following questions:
 - How did it feel to be “blind”? How did it feel to move around and walk an unknown route?
 - Did you trust your partner when you were blindfolded?
 - How was it to be a guide?
 - What did you learn from this game?

- Facilitate the discussion and encourage the participants to share their views and feelings. In conclusion, round-up the discussion as follows:
- The exercise provides a glimpse of what it is like to have an impairment. The exercise can help in building mutual trust between persons with and without disabilities, and in finding ways to better take the needs of persons with disabilities into account in daily interaction.
 - The exercise leads to experiencing how guidance by a stranger through physical contact only may arouse a strong sense of insecurity for the person who is blindfolded, which makes the guiding even more difficult. Therefore, the guide needs to know how to ease the tension and help the blindfolded partner better understand his/her intention through proper body language. In this way, the pairs manage to help each other and finish the task successfully.
 - During the exercise, the following interaction occurs among many participants: The blindfolded person dares not follow the guide's instructions at first, but later on starts to trust and follow the guide's direction. The guide, on the other hand, feels a little helpless at first when the blind partner hesitates to cooperate. Later on the pairs usually find ways that relax them both and finish the task. This tells us that mutual trust is the basis for successful communication between people with and without disabilities. People without disabilities should be more patient in providing effective support to people with disabilities.
 - During the exercise, some participants may have recognized that they can hear better when their eyes are covered. This helps participants to realize and recognize the skills and coping strategies of people with disabilities or health conditions. Workplaces can benefit from these abilities.



The exercise can also be used to train people with disabilities in using body language and compensatory functions to guide others. It can raise their awareness on how they can use their talent and increase their confidence in their skills and coping strategies. This will increase their employability in the labour market.

2.3 Exercise to discuss the rationale for equality promotion

Exercise 10. Why is equality good for people, society and business?

Instruction for trainers



Aim – To analyze how discrimination makes an individual person feel, and what the benefits of equality and the costs of discrimination are for society and business.



Time – 30-40 minutes.



Training materials and preparation – Prepare flipchart papers and marker pens for all groups. Use the **slide presentation** *Discrimination and equality: 3. Why is equality important for people, society and business?* for giving the round up points in Step 3.



Steps.

Step 1 – Reflection on the negative impacts of discrimination – 10 minutes

- Ask a volunteer to read aloud the letter sent by a student to Prof. Cai Dingjian in the **Handout**.
- After finishing ask participants how this letter made them feel. Get a few comments from the audience, and end by emphasizing that discrimination undermines human dignity and personal happiness. It is unfair, illegal, and also leads to a waste of human resources.

Step 2 – Group work – 10 minutes

- Introduce the aim of the exercise.
- Show a flipchart or a power point slide with the following questions:
 - Question A. Equality: What are the benefits for society?
 - Question B. Equality: What are the benefits for businesses?
- Divide participants in small groups. Ask half of the groups to discuss question A and half of the groups to discuss question B. Each group should prepare a presentation on a flip chart, and select a spokesperson to present it in plenary. Give the groups maximum 10 minutes to discuss.

Step 3 – Plenary discussion – 10-20 minutes

- Ask each group to present their views.
- Facilitate discussion by highlighting good points raised by the participants. Encourage participants to also share their views on the main obstacles for realizing equality in the society, and what could be done to overcome them. Motivate participants to discuss examples from their own working life.

Step 4 – Round up the key learning points – 10 minutes

- Conclude the discussion by emphasizing that discrimination is a waste of talent and reiterate some of the key points from the discussion.
- Round up the exercise by giving a short presentation on the key learning points. Use the **slide presentation** *Discrimination and equality: 3. Why is equality important for people, society and business?*

Question A. Equality: Why is it important for society?

- Inclusive labour markets are effective and productive.
- Productive enterprises create value for themselves, their employees and the whole national economy.
- Equal opportunities in the labour market motivate people to develop their skills and pursue their own development.
- Important for national human resources and skills development.
- Important for individual satisfaction.
- Important for maintaining social stability.
- Institutional discrimination may lead to an increased risk to social instability.
- Discrimination can cause individual frustration that may even lead to violence.

Question B. Equality: What are the benefits for businesses?

- Improved employee well-being and satisfaction.
- Improved employee commitment, motivation and productivity.
- Improved ability to attract talent and lower turnover rate.
- Optimal utilization of human resources: The company's most important asset and competitive edge over competitors.
- Greater diversity fostering innovation and creativity.
- Legal compliance and risk management, such as risk of litigation.
- Shareholder approval, brand value protection.
- Consumer and stakeholder satisfaction.

Exercise 10. Why is equality good for people, society and business?



Handout

A beautiful wish of a girl⁴

21:22 23 April 2005

Dear Professor,

My name is Cai Jian. What a coincidence, but I'm a girl.⁵ My father doesn't like boys, but he hopes I can be as brave and strong.

I read about your comments on the case of Zhang Xianzhu⁶ published on the Internet, and would like to share my own story with you.

I'm a teacher, currently teaching in a private school and reaching the end my three-year contract. I've been looking for a new job, hoping for a better opportunity for development. I applied for a teaching post in the Hexi Branch of Jinling Middle School in Nanjing, and passed the written examination and the teaching test. However, in the health check before the Spring Festival, I was found to have "the three positives," although my liver function is normal. As a result, I was rejected.

My sore feelings in the past two months are summarized in this short letter I am writing. I feel that I am suffering from weak nerves. Recently, I am tired and dizzy and I worry a lot. Jinling, Jinling, Jinling, this word fills up my head whenever I am awake, asleep or half awake and half asleep. I have been studying hard, full of hope that I will be able to find a good job and lead a happy life!

I really want to work in Jinling. How wonderful that would be! I would prepare well for my classes. I would also have many opportunities to study and develop, I may also become a well-known teacher. I like Nanjing, maybe I would meet my better half there, and we could go shopping and playing ball games together. I will invite my parents over, and together, the whole family would visit Mochou Lake, the Purple Mountain and Dr Sun Yat-Sen's Mausoleum. My father would be so proud, and my mother would recover quickly from her illness.

I was once so close to happiness.

Please give me some advice. I do not want to file a suit, not because of myself, but because my parents wouldn't be able to cope with the pressure. I met many people who have a similar experience in the on-line bbs forum "In the Hepatitis B camp." Please pay some attention to us.

⁴ D. Cai: *Unpublished training materials* (Beijing, 2009).

⁵ The girl's name means "sword" in Chinese, and is usually given to men.

⁶ Zhang is the plaintiff in China's first lawsuit on Hepatitis B discrimination. Zhang sued the Bureau of Human Resources in Wuhu City, Anhui Province after being rejected in the civil service enrolment due to his HBV status, although he ranked No. 1 in the written exam.

2.4 Exercises to disseminate information on disabilities and health conditions

Exercise 11. Disability and ability

Instructions for trainers



Aim - To recognize that persons with disabilities have abilities and can be productive members of the labour force and to illustrate the need to shift from the charity and medical approaches to a social approach towards disability.



Time – 10-20 minutes.



Training materials and preparation – Find pictures of well-known talented persons with disabilities in the internet or magazines. Some suggestions of persons to be introduced are given in the **Handout**. It is recommended to add a few pictures of local celebrities. Make the pictures into a slide presentation, or cut them out for showing to participants.



Steps.

- Share the aims of the exercise with participants. Explain that in the English language “disabled” means somebody who has lost his or her “ability” or whose “ability” has been taken away. Actually this concept is misleading, because an injury or disorder in one area does not take away the person’s ability in other areas. Many persons with disabilities are very talented persons and productive members of the workforce.
- Show the first picture to participants. Ask the audience whether they know who the person in the picture is. Take a few guesses and let the participants explain the achievements of the person. Ask participants to also explain what type of disability the person in the picture has. Add any information not mentioned by participants, using your own notes or the responses provided in the **Handout**. Before moving to the next picture, round-up the discussion by asking participants whether the person in the picture is “able” or “unable.” (Everybody will usually agree that the person in the picture is “able.”)
- Repeat the same procedure and facilitate the discussion on all the pictures. For each picture, always round-up the discussion by asking in the end whether the person in picture is “able” or “unable.”
- Round-up the discussion as follows:
 - When talking about disability it is important to remember that having one type of injury or disorder does not take away the person’s ability in other areas. Most persons with disabilities are very “able” people and they are as eager to participate in society and develop their individual talent as any other person. Persons with a disability just need a little assistance to ensure that they can contribute to their full capacity. Some examples of assistance measures include artificial limbs, hearing aids and wheelchairs.

- Over the past 40 years, there has been a significant change in the approaches to disability from the charity and medical approaches towards a rights-based social approach that prioritizes the abilities, diversity and rights of persons with disabilities. The new social approach puts the focus on the removal of disabling barriers through improving access to the environment and addressing discrimination, stigma and negative attitudes against disability.

 When giving the round-up points, refer to Slide No. 10 “Approaches and definitions” in the **slide presentation: *Addressing discrimination against persons with disabilities: Key issues and strategies***. See “Changing approaches towards disability: From charity to inclusive workplaces” in Section 2.1 of Chapter 3 in the *Equality and non-discrimination at work in Asia: Guide* for more information.

Exercise 11. Disability and ability



Handout. Responses⁷

1. Stevie Wonder
 - American singer-songwriter and multi-instrumentalist, record producer and activist.
 - Stevie Wonder became blind shortly after birth. However, his blindness did not keep him from dedicating himself to music, and he signed a record contract with Motown Records at the age of seven.
 - Stevie Wonder has recorded over 30 US top ten hits and received 22 Grammy Awards. Some of his most famous songs include “I just called to say I love you” and “You are the sunshine of my life.”
2. Steven Hawking
 - English theoretical physicist and cosmologist. He was a professor in mathematics at Cambridge University for 30 years (1979-2009). His special areas of expertise include cosmology, gravity and black holes
 - Steven Hawking has a rare motor neurone disease called ALS, which over the years has left him almost completely paralyzed.
3. Marlee Matlin
 - American actress. She won the Academy Award (Oscar) for Best Actress in Leading Role at the age of 21 for her role in the movie “Children of a lesser god” (1986). She is the youngest ever woman and the only deaf actress to win this title.
 - Marlee Matlin is deaf since she was 18 months old.
 - Marlee Matlin is also an activist and an advocate of disability rights. She has cooperated with the ILO to promote equal employment opportunities for persons with disabilities.
4. Gus Dur (Abdurrahman Wahid)
 - President of Indonesia (1999-2001), also called the “teacher of the nation” and “father of plurality.”
 - Gus Dur was visually impaired and became practically blind later in life.
5. Sinta Nuriyah Wahid
 - Wife of Gus Dur, the first lady of Indonesia (1999-2001) who was a great advocate of women’s rights and supporter of marginalized groups.
 - Sinta Nuriyah Wahid is using a wheelchair.
6. Deng Xiaoping
 - Chinese politician, leader of the Communist Party of China. He started the Chinese economic reform process into a direction that later became known as the “socialist market economy.” During his leadership China developed into a fast growing economy.
 - Deng Xiaoping was only 150 cm tall. In current day China, Deng would not have met the civil service height requirement and could not have joined the civil service.

⁷ Wikipedia websites: “Stevie Wonder”, “Steven Hawking”, “Marlee Matlin”, “Abdurrahman Wahid”, “Sinta Nuriyah”, “Deng Xiaoping”, “Ngarmphan Vejajiva”, “Oscar Pistorius”, <http://en.wikipedia.org/> (accessed 18 Oct 2011). Website of the Thailand DAISY Consortium, <http://www.daisy.org/> (accessed 18 Oct. 2011); Viet Newspaper, 26 Jan 2010 (Hanoi).

7. Chau Hoang Tuyet Loan
 - Vietnamese weightlifter and sportswoman. Gold medalist in the 2009 ASEAN ParaGames and silver medalist in the 2006 World Weightlifting Championships in Busan (Republic of Korea).
 - Chau Hoang Tuyet Loan was born with a serious disease which made her leg muscles shrink. She is using a wheelchair.
8. Ngarmphan "Jane" Vejjajiva
 - Thai novelist and translator. Her novel "The Happiness of Kati" won the South-East Asia Write Award, the most prestigious literary award in this region in 2006, and became an international bestseller.
 - Jane Vejjajiva has had cerebral palsy (CP) since birth and is using a wheelchair. Due to limits in her mobility she found comfort in reading and writing since she was young which led her to study languages and start a career as translator and writer.
9. Monthian Buntan
 - Senator in Thailand's Upper House in government, President of the Thailand Association of the Blind. Monthian Buntan is a long-term advocate of disability rights. He contributed to the design of the United Nations Convention on the Rights of Persons with Disabilities (2006) and in the World Summit on Information Society (WSIS, 2003). He strives to make information and communication technology accessible to all including blind people.
 - Monthian Buntan was born blind in the small village of Phrai, about 500 kilometers from Bangkok.
10. Oscar Pistorius, the "Blade Runner"
 - South African Paralympics athlete. He won three gold medals in the 2008 Beijing Paralympics (100m, 200m and 400m).
 - Oscar Pistorius was born without lower leg bones (fibulae), and his deformed lower legs were amputated at the age of 11 months.
 - Oscar Pistorius runs with carbon fiber artificial limbs. Actually, he runs so fast that his artificial limbs have generated claims that he has an unfair advantage over able-bodied runners. This claim was taken to the International Association of Athletics Federation (IAAF), which ruled Pistorius ineligible for competition with able-bodied runners. This decision was overruled by the Court of Arbitration for Sports in 2008.
 - Pictures of Oscar Pistorius as a young child show him smiling happily regardless of his amputated legs. These pictures illustrate clearly that there is no reason not to encourage any children to develop themselves from a young age in whatever area they enjoy and are good at. Anybody can make great achievements in areas where they are talented, if allowed an equal opportunity to participate and develop his/her potential.

Exercise 12. Quiz and discussion on HIV

Instructions for trainers



Aim – To disseminate correct information about the transmission and non-transmission routes of HIV and the Hepatitis B virus (HBV) and to discuss stigma and discrimination on the ground of these health conditions.



Time – 40 minutes.



Seating arrangements – Ensure all participants are positioned so that they can clearly view and hear the movie. Subtitles can be turned on to accommodate participants with hearing impairments.



Training materials and preparation – Use the **slide presentation** provided for this exercise and the movie “Hometown fellows” on DVD video (6-7 minutes).⁸ Prepare the necessary equipment for showing the slides and the movie.



Steps.

Step 1 – Quiz – 20 minutes

- Share the aims of the exercise with the participants. Show **Slides** 1-13 with the pictures depicting transmission and non-transmission routes of HIV and HBV one by one, and ask participants whether HIV and HBV can be transmitted through the contact illustrated in the pictures. Take a few guesses and explanations from participants on each of the pictures, and correct any misunderstandings using the **Handout** with the responses, as needed.
- In conclusion, show the last two slides summarizing the ways that HIV and HBV can be transmitted and the ways in which they cannot be transmitted. Facilitate further discussion and answer any questions. Distribute the **Handout** to participants.

Step 2 - Movie and discussion – 20 minutes

- Watch the “Hometown Fellows” movie.
- Ask participants to share how they feel about the movie. Try to elicit some positive and negative responses, but do not push it. There are no right or wrong responses. Ensure respect for and between people with different views.
- After a few responses ask them what are the key learning points of the movie. Take a few comments from the participants and facilitate the discussion by encouraging them to comment also on each other's views.

⁸ The “Hometown fellows” movie was produced in 2008 by the ILO HIV/AIDS Workplace Education Programme in China implemented in collaboration with the Ministry of Human Resources and Social Security (MOHRSS), China and the Chinese Employers Confederation (CEC).

- When no new points of discussion are emerging, conclude that the film presents three points that are very important for combating discrimination on the grounds of HIV:
 1. There is no need to fear HIV transmission in the workplace, because HIV cannot be transferred through casual everyday contact, such as touching, sharing food, washing face, etc. HIV is transferred only through unprotected sexual intercourse with an infected partner and transfusion or other exchange of infected blood.
 2. People living with HIV are productive members of the workforce. Thanks to the increasing availability of antiretroviral therapy HIV-positive persons often have minimal or no loss of functional capacity and can continue to contribute in the labour market. They may not experience any symptoms and are able to live healthy and productive lives over an extended period of time.
 3. One of the harshest kinds of discrimination against persons living with HIV is “freezing out” by fellow workers. The reason for rejection by co-workers at the workplace is based on fear about the infection, prejudice and poor understanding of the transmission routes of HIV.
- Emphasize that dissemination of correct information about transmission and non-transmission routes of HIV and HBV is key to dissolving fear and fighting stigma and discrimination of workers with infectious diseases.
- Close the discussion by reminding that HBV infection and Hepatitis B can be effectively prevented through vaccination. While there is no cure for HIV, antiretroviral therapy has changed the prognosis of patients with HIV infection. Voluntary HIV testing and counseling should be encouraged and supported, as early detection can assist in the effectiveness of treatment.

Exercise 12. Quiz and discussion on HIV



Handout. Responses⁹

1. No, HIV and HBV cannot be transmitted through shaking hands or touching somebody.
2. Yes, HIV and HBV can be transmitted through unprotected sexual intercourse with an infected partner. This can be prevented by using a condom.
3. No, HIV and HBV cannot be transmitted by using the same phone or other equipment at the workplace. HIV is unable to reproduce or survive in the open air, and this makes environmental transmission impossible.
4. No, HIV and HBV cannot be transmitted through open mouth kissing, unless both partners have large open sores in their mouths or severely bleeding gums. Saliva does contain the virus, but it is only present in very small quantities and as such cannot cause infection.
5. Yes, transfusion of infected blood can cause HBV or HIV infection. Nowadays, in East and South-East Asian countries most of the blood used for transfusions is tested for HIV and HBV.
6. No, HIV and HBV cannot be transmitted through mosquito bites. Even if the virus enters a mosquito or another sucking or biting insect, the insect does not become infected and cannot transmit HIV to the next human it feeds on or bites.
7. Yes, sharing infected injecting equipment is a very efficient way to transmit HIV and HBV. Injecting drug users are a high-risk group for exposure to HIV and other blood-borne viruses. Injecting with a sterile needle will not transmit HIV and HBV as long as clean equipment is used each time and none of it is shared.
8. No, HIV and HBV cannot be transmitted by using the same toilet with infected persons. (See point 3 above.)
9. No, HIV and HBV cannot be transmitted by using the same cutlery or eating together with an infected person. (See point 3 above.)
10. No, HIV and HBV cannot be transmitted by hugging or touching. Healthy, intact skin does not allow the virus to get into the body.
11. No, HIV and HBV cannot be transmitted by working together with an infected person. The virus cannot reproduce or survive in the open air and for this reason cannot be transmitted through spitting, sneezing or using the same equipment. (See point 3 above.)
12. Yes, an infected pregnant woman can pass HIV or HBV on to her unborn baby during pregnancy, labour and delivery. The virus can also be transmitted through breastfeeding. If a woman knows she is infected with HIV or HBV, there are drugs she can take to greatly reduce the chance of her child becoming infected.
13. No, HIV and HBV cannot be transmitted by using the same tableware or eating with an infected person. (See point 3 above.)

⁹ AVERT: *Can you get HIV on...?*, <http://www.avert.org> (accessed 27 Sep. 2010); *How HBV is transmitted?*, <http://www.liverdisease.com> (accessed 27 Sep. 2010).

3. Exercises to discuss key concepts in relation to discrimination

3.1 Types of discrimination

Exercise 13. What type of discrimination is it?

Instructions for trainers



Aim - To understand the concepts of direct and indirect discrimination in law and in practice.



Time – 10-20 minutes.



Training materials and preparation – Make a copy of **Handout 1** and cut out the examples, or write the examples on coloured paper slips. Shuffle and mix the paper slips. Draw a matrix with four empty fields on a flipchart as indicated in **Handout 2**.



Steps.

- Share the aims of the exercise with the participants and divide them into groups of three to six persons. Distribute a few paper slips with examples of different forms of discrimination to each of the groups. Ask the groups to discuss what type of discrimination the examples represent (direct - indirect, in law - in practice) and prepare to paste their examples in the matrix on the flipchart.
- After the groups have finished the discussion, ask the group representatives to introduce the examples given to them and to paste them in the right place on the matrix for everybody to see. Discuss each example one by one using the explanation given in **Handout 2** as needed.
- In the round-up, explain that many countries have made great progress in addressing direct discrimination and repealing discriminatory laws. However, in this process direct discrimination in law may turn into more subtle forms of indirect discrimination and discriminatory practices, unless careful attention is paid to recognition of these new forms of discrimination as they emerge. To eliminate discrimination it is important to be able to identify the different forms of discrimination, and to take action to repeal the more subtle forms of discrimination which may be widespread.

Exercise 13. What type of discrimination is it?



Handout 1.

Examples of types of discrimination on the grounds prohibited in Convention No. 111

Legal provisions which stipulate that certain business start-up micro credits may only be granted to male applicants. (1)

Legal provisions requiring persons applying for business start-up loans to have a local guarantor. Entrepreneurs who have recently moved to the city from rural towns have difficulties in finding local guarantors. (2)

Legal provisions prohibiting women's employment in certain occupations. (3)

Different salary scales for women and men doing the same work or work of equal value set in the law. (4)

Legal provisions setting unreasonable language requirements for access to civil service jobs. Admission test results show that persons belonging to a linguistic minority have difficulty in passing the language test. (5)

Legal regulations prohibiting employment of HIV positive persons in office jobs. (6)

Legal provisions that exclude domestic workers from labour law protection. More than 80 per cent of domestic workers are women. (7)

Job advertisements which state that only male applicants can apply. (8)

Job advertisements which set irrelevant height and weight requirements. Data on average height and weight of women and men shows that women are significantly less likely to meet the requirements. (9)

Women's concentration in a limited range of occupations. (10)

Setting different pay scales for "surface technicians" and "cleaners" even if the work in these two job categories is very similar and the value of their output is exactly the same. Company staff records show that all surface technicians are men and most cleaners are women. (11)

Bank loan conditions that require applicants to be a member of the dominant religion to gain access to their services. (12)

Concentration of persons with disabilities in self-employment and micro-enterprises. (13)

Bank practice of providing information on access to credit only in the majority language. It is well known that most ethnic minority entrepreneurs cannot read the majority language. (14)

Exercise 13. What type of discrimination is it?



Handout 2.

Examples of types of discrimination on the grounds prohibited in Convention No. 111

	DIRECT DISCRIMINATION	INDIRECT DISCRIMINATION
DISCRIMINATION IN LAW	Legal provisions which stipulate that certain business start-up micro credits may only be granted to male applicants. (1) Legal provisions prohibiting women's employment in certain occupations. (3) Different salary scales for women and men doing the same work or work of equal value set in the law. (4) Legal regulations prohibiting employment of HIV positive persons in office jobs. (6)	Legal provisions requiring persons applying for business start-up loans to have a local guarantor. Entrepreneurs who have recently moved to the city from rural towns have difficulties in finding local guarantors. (2) Legal provisions setting unreasonable language requirements for access to civil service jobs. Admission test results show that persons belonging to a linguistic minority have difficulty in passing the language test. (5) Legal provisions that exclude domestic workers from labour law protection. More than 80 per cent of domestic workers are women. (7)
DISCRIMINATION IN PRACTICE	Job advertisements which state that only male applicants can apply. (8) Women's concentration in a limited range of occupations. (10) Bank loan conditions that require applicants to be a member of the dominant religion to gain access to their services. (12) Concentration of persons with disabilities in self-employment and micro-enterprises. (13)	Job advertisements which set irrelevant height and weight requirements. Data on average height and weight of women and men shows that women are significantly less likely to meet the requirements. (9) Setting different pay scales for "surface technicians" and "cleaners" even if the work in these two job categories is very similar and the value of their output is exactly the same. Company staff records show that all surface technicians are men and most cleaners are women. (11) Bank practice of providing information on access to credit only in the majority language. It is well known that most ethnic minority entrepreneurs cannot read the majority language. (14)

Detailed responses

1. This example is a clear case of direct sex discrimination in law because the law explicitly stipulates eligibility for micro-credits only to male applicants.
2. This is an example of indirect discrimination in law based on social origin. The law does not explicitly exclude non-local entrepreneurs from eligibility to apply for the loan, but the seemingly neutral requirement of having a local guarantor makes meeting the criteria much more difficult for non-local entrepreneurs in practice.
3. Prohibitions of women's employment in certain occupations are often adopted as well-intended measures to protect women's health, but may in practice lead to reduced employment opportunities for women. From this perspective, the example is a case of direct sex discrimination in law because the prohibitions exclude women from employment opportunities.
4. This is a clear example of direct sex discrimination in law because the law explicitly stipulates different pay for the same work or work of equal value for women and men.
5. Full proficiency in a certain language (most often the official majority language of a country) can be an inherent requirement of the job in certain civil service jobs, but not in all positions. If proficiency in the official language is not a genuine inherent requirement of the job, language requirements may be viewed as discrimination against qualified ethnic minority applicants, whose command of the majority language may be less complete than the majority population. In this case the unreasonable language requirements constitute indirect discrimination in law based on ethnicity. If the national law prohibits discrimination based on language, these requirements can be seen as direct discrimination in law based on language.
6. This is a clear example of direct discrimination in law based on HIV status. HIV infection cannot be transmitted in regular workplace contact in office work, so there is no justification for exclusion of HIV positive persons in these kinds of jobs.
7. This is an example of indirect discrimination in law based on sex. The decision made by the legislator to exclude the occupational group of domestic workers from protection under the labour law disadvantages this large group of workers who are mostly women.
8. This is a clear example of direct sex discrimination in practice. The job advertisement explicitly excludes women from a job opportunity.
9. This is an example of indirect sex discrimination in practice. The height and weight requirements included in the job advertisement are seemingly neutral, but in practice these disproportionately disadvantage female applicants who are often shorter and lighter than male applicants.
10. All over the world labour markets are segregated so that women are concentrated in certain jobs and men are concentrated in other jobs. In some countries this type of job segregation by sex is rigid while in others it is not so strict. Variations also exist as to what are considered typically "men's jobs" and "women's jobs," for example, trading or sewing are considered men's jobs in some countries and women's jobs in other countries. Some consider that this is "natural" and not problematic. Others think that this serves to protect women from work considered "unsuitable" for them. However, evidence indicates that job segregation by sex limits the choice

of occupation both for women and men, and leads to inefficiencies in labour markets. Fewer types of jobs and occupations are available to women as compared to men and due to the undervaluation of jobs done by women, the latter are often disadvantaged in terms of salary level and access to career development. This concentration of women in a limited range of occupations usually at the lower levels of the job hierarchy constitutes sex discrimination in practice.

11. This is a clear example of indirect sex discrimination in practice. As the content of the jobs of surface technicians and cleaners is the same, they should be paid equal remuneration. Setting different pay scales for the two jobs of equal value discriminates against the cleaners who are all women, and thus constitutes indirect sex discrimination in practice.
12. This is an example of direct discrimination in practice based on religion. Religious belief should not be a condition for access to bank services.
13. Concentration of a certain group of workers in self-employment and micro-enterprises often indicates that these persons lack access to other types of employment. For this reason, concentration of persons with disabilities in self-employment and micro-enterprises can be seen as a sign of direct discrimination in practice based on disability.
14. This is an example of indirect discrimination in practice based on ethnicity. If the national law prohibits discrimination based on language, this can be considered as an example of direct discrimination in practice based on language. Entrepreneurs should have equal access to information and credit regardless of their ethnicity or language.

3.2 Inherent requirements of the job

Exercise 14. Is it height discrimination? Case studies

Instructions for trainers



Aim – To differentiate between “inherent requirements of the job,” “direct” and “indirect discrimination.”



Time – 40 minutes.



Seating arrangement – Small group seating around tables or other seating that allows people to work in groups of three to six persons.



Steps.

Step 1 – Group work on height discrimination – 25 minutes

- Introduce the aim of the exercise and explain the context:
 - Decisions that influence people’s opportunities and treatment at work are sometimes based on factors that are relevant for the job and sometimes based on factors that are not relevant for a job.
 - In many East and South-East Asian countries, a person’s height is a criterion often used by employers to select people for jobs.
- Divide people up in small groups and assign each group one case study. Some groups can discuss the same case, as needed. Ask each group to read their case and discuss: **Is height a relevant criterion for this job? (Question 1).**
- After the groups finished discussion, ask volunteers to explain and present their views. Solicit different views from different participants and facilitate discussion.
- Give the round-up points as follows:
 - Cases A, B and C are examples of direct discrimination on the basis of height or physical appearance.
 - Case D is an example of a height requirement that is relevant to the job, and, therefore, NOT discriminatory.

Step 2 – Unveiling indirect discrimination – 10 minutes

- Ask the groups to take a closer look at cases B and C to assess: **What other types of discrimination could be involved? (Question 2).** Help the participants by asking: Are there groups that would be excluded due to the height criteria? Solicit different views and facilitate discussion.
- Conclude that cases B and C may also involve indirect discrimination against women who usually are shorter than men. Height requirements may also constitute indirect discrimination against

persons with certain impairments (e.g. wheelchair users) or certain ethnic groups (with shorter average height than the majority population).

Step 3 - Round-up – 5 minutes

➤ Round-up as follows:

- Convention No. 111 does not prohibit direct discrimination based on height as such – but that alone, of course, does not mean that height is a valid selection criterion for all jobs.
- Imposing a height requirement that is not related to the contents of job or the conditions under which the job is normally carried out is arbitrary, unfair and amounts to discrimination based on height.
- Uniform height and weight requirements can, however, have a disparate impact on persons of a particular sex or a particular race. In such case, such requirements amount to **indirect sex or race discrimination, if they cannot be proven to be inherent to the job**. Significant diversions from the average human height may be recognized as impairment, so that, for example, little people can challenge such job-related distinctions as discrimination on the basis of **disability**.
- Height discrimination in recruitment is common in many East and South-East Asian countries. For example, a study analyzing application forms of over 400 public and private sector employers in the Republic of Korea found that over 50 per cent of private sector employers and 25 per cent of government agencies asked job applicants to submit information on their physical characteristics including height and weight.¹⁰
- Action against height discrimination is also springing up in many countries in East and South-East Asian countries. In China, for example, job applicants have started to bring lawsuits against **height discrimination** with some positive results, albeit indirectly. In Japan, the Ministry of Labour has issued an Ordinance clarifying that prohibition of indirect sex discrimination in the revised Equality Act (2006) prohibits the use of criteria concerning body height, weight or physical capacity when recruiting or hiring workers.¹¹
- It may also happen, however, that a person's height is relevant to the conditions under which the work is carried out. The question will then arise whether the employer can be reasonably expected to make the adjustments to the working environment which are necessary to accommodate the job applicant or employee.

📖 For further discussion on reasonable accommodation see Exercise 16. Disability and reasonable accommodation and Exercise 17. Accommodating workers with special religious requirements.

¹⁰ V. Hlasny: *Patterns of profiling of job candidates: Evidence from application forms* (2009), [http://www.akes.or.kr/eng/papers\(2009\)/hlasny.pdf](http://www.akes.or.kr/eng/papers(2009)/hlasny.pdf) (accessed 3 Feb 2011).

¹¹ R. Sakuraba: *Employment discrimination law in Japan: Human rights or employment policy?* (2008), http://www.jil.go.jp/english/events_and_information/documents/cils08_sakuraba.pdf (accessed 3 Feb 2011).

Exercise 14. Is it height discrimination? Case studies



Handout. Case studies

Case A - Height as a job factor in China¹²

In January 2003, Jiang Tao, a recent graduate of Sichuan University brought an administrative action in Chengdu, the capital of Sichuan Province against the Chengdu Branch of the People's Bank of China for height discrimination. Mr Jiang, who is 165 cm in height, alleged that the bank's 168 cm height requirement for male applicants, precluded him from applying for a civil service position at the government bank, therefore violating his constitutionally-protected equal rights to be employed by a government agency and his political right to participate in the management of state affairs. The case was tried in April 2003.

Although the plaintiff's claims were rejected by the court, the defendant bank abandoned the height requirement soon after the lawsuit was filed, most likely as a result of the adverse publicity generated by the case. According to the plaintiff's lawyer, Professor Zhou Wei of Sichuan University Law School and Shanghai University Law School, the height discrimination case represents the first time that a Chinese court has accepted a lawsuit explicitly based on a constitutional rights claim (Procuratorial Daily, April 28, 2003). In Qi Yuling vs. Chen Xiaoqi, the 2001 case widely described as China's first constitutional rights case, the plaintiff's constitutional right to education was one of several bases for her claim. The final court decision did not directly uphold the right, but ruled that violation of the right was grounds for compensation.

Case B - Height as a job factor in China¹³

A contract worker who had been working at the Shenzhen State Tax Bureau for seven years was rejected for a permanent position despite having passed the civil service qualification examination because she failed to meet the height requirement set by the Guangdong Province Personnel Bureau. In February 2003, she filed an administrative suit with the Futian District People's Court in Shenzhen against both the Guangdong Province Personnel Bureau and the Shenzhen State Tax Bureau alleging height discrimination.

The court refused to consider her case, stating that the "hiring and firing practices of state agencies are not within the court's jurisdiction over administrative adjudication suits and that the plaintiff had provided insufficient evidence to establish her claim. In February 2004, the Shenzhen Municipal Intermediate People's Court turned down her appeal, stating that the "recruitment of civil servants pursuant to certain hiring standards is part of the internal personnel management of a state administrative agency" and that "any claims arising from such administrative function is outside the jurisdiction of the People's Courts over administrative adjudication suits."

Notably, however, Guangdong subsequently dropped the height requirement from its civil service hiring regulations.

¹² In *Beijing Youth Daily* (Beijing, 20 Dec. 2003).

¹³ In *New Beijing Daily* (Beijing, 10 Feb. 2004); *China Law & Governance Review* (Beijing), June 2004, Issue No. 2, 5, [http:// www.chinareview.info](http://www.chinareview.info) (accessed 30 Nov. 2010).

Case C – Weight and Height as a job factor in the USA¹⁴

At 5'3" (160 cm) and 115 pounds (42.9 kg), 22-year old Dianne Rawlinson applied to become a correctional counselor with the Alabama prison system. Her education credentials were impressive, but she failed to meet the weight requirement of 120 pounds (44.8 kg). Rawlinson filed a complaint with the Equal Employment Opportunity Commission alleging sex discrimination. The Center filed a lawsuit on behalf of Rawlinson and another woman, Brenda Meith, who had been refused a position as a state trooper, as she did not meet the state's height and weight requirements.

At the trial, the Law Center argued that the height and weight requirements had no actual relationship to the job requirements, and 33 percent of women would be excluded from employment as prison guards and state troopers by the statutory height requirements and 22 per cent by the minimum weight requirements. The trial court ruled in favour of Meith and Rawlinson, but the Board of Corrections appealed Rawlinson's part of the case to a higher court. The U.S. Supreme Court upheld the ruling, agreeing that the height and weight requirements discriminated against women and bore no relationship to the job.

Case D - Height as a job factor in the UK¹⁵

A man who is six feet and ten inches (208 cm) tall lost out on his dream job as a trainee air traffic controller because his prospective employer considered he was too tall to sit at the workstations used for the specialist computers required for the work. Ben Sargeant-Thomson, a 23-year-old physics graduate, was offered a position as a trainee for the National Air Traffic Services (NATS) in 2003. Part of the training involved a display screen equipment assessment. The desks in the workplace were designed to accommodate 90 per cent of male and female height ranges, with an upper limit of around six feet and one inch.

Because of concerns on account of Mr Sargeant-Thomson's height, he was asked to undergo an assessment before commencing the training course. Following this, NATS informed him that it would be dangerous for him to sit for any length of time at one of the workstations as it would be uncomfortable and he could develop joint and circulation problems as a result. In addition, his concentration could be affected by the discomfort and this could in turn put others at risk. Practical solutions to the problem were sought but adaptations to the workstations were not possible as these were set up as a bank of connected desks which could not be adjusted. Also, each workstation was used by a number of different operatives in any 24-hour period. As a result, NATS withdrew its offer of employment to Mr Sargeant-Thomson.

Mr Sargeant-Thomson took his case to the Employment Tribunal (ET), claiming indirect sex discrimination because only a man would be that tall. However, the ET found that the company had been justified in requiring the display screen equipment assessment when it considered that there could be a risk to health and safety in operating the equipment, particularly given the safety-critical nature of the business. NATS had in the past hired trainees who were six feet and nine inches and six feet and six inches tall, so the company had not applied a blanket ban on height. Mr Sargeant-Thomson has indicated that he is likely to appeal against this decision. NATS has said that it does intend to invest in adaptable workstations but these will not be in place until 2012.

¹⁴ United States Supreme Court: *Decision* (433 U.S. 321, 97 S. Ct. 2720) *Dothard v. Rawlinson* (1977), <http://www.splcenter.org/legal/docket/files.jsp?cdrID=7> (accessed 16 Sep. 2010).

¹⁵ BP Collins Solicitors: "Too tall for air traffic control job", in *Employment Insight*, Issue No.4 (2006). <http://www.bpcollins.co.uk> (accessed 16 Sep. 2010).

Exercise 15. Inherent requirements of the job – Religion and gender: Case studies



Aim – To recognize that recruitment criteria which are not required for adequate job performance may lead to direct or indirect discrimination on prohibited grounds, such as religion or sex.



Time – 20-40 minutes.



Seating arrangements – Small group seating in round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with the participants.
- Divide participants into small groups. Distribute **Handout 1** and assign each group one case for discussion. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask one of the groups which discussed case A to give a brief presentation on the case. Invite other participants to add, ask questions or comment on the presentation. Do the same for case B. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - When making an employment decisions, it is always important to identify the inherent requirements of a job.
 - Religion may be an inherent requirement of a job when adherence to a certain religion is necessary for adequate job performance, such as carrying out religious proceedings or rituals, or teaching or providing religious care services to persons who have the same religion. However, whether or not a person has a certain religion is often not relevant for adequate job performance. In such cases it is discriminatory to use religion as a valid selection criterion for an employment decision.
 - Physical criteria also often need to be scrutinized: Is the lifting of certain weights really an essential requirement of a job? Or may it jeopardize the health and safety of all workers at the workplace?
 - Excessive and unnecessary lifting criteria and other types of physical recruitment criteria (e.g. height, weight) can sometimes be seen as constituting indirect discrimination against women, as they exclude women applicants from an employment opportunity. As illustrated by the case, if the work practices and procedures can be adjusted so that the job can be performed by a person not fulfilling the lifting criteria, the criteria are discriminatory and should be lifted.
 - 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. For this purpose the suitability for specific jobs should not be assessed with reference to stereotypical assumptions on women as weak and men as strong, but with reference to the individual characteristic of the person and the inherent requirements of the job in question.

Exercise 15. Inherent requirements of the job – Religion and gender: Case studies



Handout 1.

Case A. Christian faith as an inherent requirement of the job?

A worker employed as a statistician by an institution belonging to a Lutheran (Christian) church in Madagascar was dismissed because, according to his employer, he had become untrustworthy by lying about the reason for one of his absences. The employee went to court to seek damages for unfair dismissal, on the grounds that the real reason for his dismissal was that he had abandoned the Lutheran faith for another one.

The Tribunal decided that the real reason for the dismissal had indeed been the plaintiff's change of religion. It then had to judge whether the dismissal was valid, given that the internal regulations of the institution, which promoted the Lutheran faith, specified membership of that religion as a condition of recruitment.

Questions for discussion:

- What are the inherent requirements of the worker's job?
- Acting as the Tribunal in this case, would you consider the dismissal to be valid? Why?
- Would you answer differently if the worker was employed as religious instructor?

Case B. Physical recruitment criteria

A Canadian school required applicants for a part-time cleaner position to meet a set of detailed physical criteria. The physical criteria included fifty-pound floor-to-shoulder lifting. A female applicant claimed that this lifting requirement constituted discrimination of female candidates. The school responded that the work of cleaners in the school premises required lifting and stacking heavy boxes of photocopy paper and big bottles of floor cleanser and wax, and for this reason the lifting requirement was justified.

Questions for discussion:

- How would you decide this case if you were the judge hearing it?
- Is this discrimination? If so, what type of discrimination?
- What information would you collect to establish whether the criteria set by the school were discriminatory or not?

Exercise 15. Inherent requirements of the job – Religion and gender: Case studies



Handout 2. Case Responses

Case A. Christian faith as an inherent requirement of the job?¹⁶

This is a real life case from Madagascar that was decided by the Antsirabe Labour Court in 2004. Even though the national Constitution includes the principle of banning discrimination in employment based on religion in a general way, the Tribunal choose to turn to the more precise provisions of ILO Convention No. 111 which define discrimination in employment and occupation. In settling the dispute, the judgment referred especially to Article 1(2) which states: “Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”

In applying this Article, the Antsirabe Labour Court considered that despite the religious nature of the employing body, the Lutheran faith could not be deemed an inherent requirement for carrying out the job of a statistician. Basing its decision directly on ILO Convention No. 111, the Labour Tribunal declared the employee’s dismissal illegal, and awarded the employee the damages that he had claimed.

Typically, the job of a statistician would require collection and analysis of data to solve problems and to make predictions on future outcomes. The work consists largely of research and analysis based on probability and sampling. While the worker may need to access information related to the Lutheran church and faith, it is unlikely that his belief or non-belief in the Lutheran faith would impact on his ability to perform, or the quality of, his work.

If, on the other hand, the worker would have been employed as a religious instructor in the Lutheran faith, then an inherent requirement of the job may be to belong to that faith. The ability to interpret and instruct in line with the Lutheran faith would be an inherent requirement of the job. In such instances, the employer may be justified to hire on the basis of religion.

Case B. Physical recruitment criteria¹⁷

This case example is a real-life arbitration case from Canada. It is a good example on the kind of research and comparative testing that arbitrators or judges may need to undertake in order to establish whether the recruitment criteria applied by employers involve discrimination or not. In this case the analysis completed by the arbitrator had two steps:

First, the arbitrator did empirical tests on the lifting capacity of men and women. The test found that 100 per cent of the 258 tested 18-30 year old men could lift fifty-pound floor-to-waist and floor-to-shoulder. Among the 315 tested 18-30 year old women 98 per cent could lift fifty-pound floor-to-waist and only 27 per cent could lift fifty-pound floor-to-shoulder. The test thus showed that women’s pass ratio was 80 per cent less than men’s pass ratio. Based on this evidence the arbitrator concluded that the claimants had established a (*prima facie*¹⁸) case of indirect sex discrimination.

¹⁶ Madagascar, Antsirabe Labour Court: *Ramiaranjatovo, Jean-Louis v. Fitsaboana Maso*, Judgment No. 58 (7 June 2004).

¹⁷ *Arbitration decision in the case Canadian Union of Public Employers (CUPE) Local 4400 v. Toronto District School Board*, (Burlington, Ontario, 4 September 2003).

¹⁸ *Prima facie* is a 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. See Section 3.2 in Chapter 3 of the *Equality and non-discrimination at work in Asia: Guide* for more information.

Second, the arbitrator analyzed whether the 50 pound lifting requirement was an inherent requirement of the job. The arbitrator noticed that the lifting requirement derived from the employer's observation of how a male cleaner performed the job. When a male cleaner performed the job, he stacked 22kg-pails containing five gallon floor cleanser and wax containers up to three pails height, and stacked 22kg-boxes with photocopy paper into the storeroom up to five boxes height. The employer therefore considered lifting to a specific height as an occasional demand of this job.

The arbitrator indicated that to prove that the lifting requirement is reasonable and necessary, the employer must show that the work of the cleaners could not be reasonably rearranged so that also women with less lifting capacity could undertake the key tasks. The tests conducted by the arbitrator showed that the work could be completed safely and efficiently by splitting boxes of photocopy paper before transporting them. Furthermore, the lifting requirement could be reduced to twenty-five pounds or less by taking the following measures: (1) ordering supplies in smaller containers; (2) changing the pile pattern in the storeroom, (3) ordering fewer supplies to decrease the stack height; or (4) arrange for heavier supplies to be lifted or lowered by other staff members.

The employer defended that splitting boxes of photocopy paper doubles the time for transporting and that ordering supplies in smaller containers or ordering fewer supplies increases transporting times and further increases the cost. In addition, changing the pile pattern in the storeroom occupies time which otherwise could be used for other tasks. The arbitrator rejected the employer's claims stating that they did not reasonably prove that the change in work practices would constitute an undue hardship for the employer.

Based on the above analysis the arbitrator decided that the work could be satisfactorily performed without the ability to lift fifty-pound boxes floor-to-shoulder. Consequently the lifting requirement was found to be unlawful discrimination against female applicants.

Exercise 16. Health status and inherent requirements of the job: Case studies

Instructions for trainers



Aim – To discuss discrimination on the grounds of HIV and Hepatitis B virus (HBV) infection, and differentiate between situations in which absence of these infections is and is not an inherent requirement of the job.



Time – 45 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

Step 1. HIV and the inherent requirements of the job – 30 minutes

- Share the aims of the exercise with the participants and distribute **Handout 1**. Divide participants into small groups. Instruct some of the groups to discuss case A and some to discuss case B. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask a few groups to give a brief presentation on their case. Invite other participants to ask questions or comment on each presentation and facilitate discussion. Close the discussion by adding points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.

Step 2. Compulsory HIV testing at work – 10 minutes

- Ask participants to discuss case C. Facilitate general discussion on the need for such tests, and the benefits and dangers of voluntary and obligatory testing. In the end add points not mentioned by the groups and correct any misunderstandings using **Handout 2** as needed.

Step 3. Round-up – 5 minutes

- Round-up the discussion as follows:
 - HIV and HBV are infections that cannot be transmitted through regular workplace contact such as shaking hands, sharing tools, eating together, or sneezing. There are very few jobs where absence of these infections can be legitimately considered an inherent requirement of the job. These include jobs involving blood and sharp objects, for example, surgery in the health care sector.
 - People living with HIV and HBV face stigma and discrimination in the labour market and in society. Much of this stigma and discrimination is based on wrong beliefs and misinformation about the nature of the infection and its transmission routes.

- Tackling discrimination on the grounds of HIV and HBV is an important labour market issue. In 2009, more than 2 million working age persons were living with HIV in East and South-East Asia. (See table below.) Many countries in the region also have a large working age population of HBV carriers. Ensuring that these persons can fully participate in the labour market and contribute their talent is crucial for these individuals as well as for the society and economy as a whole.
- The importance of tackling employment discrimination on the grounds of HIV and HBV infection has been increasingly recognized in recent years, and new laws and regulations have been adopted to outlaw discriminatory practices. While establishing an effective legal framework is essential in fighting discrimination, much remains to be done to reduce the stigma by raising awareness in the society and in workplaces.
- Compulsory HIV testing for job applicants is common in several countries even if there is no evident link with the inherent job requirements. International migrant workers are also routinely tested before entry in their destination country. These practices often lead to the violation of fundamental rights and discrimination in employment for people living with HIV. At the same time it is important to detect HIV early so infected persons can be effectively treated. HIV testing is therefore often integrated in routine medical and life cycle events. In such cases the protection of those who test positive needs to be safeguarded.

 To discuss transmission routes of HIV and HBV see Exercise 11. Quiz and Discussion on HIV.

Table. Estimated working age people living with HIV/AIDS in East and South-East Asian countries (15+ years)

Country	
Cambodia	56,000
China	730,000
Indonesia	300,000
Japan	8,100
Korea	9,500
Lao PDR	9,500
Malaysia	100,000
Philippines	8,600
Singapore	3,300
Thailand	520,000
Viet Nam	270,000
Total	2,013,800

Source: UNAIDS: *Report on the global AIDS epidemic* (2010).

Exercise 16. Health status and inherent requirements of the job: Case studies



Handout 1

Case A. Mr Hoffmann and South African Airlines

Mr Hoffman applied in September 1996 for employment as a cabin attendant with South African Airlines (SAA). He went through a four-stage selection process comprising a pre-screening interview, psychometric tests, a formal interview and a final screening process involving a role-play. At the end of the selection process, the appellant, together with eleven others, was found to be a suitable candidate for employment. This decision, however, was subject to a pre-employment medical examination, which included a blood test for HIV/AIDS. The medical examination found him to be clinically fit and, thus, suitable for employment. However, the blood test showed that he was HIV positive. As a result, the medical report was altered to read that the appellant was “HIV positive” and therefore “unsuitable”. He was subsequently informed that he could not be employed as a cabin attendant in view of his HIV positive status.

Mr Hoffman challenged the constitutionality of the refusal to employ him in the Constitutional Court, alleging that the refusal constituted unfair discrimination, and violated his constitutional right to equality, human dignity and fair labour practices. He sought an order directing SAA to employ him as a cabin attendant.

SAA denied the charge. It asserted that the exclusion of the appellant from employment had been dictated by its employment practice, which required the exclusion of all persons who were HIV positive from employment as cabin attendant. SAA justified this practice on safety, medical and operational grounds. It added that people who are HIV positive are prone to contracting opportunistic diseases and therefore there is a risk that they may contract these diseases and transmit them to others. SAA emphasized that its practice was not only directed at detecting HIV, but detecting all kinds of disability that make an individual unsuitable for employment as flight crew, such as epilepsy, impaired vision and deafness. SAA added that the life expectancy of people who are HIV positive was too short to warrant the costs of training them. It further stated that harm would be done to its commercial interests if it were known that HIV positive people were in its employ.

Questions for discussion:

1. How should the Constitutional Court rule in this case? Do you think Mr Hoffmann was discriminated on the grounds of his health status or not?
2. Analyze the different arguments presented by SAA. Do you think SAA had a legitimate reason not to hire Mr Hoffmann?
3. If a similar case would take place in your country today which laws would apply? What would be the outcome in a national court?

Case B. Mr Kim's recruitment case

Mr Kim applied for a job as bank teller at a bank. He passed the selection test and the final job interview. Before appointment Mr Kim was, however, required to take a pre-employment medical examination, which included a blood test for HBV. The test showed that Mr Kim was a HBV carrier, but stated that “as a HBV carrier, Mr Kim is not considered to have problems with working or in regular daily activities”. After the medical check-up the job offer from the bank was cancelled. Mr Kim contended that he had been discriminated against on the grounds of his medical history, and turned to the National Human Rights Commission of the Republic of Korea for help.

In a communication to the Human Rights Commission the bank explained, “Communication with customers was the main job of the team Mr Kim applied for, and we were worried about HBV spreading to customers. Also, the HBV virus could have progressed more quickly because of the excessive labour he would have done.”

Questions for discussion:

1. How should the Human Rights Commission assess this case? Do you think Mr Kim was discriminated on the grounds of his health status or not?
2. Analyze the different arguments presented by the bank. Do you think the bank had a legitimate reason not to hire Mr Kim?
3. What laws apply to similar cases in your country today? Where could a HBV carrier turn to seek legal remedies for a case like this?

Case C. Compulsory testing for HIV and AIDS?

In many countries, HIV tests are compulsory for all persons entering certain occupations such as in the military or the hotel, restaurant and tourism sector. For example, in countries such as Cambodia, Sri Lanka and Indonesia HIV tests are required for all positions within the military. Moreover, the overall majority of countries in Asia and the Middle East which import labour require that all international migrants be certified as healthy and fit to work in their country of origin before they depart for work; and regular HIV tests are often required on a periodic basis. Hong Kong SAR China and the Republic of Korea do not require HIV testing for migrant workers.

Questions for discussion:

1. What are some of the reasons countries require compulsory HIV testing for certain occupations and for all international migrant workers? Are these justifiable or not and why?
2. What are potential dangers of compulsory HIV testing as a condition for employment? How can these be avoided?
3. What happens to workers who acquire HIV during employment in your country or workplace?

Exercise 16. Health status and inherent requirements of the job: Case studies



Handout 2. Case Responses

Case A. Mr Hoffman and South African Airlines

The case is a real-life case from the South African Constitutional Court.¹⁹ The Court found that Mr Hoffman had been discriminated on the grounds of his HIV status and ordered South African Airlines (SAA) to employ him as cabin attendant.

The Court reasoned in the following way:

“An asymptomatic HIV positive person can perform the work of a cabin attendant competently. Any hazards to which an immunocompetent cabin attendant may be exposed can be managed by counselling, monitoring, vaccination and the administration of the appropriate antibiotic prophylaxis if necessary. Similarly, the risks to passengers and other third parties arising from an asymptomatic HIV positive cabin crew member are therefore inconsequential and, if necessary, well-established universal precautions can be utilized.”

The judgement by the Court highlights the important point that absence of an infectious disease such as HIV is an inherent job requirement only in those very limited jobs that involve a high risk of transmission (e.g. surgeons, anaesthetists). In other jobs the risks can be well managed through adequate standard measures of **universal precaution**. Universal precautions refer to simple infection control practices to be used to minimize the risk of blood-borne pathogens. The ILO Code of practice on HIV/AIDS and the world of work (2001) requires employers to ensure that in workplaces where workers come into regular contact with human blood and body fluids all workers know the procedures to be followed in the event of an occupational incident and that universal precautions are always observed.

Concerning SAA's allegations that hiring HIV positive persons would harm its public image and favour its competitors, the Court added:

“Legitimate commercial requirements are, of course, an important consideration in determining whether to employ an individual. However, we must guard against allowing stereotyping and prejudice to creep in under the guise of commercial interests. The greater interests of society require the recognition of the inherent dignity of every human being, and the elimination of all forms of discrimination. Our Constitution protects the weak, the marginalized, the socially outcast, and the victims of prejudice and stereotyping. It is only when these groups are protected that we can be secure that our own rights are protected.”

The Constitution of South Africa, which prohibits unfair discrimination, does not expressly mention HIV status. Nevertheless, the Court held that unfairly discriminating against employees on the basis of their HIV status amounts to a violation of their right to dignity.

This case was significant because it was the first Constitutional Court case on the issue of HIV/AIDS discrimination in the workplace heard in South Africa. Due to the HIV infection level of over 20 per cent HIV is a very important labour market issue in South Africa.

¹⁹ South Africa, Constitutional Court: *Hoffmann v South African Airways (CCT 17/00)* (28 Sep. 2000); M. Chartier: *Legal initiatives to address HIV/AIDS in the world of work by the ILO Programme on HIV/AIDS and the World of Work*, (Geneva, ILO, 2005).

Case B. Mr Kim's recruitment case

The National Human Rights Commission of Korea reviewed the case²⁰ and contended that the bank had discriminated against Mr Kim on the grounds of his health status. As a result the Commission issued a recommendation to the bank to improve its hiring procedure.

The Human Rights Commission noted that the arguments presented by the bank were based on poor understanding of transmission routes of the HBV virus. It pointed to a communication issued by the Ministry for Health, Welfare and Family Affairs stating that HBV is not infectious through regular daily activities. The Commission further referred to research conducted by the Korea Association for the Study of the Liver which concluded that there is no evidence that overwork or stress worsens an existing virus-induced liver disease.

The Human Rights Commission has played an important role in changing the policy on treatment of HBV positive workers in the Korean labour market. In 2003, the Commission recommended to the Ministry of Public Administration and Security (MOPAS), that it should alter its policy regarding physical check-ups for the appointment of public officials, as "HBV does not necessarily disable a person from performing one's tasks." The MOPAS accepted the recommendation and amended its policy in 2005.

Similar cases of discrimination on the grounds of HBV infection are common in other East and South-East Asian countries. For example in China, the first HBV discrimination case was successfully litigated in a Chinese court in May 2008 when a job applicant named Gao Yiming sued a Beijing technology company for refusing to employ him on the grounds of his HBV status. Earlier HBV discrimination cases have been concluded through court ordered mediation or through private agreements between the plaintiff and the defendant.

Case C. Compulsory testing for HIV and AIDS

ILO Recommendation No. 200 and the Code of practice on HIV and AIDS in the world of work state clearly that HIV testing or other forms of screening for HIV should not be required of any workers, including members of the armed services, migrant workers, jobseekers and job applicants.

While voluntary HIV testing is an important measure to prevent the spread of infection, testing must be genuinely voluntary and free of any coercion. Testing programmes must respect international guidelines on confidentiality, counselling and consent. Compulsory testing of HIV and AIDS as a condition for employment is prohibited in national legislation in many Asian countries. Often, countries which export or import labour have policies in place to prohibit compulsory testing for national workers but they allow or require it for migrant workers entering the country.

Compulsory testing of HIV and AIDS can constitute a violation of fundamental rights, including the right to privacy, and the difficulty, in practice, to prevent discriminatory treatment of people living with HIV by (potential) employers. Some of the **potential dangers** of compulsory testing of HIV include:

- The invasion of privacy.
- The difficulty in protecting confidentiality of test results.

²⁰ National Human Rights Commission Republic of Korea (NHRCK), *Not employing HBV carriers is discrimination* (9 July 2009), <http://www.humanrights.go.kr> (accessed 30 Sep. 2010); J. Li: "Labourer won Beijing's first case on HBV discrimination", in *Xinhua* (Beijing), 24 May 2008.

- The potential negative ramifications that may follow for a person who tests positive, such as denial of job opportunities, dismissal or disclosure to family or community members.
- The difficulty of redressing rights abuses towards people with HIV who have been forced to undergo an HIV test.

While compulsory HIV testing has been clearly prohibited in Recommendation No. 200, the practice continues in occupations such as the military and for migrant workers. Some governments consider military personnel, particularly those deployed for combat, to be exposed to a higher risk of contracting HIV through blood to blood contact. However, blood related transmissions in combat situations, while possible, have not been established through evidence. UNAIDS research²¹ shows that the high rates of HIV in the military are associated with unsafe sex practices rather than combat related incidences. However, it is important that safety measures be put in place to prevent work related infections in sectors with any potential of work related transmission, including in the military and the health sector.

Similarly, HIV testing for migrant workers has been a difficult issue to tackle at the national and international level. The justification for testing from labour import countries has been that imported labour must be fit to work and not become a burden on health systems of individual employers. Labour importing countries often maintain a double standard for national and migrant workers, denying employment protections, social security and health services to migrants. In some cases, migrants who are determined to have the HIV virus are deported, often after being detained for a period of time. In these situations, they often are not provided any information or referral advice prior to being deported or after they return to their home countries.

While compulsory testing often leads to denial of basic rights, HIV testing in itself is essential for an effective response to the epidemic. On average more than 70 per cent of people who are infected with HIV in Asia and the Pacific are unaware that they have the virus. This often leads to a situation where people with HIV only know their status when they are in the later stages of viral progression. This means that people often learn they have HIV when it is either very costly or impossible to treat because infections and diseases that occur because of a sustained weakened immune systems are too far advanced. The likelihood that these individuals have passed on the virus unknowingly to partners is also high.

This situation indicates that the overall effort to ensure that the traditional voluntary testing and counseling approach, where people on their own initiative seek out and do HIV tests, has failed from a public health perspective. Over the past five years, national AIDS programmes have moved towards an approach of integrating HIV testing into routine medical and life cycle time points such as when obtaining marriage certificates, prior to giving birth and during routine medical exams and surgical procedures. However, it is essential that any testing that is carried out guarantees confidentiality, allows for opting out of the test and ensures protection of the rights of those who test positive.

²¹ UNAIDS: *AIDS and the military: UNAIDS point of view*, UNAIDS Best practice collection (May 1998).

3.3 Approaches and strategies for achieving substantive equality

Exercise 17. Protection and equality: Case studies

Instructions for trainers



Aim – To distinguish between protection (“protective equality”) and equality (“substantive equality”), and assess how they impact on employment outcomes for women.



Time – 30-40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – One sheet of flipchart paper and one marker pen for each group. Select the relevant case study/ies for the participants before the session. Read “Shifts in international approaches to gender equality promotion” in Section 2.1 in Chapter 3 of the *Equality and non-discrimination at work in Asia: Guide*.



Steps.

- Share the aims of the exercise with participants. Divide them into small groups and distribute **Handout 1**. Assign each group a case for discussion.
- Reconvene in plenary when the groups are ready. Ask the groups to present their case and the outcome of their discussion. After the presentations invite other participants to ask questions or comment. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Blanket protection measures are defended by some as necessary for women workers, and criticized by others because they are contrary to gender equality goals and disadvantageous to women’s employment and promotion prospects. However, there is overall consensus about the need to protect the safety of all workers, including the reproductive functions of women and men, and most importantly the health of the woman and her child during pregnancy and breastfeeding.
 - Blanket protection measures for women only run the risk of perpetuating stereotypical ideas of women and men, and they often make women workers more expensive. This, in turn, can lead to decreasing women’s access to employment or lower wages for women. Therefore, evidence needs to be sought to justify the need for protective measures and analyze their actual effect on equality promotion.
 - Women and men have an equal right to employment and to safe and healthy working conditions. For this reason, it is essential to safeguard access to equal job opportunities and at the same time enforce (minimum) decent work standards for both sexes.

Exercise 17. Protection and equality: Case studies



Handout 1.

Case A. Night work by women in France and Indonesia

A French company fell into economic difficulties in 1988, and needed to reorganize production. The enterprise considered laying off about 200 people at one of its plants. However, having calculated that the number and the effects of redundancies could be limited if a continuous shift-work system were adopted, involving night work for the entire workforce, it undertook negotiations with the unions. This led to an agreement whereby night-work jobs were offered to all the staff, including women.

In view of the fact that the female workers in the company had the necessary skills for the posts that had been retained, the parties, wishing to ensure that women were given the same opportunities as men, agreed to make all posts available to both men and women, subject to approval by a majority vote of the female workers. A majority voted in favour of the shift-work system, and it was introduced with effect from 1 October 1988.

At that time the French law prohibited night work by women in industry, and breaching the law was a criminal offence. The director of the company, Alfred Stockel, was thus taken to the Police Tribunal. In the court Mr Stockel admitted that he had breached the national law in France, but contended that this law was contrary to the law of the European Community (EC) on equal treatment of women and men in employment. Namely, EC Directive 76/207 on the implementation of the principle of equal treatment for men and women as regards to employment, vocational training and promotion required EC member States to take all the necessary measures to eliminate inequalities in employment and working conditions. In these circumstances the French Court stayed the proceedings and referred the case to the European Court of Justice for a preliminary ruling on the interpretation of EC law.

Questions for discussion:

1. How would you decide this case if you were the judge in the European Court of Justice hearing it?
2. Discuss the arguments in favour and against protection (“protective equality”) and equality (“substantive equality”) in your group.
3. In Indonesia, night work of women is allowed since 2003. However, employers who employ women workers at night are required to provide their female employees with nutritious food and drinks between 23.00 and 7.00 hours and roundtrip transportation to/from work between 23.00 and 5.00 hours (Indonesian Manpower Act, Law No. 13 of 2003, Art. 76), and to maintain decency, morality and security in the workplace.
 - Are these protective measures reasonable or not? And why?
 - Do they constitute discrimination? Against whom?
 - What impact could these provisions have on women’s access to and their position in the labour market?

Case B. Employment of women in the South African mining industry

Read the case and discuss the following questions:

1. How would you assess the pre-1996 situation in the South African mining industry from the gender equality point of view? Do you think exclusion of women from the mining industry (the country’s largest employer) was reasonable and necessary?

2. Brainstorm and make a list of different risks and health hazards related to mining work. Assess each of the risks in terms of how they affect women and men. Are the health impacts the same? Or are some hazards more harmful to one sex than the other?
3. When providing women access to employment in mining, are special measures needed to protect women working in the sector? If yes, what kind of measures should be adopted?

South Africa is known throughout the world for its large deposits of mineral resources and for its mining industry producing and owning a significant proportion of the world's minerals. The country's economy is largely built on the country's mineral resources – nearly 90 per cent of the world's platinum reserves, 80 per cent of manganese, 73 per cent of chrome, 45 per cent of vanadium and 41 per cent of gold.

The mining industry is also South Africa's biggest employer, with around 460 000 employees and another 400 000 employed by the suppliers of goods and services to the industry. However, mining was a male-dominated industry that was hostile to women's participation in work. Employment of women underground was prohibited in law and women were considered unfit for the hard labour in mines. Most of the jobs in mining that were available for women were either administrative or menial low-skill activities like sweepers, cleaners or attendants in the offices.

However, attitudes towards women's employment in mines in South Africa changed. The Mine Health Safety Act (1996) removed restrictions for employing women underground. The Employment Equity Act (1998) was another ground-breaking law that put women on the same footing as men, by doing away with discrimination on the grounds of sex, among others.

Case C. Menstruation leave in some Asian countries

Read the legal provisions on menstruation leave below and discuss the following questions:

1. Consider the impact of menstruation leave on women's well-being and employment opportunities from the protection ("protective equality") and equality ("substantive equality") perspectives. Make a list of possible arguments in favour and against the provision of such special measures.
2. From your experience what would you recommend if you were asked to develop a gender equality law (or workplace policy or collective agreement) in your country on this issue and why?
3. What additional information would you want to have to make an informed decision on the matter?

1. Indonesia – Manpower Act No. 13 (2003)

Article 81(1). Female workers who feel pain during their menstruation period and notify the entrepreneur about this are not obliged to come to work on the first and second day of menstruation.

Article 93(2).... the entrepreneur shall be obliged to pay the worker wages if the worker does not perform work because of the following reasons: ... (b) The female workers are ill on the first and second day of their menstruation period so that they cannot perform their work.

Articles 81(2), 93(5). The arrangements for the implementation of menstruation leave are not stipulated in the law, but shall be specified in the work agreements, company regulations or collective labour agreements.

These legal provisions have led to varying practices in implementation of the law and less transparency in conditions for the leave entitlement.²² In practice, women are generally only entitled to payment during menstruation leave if they provide a doctor's statement. However, some work agreements, company regulations, or collective agreements do not require presenting a doctor's statement. In addition, some employers are paying women two days of extra wages if they do not take the two days off.²³

2. Viet Nam – Labour Code (2007)

Article 115 (3). A female employee in her menstruation period shall be entitled to 30 minutes off in every working day with full pay.²⁴

3. Korea – Labour Standards Act (2003)

Article 71. An employer shall, if requested by a female worker, grant her one day's menstruation leave per month.²⁵

4. Japan – Labour Standards Law (1947)²⁶

Article 68. When a woman for whom work during menstrual periods would be especially difficult has requested leave, the employer shall not employ such woman on days of the menstrual period.

Provision of menstrual leave has been further specified in Ordinance 151 of the Ministry of Health and Labour, issued in 1988. The ordinance states that when a female worker applies for menstrual leave, the employer shall in principle give the leave as requested. If the employer asks the worker to provide any proof, it should be simple such as a co-worker's testimony and it does not need to be a medical certificate.

5. Taiwan – Gender Equality in Employment Law

Article 14. When a female employee has trouble working due to menstruation, she may request menstruation leave for one day per month. This leave will be incorporated into sickness leave.

6. China – Labour Law (1994)

Article 60. Female workers during their menstrual periods shall not be arranged to engage in work high above the ground, under low temperature, or in cold water or work with Grade III physical labor intensity as stipulated by the State.

²² K. Lahiri-Dutt & K. Robinson: "Bodies in contest: Gender difference and equity in a coal mine", in Ford and Parker eds.) *Women and work in Indonesia* (2008) p.122

²³ ILO: Findings from Better Work Indonesia research and monitoring reports (Jakarta, 2011).

²⁴ Amended and supplemented in 2002.

²⁵ Amended by Act No. 6974, 15 Sep. 2003.

²⁶ Law No. 49 of 7 April 1947 as amended through Law No. 107 of 9 June 1995.

Exercise 17. Protection and equality: Case studies



Handout 2. Case responses

Case A. Night work by women in France

This case relates to an actual dispute which occurred in France in 1991.²⁷ It illustrates the conflict of interests between “protective equality” and “substantive equality” – and why substantive equality should prevail according to the paradigm “in equality we trust, protection if we must”. While women’s health needs to be protected during special conditions such as pregnancy and breastfeeding, blanket protection measures banning women’s employment in certain occupations or types of work remove opportunities for decent work by providing a level of protection that is disproportionate to the actual protection needs. They are defended by some as necessary for women workers, and criticized by others because they are disadvantageous to women’s employment and promotion prospects. The debate usually concerns women’s employment in physically strenuous work, at heights, underground in mines and during the night.

Among East and South-East Asian countries night work by women is still formally prohibited in Malaysia (Section 34 of the Employment Act, subject to exemptions from the Director General of Labour), and in Brunei Darussalam for women below 18 years of age. In the Philippines, Congress repealed Sections 130 and 131 of the Labour Code in May 2011, which had hitherto banned night work for women except under strict government permission. At the same time, it adopted a new Labour Code Chapter on “Employment of night workers.” The new chapter provides protection to both women and men working at night, including, among others, the right to health assessment and transfer to a similar job if certified as unfit for night work. Importantly, it also requires the employer to consult workers’ representatives or labour organizations on the details of the work schedules before introducing night work.²⁸ In Viet Nam, Section 115 of the Labour Code prohibits night work for women who are at least seven months pregnant or have a child less than 12 months old.

Advantages of blanket protection measures are that women are barred from work that is considered too dangerous or dirty for them. In the case of night work, arguments could be that it is difficult to combine this type of work with family responsibilities, or that women run the risk of sexual harassment or assault by male workers. However, the **disadvantages** of blanket protection measures may overall be more significant than the advantages, as protection takes the form of prohibition of women in certain jobs or work processes and perpetuates traditional stereotypes of women as weaker and less able workers. For this reason in the real-life case in France the women workers voted in favour of introduction of shift-work, which required them to work at night but helped them to save their jobs.

In its reasoning, the European Court of Justice (ECJ) stressed that the EC directive requires the abolition or revision of national provisions that are contrary to the principle of equal treatment of women and men in employment. Exceptions are valid only if there is a justified need for a difference of treatment between women and men. The ECJ noted that with regard to the case at hand, the risks to which women are exposed when working at night, on the whole, do not seem significantly different from those to

²⁷ “CJ Case C-345/89 Alfred Stoeckel, 25 July 1991, [1991] ECR I-4047” in A. Bronstein: *International and comparative labour law: Current challenges* (Geneva, 2009).

²⁸ Republic Act No. 10151, An Act Allowing the Employment of Night Workers, Thereby Repealing Articles 130 and 131 of Presidential Decree Number Four Hundred Forty-Two, As Amended, Otherwise Known As The Labor Code Of The Philippines. <http://www.gov.ph/2011/06/21/republic-act-no-10151/> (accessed 19 Oct 2011).

which men are exposed. On these grounds the ECJ judged that prohibition in the French law banning night work by women was not justified, and was in breach with the EC law. The ECJ noted however that special measures protecting the health of women during pregnancy and maternity are necessary and justified.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted in its General survey on night work of women in 2001 that there is a clear tendency among ILO member States to move away from a blanket ban on night work of women in industry, to regulating night work for both men and women.  See Section 6.3 in Chapter 2 of the *Equality and non-discrimination at work in Asia: Guide* for details.

Due to changes in the roles of women in economic life and the growing need to ensure equal opportunities and treatment in employment, the International Labour Conference adopted a Protocol in 1990 substantially revising the Night Work (Women) Convention (Revised), 1948 (No. 89), as well as a new **Night Work Convention, 1990 (No. 171)**. In adopting the Protocol to Convention No. 89 and Convention No. 171, ILO has sought to satisfy the different needs of its member States while seeking to establish working conditions for night workers that are acceptable from both a health and a social perspective.

Turning to the protective provisions for women who work at night in Indonesia, the question on the provision of **food, drinks and transport services** for women in night work relates to the general question concerning the risks to personal safety and well-being that women and men are exposed to in night work. It is well known that night work is stressful and tiring for both women and men workers. Scientific research on physical abilities and characteristics of women and men has, however, increasingly shown that the risks to which women are exposed when working at night are not significantly different from those to which men are exposed. Based on this evidence, provision of food and drinks only to women working at night does not seem justifiable, and could even be considered as discrimination against men. The ILO Night Work Recommendation, 1990 (No. 178) has adopted this approach and encourages employers to provide transport, food and beverages to all male and female night workers without distinction.

While the physical impacts of night work on women and men may not be different as such, it should be noted that as regards to the **risks to personal safety**, women could be more vulnerable than men, especially when walking alone at night on their way to/from work or during their break. From this point of view, the provision of special services such as food and drinks at the workplace or roundtrip transportation to women only may be justifiable, if public transportation, street stalls or restaurants carry risks to the personal safety of women during the night. If evidence indicates that men face similar risks to their personal safety at night, such benefits should not only be provided to women workers.

In the debate on the provision of food and drinks to women only, arguments raised in Indonesia in favour of providing nutritious food and drinks to female workers relate to the deep-rooted poverty among women who resort to night work and the fact that, overall, they face a higher workload than men as they have a “double workload,” engaging in low-paid employment, just like low-income men but additionally responsible for the bulk of family responsibilities. While these arguments may be valid in and of themselves, one could ask whether it would not be more strategic to address the underlying problems of wage payments that do not cover a living wage, rather than resort to stop-gap measures, such as providing food to female night workers only.

Case B. Employment of women in the South African mining industry²⁹

In 1935, ILO member States adopted the ILO Underground Work (Women) Convention (No. 45) with a view to protect women from work in underground mines because of the hazardous and heavy nature of the work and perceptions that such work should not be done by women. However, since then, mining technology has improved leading to substantial reductions in work hazards in this industry in many countries.

From a gender equality point of view, the blanket prohibition of women's employment in the mining sector in South Africa became problematic after 1996. The exclusion from an industry that is the largest employer in South Africa put women in a disadvantaged position compared to men in their ability to find a job and secure decent livelihood for themselves and their families. Two other factors contributed to the change in policy. First, the mining industry in South Africa was experiencing a labour shortage. Secondly, mining operations are often located in remote areas, and HIV/AIDS – a common by-product of unsafe sex work – were rampant in the all-male settlements surrounding the mining operations.

Work underground in mining shafts is dangerous and involves exposure to chemical substances, physical, ergonomic and biological hazards. The hazards may include, for example, vibration and mechanical shocks, extreme heat and cold, noise, radiation, and exposure to lead, mercury, anesthetic gases, and pesticides. Such hazards affect both women and men, and for that reason the prevention and management of these risks is essential for protecting the health of all workers involved in this sector. Exposure to the above hazards may lead to reproductive abnormalities impacting both women and men, including changes in the fertility rate, sperm count, sperm mobility, libido and the menstruation cycle. These abnormalities may result in miscarriage, embryo toxicity, development defects and stillbirth.

While both men and women need to be protected against occupational health hazards throughout their employment in the mining sector, an enhanced level of protection is needed when human reproduction is in its most critical phase, that is during pregnancy and breastfeeding. For this reason adequate maternity protection measures are indispensable in the mining industry (as in any other industry). ILO Maternity Protection Convention, 2000 (No. 183) requires that pregnant or breastfeeding women shall never be obliged to perform work prejudicial to the health of mother or child.

After providing women with access to employment in South Africa's mines, practical approaches were developed to make mining workplaces more inclusive towards women. An Occupational Hygiene Specialist for a major South African platinum producing company outlined key principles for employment of women in underground mining as follows:

- Principle 1 – Health and safety shall not be compromised: A female employee can do any job that she is qualified to do, subject to her fulfilling the inherent requirements of the job. The safety and health of the female employee and other employees working with her cannot be compromised by appointing her to conduct tasks that she is not physically or functionally capable to do.
- Principle 2 – Safe placement of the woman prior to and during pregnancy: A risk assessment shall be conducted upon placing a woman employee in a job and identified risks eliminated as far as possible.

²⁹ "Mining and minerals in South Africa", in *South Africa Info*, <http://www.southafrica.info> (accessed 24 Sep. 2010); C.J. Badenhorst: *Occupational health and safety considerations for the employment of female workers in hard rock mines*, presented at the Southern African Institute of Mining and Metallurgy Hard Rock Safe Safety Conference 2009, <http://www.saimm.co.za> (accessed 24 Sep. 2010).

A woman employee shall be informed about the outcomes of the risk assessment and instructed to inform her employer as early as possible when she gets pregnant. As soon as the woman employee has informed the employer about her pregnancy a new risk assessment shall be conducted and her working conditions adjusted, if necessary.

- Principle 3 – Creating supportive infrastructure: The employer shall accommodate the woman employee as far as is reasonably practicable. Reasonable accommodation practices include provision of personal protective equipment and mining equipment suitable to women (e.g. smaller sizes of gloves, lighter drills), changing rooms for women, work-life balance measures, childcare facilities, personal safety and security measures.

The experience from South Africa shows that protection of women's reproductive role does not require full exclusion of women from underground mining work, but women's health and safety can be adequately protected through other measures. With adequate maternity protection measures and reasonable accommodation measures in place, it is not necessary to exclude women from this important industrial sector.

In the East and South-East Asian region, underground work for women remains prohibited in most countries, but in several of these countries women do perform underground work in mines, meaning that they are even less protected than the men who at least work legally in underground mines. China (1936), Indonesia (1950), Japan (1956), peninsular Malaysia (1957), Singapore (1965) and Viet Nam (1994) have ratified the ILO Underground Work (Women) Convention, 1935 (No. 45). The ILO Governing Body is recommending these countries to consider ratifying the **Safety and Health in Mines Convention, 1995 (No. 176)** instead – considering that a blanket ban on employment of women in underground mines is discriminatory in principle.

Case C. Menstruation leave in some Asian countries

Several countries in Asia grant a rest period or sick leave to women during the first days of their menstruation (menstruation leave in short). Provision of such leave is currently subject to debate in Asia. Some women and their organizations are strongly in favour of such measures while others consider that they may disadvantage women's employment opportunities. For example in Indonesia, women workers and their organizations seem to lean towards protection rather than equality promotion. Globally, however, menstruation leave is more often seen as excessive protection hindering women's equal employment, and outside Asia only very few countries have provisions on menstruation leave in their labour laws.

Arguments in favour of granting paid menstruation leave to women workers often originated from practical considerations at a time that hygienic sanitary supplies were not readily available to all women workers. Cultural traditions separating women from society during menstruation are also sometimes referred to, citing for example the menstruation huts that were common in some tribal societies in which women were periodically isolated considering that they were unclean during their menstruation. Some animist traditions and religions see menstruation as the way in which nature or deity prepares the womb for the next cycle of life. This is considered sacred time when women need to rest and allow their body to cleanse and renew.

In other instances, arguments in favour of menstruation leave are an indication of the **protectionist perspective** towards women at work. Women are perceived as “weak” or more fragile than men, and are considered to be in need of special protection because of their reproductive biological functions.

Some women activists supporting this view may consider that menstruation leave is an integral part of women's reproductive rights and, therefore, does not constitute discrimination against men. Again others argue that women require two days of rest during their menstruation as they are assigned the double workload of productive work and the reproductive, unpaid household and family responsibilities during all others days.

In the case of Japan, provision for menstruation leave in the Labour Standards Law of 1947 was argued on the basis of post-war living and working conditions, and politically rooted in the course of trade union development. In practical terms, sanitary supplies and work place facilities were scarce and commuting hours in crowded buses were long. The unions were organizing but generally did not advocate for special clauses to meet the demands of female employees in labour agreements. Union leaders felt instinctively that this was unreasonable and thus the demand for menstruation leave allowance for women union members was born. By attaining the menstruation leave allowance for their female members, which no men could be granted, the male union leaders felt that they had achieved a benefit for female union members, and the latter were grateful that this allowance was garnered by the trade union movement.³⁰

The **argument against menstruation leave** rests on the potential obstacle it creates for the participation of women in the labour market. This argument is embedded in the international trend to move away from protectionist measures towards measures that promote **equality in law and in practice**, that is, in labour market outcomes – and reduce the scope of protection to situations in which women workers genuinely need special protection on account of their biological differences. Menstruation leave increases the cost of women workers for employers who will have to pay women wages during menstruation leave and their replacement cost, and this may make women less attractive as workers in comparison to men.

In some companies in Indonesia women who come to work during the first two days of their menstruation are entitled to receive an additional payment or **double pay** for the menstruation leave days. This practice may be considered as discrimination against men. Furthermore, paying double pay to those women who come to work during menstruation leave puts at a disadvantage women who suffer from severe menstruation pain – “dysmenorrhea” in medical terminology – and genuinely cannot work on the first days of their menstruation. This line of argument would conclude in favour of discrimination on the basis of health status. Research in the United States has estimated that only five per cent of women suffer from dysmenorrhea – a significant enough number to have their protective needs recognized, but not enough to warrant legal provisions that impose blanket leave and pay conditions on employers for all women workers.

Under ILO Convention No. 111, menstruation leave is an acceptable legal protection measure for women if it is based on solid **scientific evidence** validated within the country to which the measure applies.³¹ Since the leave or rest period actually seeks to accommodate the temporary incapacity to work because of severe symptoms caused by menstruation rather than the menstruation as such, the protection afforded by the law should not extend beyond the accommodation actually needed.

In reality there seems to be little evidence of medical reasons for the need of menstruation leave. While most women experience some pain during menstruation, only a minority have severe pain that limits their

³⁰ T. Hattori: *Study on the "menstruation leave problem" in Japan*, 1965, <http://repository.osakafu-u.ac.jp/dspace/bitstream/10466/7393/1/2009000259.pdf> (accessed on 1 July 2011).

³¹ See e.g. M. Nohara, M. Momoeda, T. Kubota and M. Nakabayashi, *Menstrual cycle and menstrual pain problems and related risk factors among Japanese female workers*, *Industrial Health* 2011, 49, 228–234, http://www.jniosh.go.jp/en/indu_hel/pdf/IH_49_2_228.pdf (last accessed on 1 July 2011).

daily activity. In the great majority of cases, therefore, sick leave should be sufficient to accommodate the need for temporary absence from work without women having to provide evidence that their absence is justified by menstruation or by any other type of discomfort that genuinely prevents them from reporting for duty. In this way, sick leave would provide a more flexible method of accommodation that has no regard for whether the affected worker is a man or a woman.

In practice, menstruation leave is more often based on gender bias than medical necessity, and functions as a subterfuge for intractably low wages or the inaccessibility of sick leave. Using the leave to compensate for the gender pay gap or other **bad working conditions** of women does not seem a good idea. Over time this kind of outdated and unpractical measures should be progressively done away with and replaced with more equitable wage levels and improved working conditions.

If menstruation leave is applied, the arrangement for getting the entitlement needs to be **practical**. It is unrealistic to ask women to go to a medical practitioner every month to prove that they are menstruating. The opportunity costs are too high and women in poverty are known not to go to doctors at all even if they are quite sick.

Exercise 18. Affirmative action for gender and ethnic equality



Aim – To analyze and identify how to design effective affirmative action measures.



Time – 45-70 minutes



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – One sheet of flipchart paper and one marker pen for each group. Select the cases that are relevant for the participants prior to the session.



Steps.

- Share the aim of the exercise with participants and divide them into small groups. Distribute **Handout 1** to the groups, and assign each group one case. Ask them to read and discuss the case, and select a spokesperson to present the outcomes of their discussion in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask the groups to introduce their case and briefly present the outcome of their discussion. Invite other participants to ask questions or comment on each presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Affirmative action measures are temporary support measures that seek to accelerate the pace of improving the situation of groups that are at a disadvantage because of past or present discrimination. These can include, among others, targets to promote women's recruitment into non-traditional sectors of employment or quotas on employment of ethnic minorities.
 - Affirmative action measures can be adopted as part of national or local equality or employment policy, or at workplace level in companies and public organizations.
 - Whether adopted at national, regional or workplace level, the key components of effective affirmative action commonly include:
 - Reliable evidence to determine the extent and nature of the problem.
 - Specific objectives concerning the group covered by the programme.
 - Specific measures to redress the causes of the discrimination noted.
 - A timetable to attain the objectives and apply the measures.
 - A mechanism to monitor progress, assess difficulties and make adjustments.
 - The impact of affirmative action programmes in achieving their objectives is still being debated but overall evidence points to their utility for promoting equality, even if progress is a slow and gradual process.³²

³² ILO: *Equality at work: The continuing challenge*, Report 1(B), International Labour Conference, 100th Session, Geneva, 2011 (Geneva).

- Achieving substantive equality requires joint efforts by governments, employers and trade unions to address the immediate and structural causes of discrimination against certain groups. The necessity for, and legitimacy of, affirmative action measures can be controversial, and, if implemented poorly, can backfire and result in increased gender bias, racial tension and discriminatory perceptions by the dominant, non-target group who feel they are unfairly disadvantaged. It is important, therefore, to develop and implement affirmative measures in a participatory and consultative manner involving all stakeholders. The policies should also involve a mixture of incentives and deterrents for employers.
- Affirmative policies require ongoing monitoring and evaluation of their effects and regular revision and adjustment of measures to ensure the intended objectives will be achieved.



Note to trainers: When giving the roundup points, show the last Slide (No. 19) of **Slide presentation** *Discrimination and equality: 2. Concepts and principles*. The cartoon picture depicting the woman and man climbing the stairs is helpful in illustrating the meaning and objectives of affirmative action measures.

Exercise 18. Affirmative action for gender and ethnic equality



Handout 1. Cases

Case A. Affirmative action to promote gender equality in the public and private sector

Read the cases and discuss:

1. What are the objectives for adopting gender equality laws and setting targets for women's representation in company board rooms?
2. What are arguments in favour and against these measures?
3. Do you think your country should adopt similar affirmative action measures? If yes, what kind of affirmative action measures would you recommend? If no, why not?

Finland

The Finnish Act on Equality between Women and Men (1987, revised in 2005) requires all private and public employers employing 30 or more employees to draw up a gender equality plan and to review it annually in cooperation with the staff. The gender equality plan is primarily concerned with pay and other terms of employment, career development of women and men, and prevention of sexual harassment. The gender equality plan must contain a gender equality assessment, clearly defined measures for improving the situation, and a review of the results of the previous year's plan. In 2005, the obligation to conduct gender equality planning was extended to also cover educational institutions, such as upper secondary schools, vocational schools, universities, polytechnics and adult education centers.³³

Mongolia

The 2011 Law of Mongolia on Promotion of Gender Equality aims at ensuring equal rights, opportunities and treatment of men and women, and preventing and eliminating gender discrimination. It defines direct and indirect discrimination in line with Convention No. 111. It calls for gender mainstreaming and special measures for maternity protection and achieving equality between men and women, and sets a range of gender quota towards more equal representation of men and women in decision making positions. In the spheres of employment and labour relations the law prohibits discrimination on the grounds of sex, pregnancy, childcare duties and family status. Employers have the responsibility to implement a plan for the promotion of gender equality at the workplace and to report on progress to employees. Job vacancy notices and advertisements should not specify or imply a preference for either sex, unless it concerns inherent job requirements or special measures to redress gender imbalances.

Viet Nam

The Vietnamese Law on Gender Equality (2006) mandates the National Assembly and the Government to adopt measures to promote gender equality. The Law defines measures to promote gender equality as "measures aimed at ensuring substantive gender equality, set forth by the competent state agencies in cases there remains considerable disparity between man and woman concerning the roles, positions, conditions, and opportunities for man and woman to bring into full play their capacities and to enjoy the achievement of the development where the application of equal regulations for man and woman

³³ The Ombudsman for Equality & Gender Equality Unit, Ministry of Social Affairs and Health (Finland): *The Act on Equality between Women and Men 2005*, Gender Equality Publications 2005:2 (Helsinki, 2005). Available at: <http://www.stm.fi/> [9 Oct 2011].

cannot remove this disparity. Measures to promote gender equality are to be implemented for a certain period of time and to end when the target on gender equality has been achieved” (Art.5(6)). Support measures stipulated in the law include, among others, building the capacity of female employees, giving a woman applicant priority over a male candidate in case of equal qualifications, and supporting rural women’s access to credit.

Australia

In 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. 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.³⁴

Norway, France, Germany and Spain

In Norway, laws require public or publicly traded companies to have a gender balance of at least 40 per cent of women in the boards since 2004 and 2006 respectively.³⁵ The French parliament gave final approval to a law obliging large companies to reserve at least 40 per cent of their boardroom positions for women within six years in January 2011.³⁶ Since 2007, similar legal measures have been adopted in Germany and in Spain, and by the European Union Commission.³⁷

The ILO Policy on Gender Equality and Gender Mainstreaming

In 1999 the ILO adopted a Policy on Gender Equality and Gender Mainstreaming in the International Labour Office. One of the key aims of this policy was to reach parity of women and men in professional positions. In 1980 women constituted only 15 per cent of ILO officials in professional positions and in 1991 this ratio stood at 23 per cent. In 1999 women constituted 31 per cent of officials in professional positions, but the ILO was still among the poorer performers in gender parity in the UN system. By 2010, 42.5 per cent of professional and higher category positions were held by women and the aim is to reach gender parity in these positions by 2015.³⁸

Case B. Affirmative action in Santa Clara County Transportation Agency – United States

Santa Clara County Transportation Agency (Agency) adopted an affirmative action plan for hiring and promoting minorities and women in 1978. The long-term goal of the affirmative action plan is to attain a work force whose composition reflects the proportion of women and minorities in the local labour force. The affirmative action plan provides that the Agency is authorized to consider as one factor the sex or race of a qualified candidate when making promotions to positions where women and minorities have been significantly under-represented. The plan does not establish a specific quota for hiring or promoting women and minorities, but requires that short-range goals be established and annually adjusted to guide actual employment decisions.

³⁴ Australian Securities Exchange (ASX) Corporate Governance Council: *Corporate governance principles and recommendations with 2010 amendments*, <http://www.asx.com.au/> (accessed 9 Oct 2011).

³⁵ Norway, Ministry of Children, Equality and Social Inclusion: *Rules on gender representation on company boards*.

³⁶ “France sets quota for women on big companies’ boards”, *Reuters*, 13 Jan. 2011. Available at: <http://www.reuters.com> (accessed 26 Jan. 2011).

³⁷ ILO: *Equality at work: The continuing challenge*, Report 1(B), International Labour Conference, 100th Session, Geneva, 2011 (Geneva).

³⁸ ILO: *Action Plan for Gender Equality 2010-2015* (Geneva, 2010); ILO: *Statement by Mr Juan Somavia, Director General of the International Labour Office on the occasion of International Women’s Day* (Geneva, 1999); ILO: *Gender equality and mainstreaming in the ILO Office*, Circular No. 564 (Geneva, 1999).

In 1986 the Agency announced a vacancy for a promotional position of a road dispatcher (a skilled craft position in charge of assigning road crews, equipment and materials, and maintaining records on road maintenance jobs). Several applicants applied for the position, including Mr Johnson and Ms Joyce who both had several years of experience in working with the Agency. Mr Johnson and Ms Joyce were both deemed qualified for the job and were invited to a job interview. The two-person interview board awarded Mr Johnson a score of 75 points and Ms Joyce a score of 73 points. Eventually, pursuant to the Agency affirmative action plan the position was given to Ms Joyce. Mr Johnson felt unfairly treated and filed a case in the Federal District Court claiming that he had been discriminated against on the grounds of sex.

Questions for discussion:

1. Do you think Mr Johnson has been discriminated against? Explain.
2. What information would you collect to assess whether giving priority to Ms Joyce was justified?
3. Do you think your organization should adopt similar affirmative action measures? If yes, what kind of affirmative action measures would you recommend? If no, why not?

Case C. Ethnic relations and affirmative policies in Malaysia

Malaysia implements affirmative policies in favour of Malays (54.2 per cent) and indigenous groups of Sabah and Sarawak, jointly known as “Bumiputra,” or sons of the soil. The rationale of the affirmative policies is to secure the majority population’s share in the economy so as not to be marginalized by the Chinese (25.3 per cent) and Indian ethnic groups (7.5 per cent). The Bumiputra, the majority Malay population, receive privileged access to public-sector jobs, university places and government contracts.

The pro-Bumiputra affirmative policies were laid down in the country's first Constitution in 1957, and extended greatly after the race riots in 1969. The new alliance government that emerged after the 1969 riots articulated a set of policies that would promote the twin goals of rapid economic development and political stability based on racial harmony.

Aided by measures embodied in the New Economic Policy (NEP) and other initiatives, the gap between Malays and other ethnic groups has closed in numerous areas of the economy. The incidence of poverty fell by more than half by the time the NEP officially ended in 1990, gross enrolment rates in tertiary education increased from less than one per cent in 1950 to over eight per cent by the early 1990s and there was a 12-fold increase in the number of registered professionals (engineers, doctors, dentists, etc.) between 1970 and 1995. Between 1995 and 1999, annual growth in the mean income of Bumiputra and rural households was well above national average. Despite these advances and the overall fall in income disparities since 1970, the mean Malay income still lags behind the national mean and well behind the Chinese mean.

While Malaysia’s affirmative action policies (together with its economic success) may have been vital in ensuring ethnic harmony, it is currently a matter of debate within Malaysia whether affirmative action based on ethnicity should continue to be pursued as a central objective of public policy. Indeed, the policies may actually exacerbate ethnic tensions for several reasons. First, inter-ethnic inequality is not as significant as it once may have been or when compared with other forms of inequality. Decompositions of inequality data confirm that inter-ethnic inequality accounted only for a small part of overall income inequality in Malaysia. In contrast, regional disparities, especially between rural and urban areas, continue to be significant, and have been growing even during periods of relatively fast growth. Second, due to increasing intra-Malay inequality and wealth disparities with the non-Malays, the pro-Bumiputra policies are increasingly hard to justify. Those who have been left behind may resent the success of the richer

sections of the populations and/or call for greater redistribution. There are also worries about increasing polarization between different ethnic groups as well as certain emerging radical tendencies among the Malay Muslim majority of what has been a largely secular country.³⁹

Questions for discussion:

1. What was the rationale and justification for adoption of affirmative policies in favour of the Bumiputra in 1957?
2. The economic situation of different ethnic groups in Malaysia has changed drastically since 1957. Do you think the across-the-board affirmative policies in favour of the Bumiputra are still justified?
3. The implementation of the affirmative policies is currently a matter of debate and ethnic tension in Malaysia. What information would you collect to assess whether there is still a need for these affirmative policies?

Case D. Ethnic relations and affirmative action in Papua province in Indonesia

In Indonesia, the Special Autonomy Law for Papua provides affirmative action to support indigenous Papuan's access to employment. Article 62(2) states: "...[t]he native Papuans shall be entitled to have the opportunity and shall be given priority to employment in all field of work within Papua Province based on their education and expertise." With regard to employment in the judicature, Article 62(3) provides: "...Papua natives shall have the right to have the priority to be appointed as judge or prosecutor in Papua Province."

The affirmative action measures within this law aim to achieve substantive equality for indigenous Papuans in employment by providing them with preferential treatment to facilitate their access to employment opportunities in their place of origin. The measures attempt to redress the inequalities felt by indigenous Papuans related to their lower levels of participation in formal employment, historically poorer access to education and lower levels of living standards than in other parts of Indonesia and in comparison to Indonesian immigrants in Papua. The policy also aims to rectify the neglect and marginalization of Papuan people in all sectors of life during the development of Papua, which occurred when a large number of migrant workers from outside of Papua dominated economic and political decision making in the province.

Implementation of these measures in Papua has faced several challenges. They include, among others, lack of adequate skills among the disadvantaged groups for whom the measures are intended. Cultural differences and prejudices between the indigenous and immigrant populations and the new and the old groups of immigrants have also led to resentment by the groups excluded from affirmative action coverage. Overall, the competition over scarce resources and economic opportunities has led to increased tension between disadvantaged groups and the groups not targeted by the affirmative action measures.

Questions for discussion:

1. What is the rationale and justification for the affirmative action in the Special Autonomy Law for Papua?
2. What are the challenges to effective implementation of these measures in the province?
3. What measures could be taken to make the affirmative action measures more effective?

³⁹ D. Sriskandarajah: "Development, inequality and ethnic accommodation: Clues from Malaysia, Mauritius and Trinidad and Tobago", in *Oxford Development Studies*, Vol. 33, No. 1, March 2005; *Economist*: "Tall buildings, narrow minds", 9/1/2007; N.M. Noor: "Polarisation and inequality in Malaysia: The future of Malay-Chinese relations", in *Intellectual Discourse*, Vol. 15, No. 2, 2007.

Exercise 18. Affirmative action for gender and ethnic equality



Handout 2. Case responses

Case A. Affirmative action to promote gender equality in companies and public organizations

International and national experience shows clearly that prohibition of gender based discrimination is not sufficient in and of itself to eliminate discrimination against women in employment and occupation. Therefore, affirmative action measures to improve the status of women in the labour market constitute an important part of a national gender equality policy.

The basic obligation of employers established in national non-discrimination law is not to discriminate in their human resource practices. In addition to this “negative obligation” not to discriminate, many countries have passed legislation to establish “positive obligations” for employers to promote gender equality in their organization. These positive obligations may include, among others, an obligation to draw up a gender equality plan or to adopt and implement an equality policy. Many countries have also established compulsory or voluntary targets or quotas for women’s representation in senior management positions and on company boards.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Elimination of Discrimination against Women (CEDAW) have noted that the use of affirmative measures is still inadequate in many Asian countries. For example, the 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.⁴⁰

 For evidence on the business benefits of female leadership in companies see Box 4. Female leadership and company profitability in the *Equality and non-discrimination at work in Asia: Guide*.

Case B. Affirmative action in Santa Clara County Transportation Agency – United States

This is a real-life case from the United States.⁴¹ In the actual case the Federal District Court ruled in favour of Mr Johnson stating that the Agency affirmative action plan was invalid, but the Court of Appeals and the United States Supreme Court reversed this judgment. The Supreme Court ruled that it was appropriate for the Agency to take into account the sex of Ms Joyce as one factor in determining that she should be promoted to the road dispatcher position, and thus ruled against Mr Johnson.

When assessing whether passing over a male candidate to promote the qualified female candidate in the case of Ms Joyce was legitimate, the Supreme Court looked at detailed information concerning the work force demographics in the Agency. It found that women were under-represented in the Agency workforce as a whole (22.4 per cent), and were concentrated in only a few job categories traditionally held by women. Women made up 76 per cent of office and clerical workers, but only 7.1 per cent of officials and administrators, 8.6 per cent of professionals, 9.7 per cent of technicians, and 22 per cent of service and maintenance workers. None of the 238 skilled craft positions – the job classification to which road dispatchers belong – was held by women. Noting

⁴⁰ 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).

⁴¹ United States Supreme Court: *Decision (480 U.S. 616) Johnson v. Transport Agency* (1987), <http://laws.findlaw.com/us/480/616.html> (accessed 18 Oct 2011).

this manifest gender imbalance and the objectives of the affirmative action plan, the Supreme Court judged that the Agency's decision to pass over Mr Johnson and promote Ms Joyce was legitimate.

The Supreme Court further noted that the Agency's affirmative action plan cannot be considered as unnecessarily trammeling the rights of male employees or creating an absolute bar to their advancement. The sex of the applicants is but one factor that is taken into account in evaluating qualified applicants for a position (a "plus" in the applicant's file), but female candidates still need to compete on merit with the other applicants.

Case C. Ethnic relations and affirmative policies in Malaysia

Malaysia's affirmative action policies are unusual because they seek to benefit the majority population and have been in place for over 40 years. The measures were developed in response to the economic reality in the 1970s when the Malays and indigenous groups of Sabah and Sarawak (jointly known as Bumiputras) owned just 3.4 per cent of the country's wealth despite forming the majority of the population. The objectives of the policy were to put Bumiputras on a more equal footing with the Chinese and Indian immigrant populations, and to reverse the social imbalances that had set in during centuries under colonial rule, starting with the Portuguese and Dutch and ending with the Japanese and British.

The affirmative measures have been successful in achieving their objectives in some respects. For example, between 1970 and 1995, the number of registered Bumiputra professionals and their ownership of corporate companies rose drastically. However, segmentation of the labour market persists and Bumiputras continue to be under-represented in some sectors and occupations. In addition, the patterns of inequality have changed since the late 1960s: **Inter-ethnic** disparities have narrowed while **regional disparities** seem to be on the rise. Due to this change, calls are made to review the broad-based affirmative action policy.⁴²

When formulating or revising an affirmative action policy it is vital to know who the disadvantaged people are. In the case of Malaysia, detailed statistical information on regional disparities and on the socio-economic status of different ethnic groups in each region would be needed to design and target the revised affirmative policy so that it can meet the needs of the most disadvantaged groups. Knowledge of the extent and the nature of the discrimination is also essential. Data collection on work-related indicators such as poverty levels, labour force participation rates, occupational segregation, wage and income data, social inequalities, and educational levels is essential to address the problem effectively.

Case D. Ethnic relations and affirmative action in Papua province in Indonesia

The rationale and justification for the affirmative action measures provided in Article 62 of the Special Autonomy Law for Papua is the need to address the lower levels of participation of indigenous Papuans in formal employment, and their historically poorer access to education and lower levels of living standards in comparison to other parts of Indonesia and Indonesian immigrants in Papua. The aim of the affirmative action is to achieve substantive equality for indigenous Papuans in employment by providing them with preferential treatment to facilitate their access to employment opportunities in their place of origin.

⁴² ILO: *Time for equality at work: Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*, Report I (B), International Labour Conference, 91st Session, Geneva, 2003 (Geneva) pp. 63-66; D. Sriskandarajah: "Development, inequality and ethnic accommodation: Clues from Malaysia, Mauritius and Trinidad and Tobago", in *Oxford Development Studies*, Vol. 33, No. 1, March 2005; *Economist*: "Tall buildings, narrow minds", 9/1/2007; N.M. Noor: "Polarisation and inequality in Malaysia: The future of Malay-Chinese relations", in *Intellectual Discourse*, Vol. 15, No. 2, 2007.

The key challenges faced in implementing the affirmative action measures in Papua include:

- Lack of adequate skills among the disadvantaged groups for whom the measures are intended.
- Cultural differences and prejudices between the indigenous and immigrant groups.
- Competition over scarce resources and economic opportunities.
- Resentment by the groups excluded from affirmative action coverage.

These types of challenges are common when implementing affirmative action measures. They can be overcome by including the following measures:

- Training is an essential part of most affirmative action programmes, for example, increased and preferential access to training, education grants, on-the-job training and special career development to raise the skills and educational level of the targeted groups.
- Awareness raising to fight stereotyped ideas and prejudice on both sides and to help the newcomers to adjust to the working style and culture of the workplace.
- Affirmative action programmes need to be formulated and designed through broad-based dialogue so that all groups in the society can accept their rationale and justification.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that effective social dialogue between employers and workers is a key element in successful implementation of affirmative action measures in the workplace.⁴³ The ILO CEACR has also emphasized that affirmative action programmes will only be successful if they are subject to the direct supervision of a national authority entrusted with promoting, applying and supervising affirmative action measures.⁴⁴  For more information on the design and implementation of affirmative action, see Section 2.1 in Chapter 3 in the *Equality and non-discrimination at work in East and South-East Asia: Guide*.

⁴³ ILO: *Time for equality at work*: (Geneva, 2003) pp. 65-69; ILO. “Equality in employment and occupation, General survey”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4 B), International Labour Conference, 75th Session (Geneva, 1988).

⁴⁴ ILO: “Equality in employment and occupation, General survey”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 4 B), International Labour Conference, 75th Session (Geneva, 1988); ILO: *Women workers’ rights: Modular training package* (Geneva, 1995).

Exercise 19. Disability and reasonable accommodation: Case studies

Instructions for trainers



Aim – To identify how employers can provide for reasonable accommodation to avoid discrimination and promote equality for people with disabilities at work.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise and distribute **Handout 1** to participants. Divide participants into small groups and instruct some of the groups to discuss case A and some to discuss case B. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. Invite other participants to ask questions or comment on the presentation and facilitate discussion. Add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Reasonable accommodation measures such as practical modifications and adjustments in work practices and equipment are important strategies in promoting equal opportunity and treatment in employment for persons with disabilities.
 - Provision of reasonable accommodation to persons with disabilities is a good employment practice, and efforts to further adopt such measures should be promoted both in public and private sector workplaces in East and South-East Asian countries. The UN Convention on the Rights of Persons with Disabilities, signed or ratified by most East and South-East Asian countries,⁴⁵ urges ratifying States to ensure that reasonable accommodation is provided in education and in employment. The Convention recognizes denial to provide reasonable accommodation as discrimination on the basis of disability.
 - Employers' organizations, trade unions and disabled persons' organizations can play an important role in promoting the adoption of these measures in enterprises and sharing good practice examples among companies and workers.

⁴⁵ Cambodia (signature 2007), China (ratification 2008), Indonesia (signature 2007), Lao PDR (ratification 2009), Malaysia (ratification 2010), the Philippines (ratification 2008), Thailand (ratification 2008), Viet Nam (signature 2007).

Exercise 19. Reasonable accommodation: Case studies



Handout 1. Cases

Case A. The disabled radio announcer's job application

A supermarket chain opened a store in Xining, Qinghai Province, China. As the Guidelines for the Implementation of the Law on Disabled Persons in Qinghai Province set a percentage for the employment of persons with disabilities in every enterprise, the Provincial Disabled Persons' Federation recommended three persons with disabilities who were trained by the vocational training institution for persons with disabilities. Two were accepted by the supermarket. The third was a young woman who had to walk with crutches. She applied for the radio announcer's post in the store. Her voice was very suitable for the post. However, the company refused to recruit her because the path to the broadcasting studio was too narrow to allow her to pass with her crutches, although the woman's family pleaded that they could carry her in and out of the studio everyday. The woman had always been an active youth member of the local Disabled Person's Association. She brought her situation up with the Association and asked them to take action with the supermarket management and/or use this case to promote the employment of persons with disabilities.

Questions for discussion:

- Was the young woman discriminated on the grounds of disability?
- What should the Association do to solve the situation? List arguments and methods.
- What legal remedies are available in your country for seeking redress in these kinds of cases? Which laws apply?

Case B. Dismissal of a nurse with a hearing impairment

Ms Wright was working in a hospital in Houston as a nurse. She had suffered profound bilateral hearing loss from Meniere's Disease and due to this, hearing over background noise was very difficult if not impossible for her. Ms Wright could not use a regular telephone or stethoscope, or hear overhead announcements or monitor alarms. As an alternative to a mobile phone she used a mobile pager for receiving messages. One day after three and half years into her otherwise satisfactory employment as a staff nurse, a patient safety incident occurred. The monitor technician tried to contact her, but could not reach her as she did not carry a portable phone like the other nurses, and the monitor technician did not have access to equipment to send a message to her pager. Fortunately, Ms Wright happened to go and check on the patient anyway before harm could occur. Although Ms Wright was officially ruled not at fault in the safety incident she was ordered to do a mandatory skills reassessment. The assessment revealed that her basic nursing skills were completely adequate. However, she was also told to report for an audiologist's evaluation. Ms Wright refused to attend the audiologist's evaluation, she was suspended and then terminated.

Questions for discussion:

- Was it fair or discriminatory to order Ms Wright to take a mandatory skills reassessment and attend an audiologist's evaluation? Why?
- Was it fair or discriminatory to dismiss Ms Wright for refusing to take the audiologist's evaluation? Why?

Exercise 19. Reasonable accommodation: Case studies



Handout 2. Case Responses

Case A. The disabled radio announcer's job application

The case illustrates discrimination on the basis of disability, and the importance of reasonable accommodation measures in ensuring equal access to employment for persons with disabilities. This is a real life case from China whose outcome is not yet known.

Reasonable accommodation refers to “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”⁴⁶ At the workplace reasonable accommodation may mean changing office space, equipment, working time or other work arrangements so that a worker with special needs can perform the job. Accommodating special needs of a worker is a good employer practice, and an employer obligation to provide reasonable accommodation to persons with disabilities and health conditions has been included in national non-discrimination legislation in many countries.

The employer can refuse accommodating the needs of an employee only if this would impose **undue hardship** on his/her business. The failure to provide reasonable accommodation constitutes discrimination. With reference to the reasonable accommodation principle, the employer's action in this case is discriminatory. The company should have accommodated the needs of the disabled worker by letting the family members carry the woman to and from the studio or by widening the corridor to allow her to use her crutches. Neither one of these measures would have imposed undue hardship to the employer's business.

In the East and South-East Asian region, many countries have adopted legislation prohibiting discrimination on the grounds of disability and promoting employment of persons with disabilities. Workplace accommodation and accessibility measures are implemented in Japan and Thailand, and financial incentives to compensate employers for any financial burden due to employment of workers with disabilities are provided in many countries – including tax reductions in China and Singapore, and financial support for training in Japan and Thailand. Provisions requiring enterprises or categories of enterprises to hire a certain percentage of persons with disabilities (quotas) exist in Cambodia, China, Indonesia, Japan, Mongolia and Thailand.⁴⁷

Case B. Dismissal of a nurse with a hearing impairment

This is an real-life case from the US District Court for the Middle District of Georgia.⁴⁸ The court settled some of the allegations raised by Ms Wright against her former employer, but allowed further elaboration of the evidence presented on other allegations. No final judgement has been issued in this case so far.

⁴⁶ UN Convention on the Rights of Persons with Disabilities (Art 2).

⁴⁷ ILO: Equality at Work: Tackling the challenges (Geneva, 2007).

⁴⁸ “Wright v. Hospital Authority of Houston Co., 2009 WL 274148, M.D. Ga. (February 3, 2009)” and “Hearing-impaired nurse. Court discusses disability discrimination issues”, in *Legal Eagle Eye Newsletter for the Nursing Profession*, No. 5 (March 2009).

The assessment of the court focused on defining the scope of “reasonable accommodation” required by law. The court noted that in disability discrimination law it depends on the circumstances of every case whether accommodation requested by the employee is a reasonable accommodation required by law, or, on the other hand, an undue hardship beyond the employer’s responsibility. The reasonable accommodation measures considered by the court included use of amplified phones, text telephones for persons with a hearing impairment, and sign language interpreters at in-service meetings.

With regards to Ms Wright’s dismissal, the court needs to evaluate whether the employer has a legitimate reason for imposing the skills test and the audiologist’s evaluation on Ms Wright. After three and half years into her otherwise satisfactory employment and a single safety incident which was officially ruled not her fault, it seems unreasonable to require Ms Wright to take these tests. With reference to the fact that for the past three and half years Ms Wright had been considered a fully capable nurse with completely adequate skills and abilities, and the challenges arising from her hearing impairment had been handled successfully through practical accommodation measures, it seems unreasonable for the employer to require the skills test or the audiologist’s evaluation after the incident. To prove that testing was legitimate, the employer should produce evidence on why Ms Wright’s abilities as a nurse had now come under doubt (such as, changes in her abilities, deterioration in her hearing ability). In case no legitimate reason for imposing the tests on Ms Wright could be shown, disciplinary action to dismiss her for her failure to attend the audiologist’s evaluation could be considered discrimination on the grounds of her disability.

Exercise 20. Accommodating workers with special religious requirements: Case studies



Aim – To consider the usefulness of practical reasonable accommodation measures to meet the religious requirements of certain workers and to explore the concept of “inherent requirements of the job” in relation to religion.



Time – 30 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with the participants. Divide them into small groups. Distribute **Handout 1**. Assign some groups case A and others case B. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. After each presentation, invite other participants to ask questions or comment. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Specific religious requirements of workers are best accommodated through practical measures at the workplace. These measures are often easy and inexpensive, so employers and workers should work together to find applicable solutions.
 - In order to assess whether a certain practice is discriminatory against certain religious or ethnic groups requires good understanding of discrimination and the concept of “inherent requirements of the job.”
 - The best solutions to promote religious equality can often be found through workplace cooperation and consultation. Trade unions, ethnic and religious associations or other civil society organizations can play an important role in facilitating consultations between employers and workers to find a good solution to a practical problem.

Exercise 20. Accommodating workers with special religious requirements: Case studies



Handout 1. Cases

Case A. Right to wear a beard - Kazakhstan

Mr Kyrkymbai had been employed as a shop foreman at an oil and gas production division of China's Sinopec concession in Kazakhstan since 1999. Kazakhstan declares itself a secular state in its Constitution. In 2006 Mr Kyrkymbai converted to Islam and grew a beard. This caused him some problems at the workplace. Workers in the department where Mr Kyrkymbai worked were required to have gas masks available for emergencies, and, when an emergency occurs, wear them on pain of disciplinary sanctions (including dismissal) as per occupational safety and health arrangements. However, standard gas masks weren't designed for men with beards. The Chinese managers refused to buy Mr Kyrkymbai a special gas mask suitable for bearded men, and dismissed Mr Kyrkymbai from his job in November 2008. Mr Kyrkymbai filed a lawsuit for discrimination.

Questions for discussion:

1. On what ground did Mr Kyrkymbai think he was discriminated against? Would that be direct or indirect discrimination?
2. What could the employer have done to prevent discrimination? Is it reasonable to expect the employer to accommodate the worker in this case?

Case B. Dietary requirements at the workplace - China

In 2008, an Uighur student from Southwest University for Nationalities participated in a job fair held by a Chengdu computer company. He passed both the written exam and the face-to-face interview. The company was located in Chengdu hi-tech incubation center, which had few restaurants around, so the company was unable to provide a free Moslim lunch. The company refused the Uighur job applicant because of his dietary habits. The job applicant lodged a complaint with his religious association.

Questions for discussion:

1. Is this discrimination? On what grounds?
2. What can the applicant do? Is there any practical solution to the problem?
3. Who should the applicant approach? Who could help in solving the problem?
4. If the applicant lodged a complaint in the labour department or the court, what would be the outcome of the case? Which articles of the labour laws should be applied?



Handout 2. Case responses

Case A. Right to wear a beard

This is a real life case from Kazakhstan involving a local subsidiary of Sinopec Group.⁴⁹ In the real case the court found that the decision to dismiss Mr Kyrkymbai was indirect discrimination on the basis of religion. The court ordered the local Sinopec division to reinstate Mr Kyrkymbai in his job and let him return to work, and to pay him the wages that were due since his unlawful dismissal. He also received USD665 in emotional damages.

Although the report published on this case does not provide full information, it can be assumed that the arguments of the claimant and the respondent during the court hearing were as follows:

- The claimant (employee) argued that he had been indirectly discriminated on the grounds of religion.
- The respondent (company) argued that it had no intention to discriminate, but it had strictly followed its company policy and guidelines designed to prevent accidents, injuries and diseases at work.

While the employer's argument is legitimate – and it is indeed required to have company policies on occupational safety and health⁵⁰ – the court had to weigh the two arguments against each other and see whether the safety requirements could have been met in a non-discriminatory way. Thus, the court needed to assess whether the employer could have taken any practical measures to accommodate the special religious requirements of Mr Kyrkymbai.

Reasonable accommodation of religious requirements at the workplace refers to practical modification or adjustment to the work arrangements or environment that enables a qualified applicant or employee with special religious requirements to perform essential job functions. The obligation to provide reasonable accommodation is imposed on employers in many jurisdictions. In these jurisdictions employers can only refuse providing reasonable accommodation if this would impose a significant expense or difficulty (undue hardship). Failure to provide reasonable accommodation is considered discrimination.

In Mr Kyrkymbai's case a practical reasonable accommodation measure would have been to purchase a gas mask that can be worn by a man with a beard. As the cost of purchasing a special gas mask cannot be very high, requiring the employer to do so cannot be considered as undue hardship. The employer's failure to provide Mr Kyrkymbai reasonable accommodation can be considered discrimination.

Case B. Dietary requirements at the workplace

This case is a real-life case from Chengdu, China.⁵¹ The job applicant felt that he had been discriminated against on the basis of his religion and he asked the Chengdu Islamic Association for help. The Islamic Association helped him in negotiating with the company, and the two sides reached a practical low-cost solution to the situation. The company bought a microwave oven and put it in the company canteen. This way the job applicant could bring his own lunch, and warm it up in the canteen. The problem was solved and he was hired.

⁴⁹ A. Raimov: "Kazakh worker defends his right to wear a beard," in *Central Asia Online* (11 March 2009).

⁵⁰ See ILO Occupational Safety and Health Convention, 1981 (No. 155).

⁵¹ W. Zhou: *Unpublished training materials* (Nanchang, 2009).

This case is a good illustration of reasonable accommodation of special religious needs of workers in the workplace. As indicated by the case, the best solutions to accommodating religious requirements are often very practical and can be best agreed upon at the enterprise level. Religious associations, ethnic organizations and trade unions can play an important role in helping the two parties in finding feasible solutions.

4. Exercises to discuss discrimination at different stages of the employment cycle

4.1 Fair recruitment practices

Exercise 21. Writing non-discriminatory job advertisements

Instructions for trainers



Aim – To identify discrimination in job advertisements and rewrite them in a non-discriminatory manner.



Time – 40-60 minutes.



Training materials and preparation. Collect examples of discriminatory job advertisements from a local newspaper or website and select one or two of the advertisements for analysis. In case no local examples are available, select some examples from **Handout 1**. It is useful to select examples with proxies for desired abilities (see Step 2). In the discussion below job advertisements No.'s 3 and 7 are used.

Prepare two flipchart sheets before starting the exercise. Write the selected job advertisement on a flipchart in its original form (with the discriminatory criteria highlighted), and an example of the same advertisement written in a non-discriminatory manner on another flipchart to be shown at the end of the exercise. Alternatively, use the **slide presentation** provided for this exercise.



Steps.

Step 1 – Detecting discriminatory requirements in job advertisements – 15 minutes

- Introduce the aim of the exercise. Give participants copies of local job advertisements or **Handout 1** with Chinese, Indonesian, Thai and Vietnamese examples. Point the participants to read the advertisement you have selected for analysis, e.g. **No. 3 “Driver”**. Ask participants to examine the job advertisement and identify which of the listed criteria are required for the job and which could be considered to be discriminatory.
- Discuss with the group which criteria are actually required for the job and which ones are clearly discriminatory. List them on a flipchart under the heading “non-discriminatory” and “discriminatory.”
- After soliciting answers from the groups, check, correct and complete the two lists on the flipchart. Show participants the flipchart sheet prepared in advance highlighting the discriminatory criteria.

Job advertisement No. 3: Driver, Beijing Whosawho Culture Group – China

Requirements:

1. Age 21-24, above 175 cm.
2. Army man transferred to civilian work, Communist party member.
3. No family responsibility, can live in dormitory.
4. Healthy, can work overtime (male).
5. Over three years of safe driving experience, B type licence, familiar with roads in Beijing, strong sense of safe driving.

Guarantor with Beijing residency and work permit required for non-Beijing residency and work permit holders.

- Continue discussion with the participants on why the criteria listed as discriminatory are discriminatory. Issues to be discussed may include:
 - Age and sex: Only young men can apply, but why this is so, is not clear.
 - Health: It is discriminatory to include general statements about health. If the job in question requires specific physical abilities, such as lifting heavy loads, these should be listed as such and reasons for this requirement should be explained.
 - Height: There does not seem to be any justifiable reason for height requirements for this job. As mentioned above, if the job requires specific physical abilities, these should be listed as such.
 - Party member: Political opinion can be an inherent requirement for a high-level civil service job, but not for a job as a driver.

Step 2 – Identifying discriminatory requirements as proxies for desired abilities - 15 minutes

- Continue the discussion on example **No. 3 “Driver”** by asking participants what they think the employer had in mind when writing this job advertisement. For example, why would an employer prefer applicants who are party members? Or over 175 cm tall? What was the employers’ motivation? What could be underlying reasons? Lead the participants towards realizing that in this job advertisement most of the discriminatory criteria seem to stand for, or in other words are proxy indicators or “proxies” for certain desirable characteristics, for example:
 - No family responsibility: This could be a proxy for the ability to spend nights away from home, which is necessary for long distance truck drivers.
 - Party member: In China party membership can be seen as an indication of reliability and good character.
 - Tall: This could be a proxy for physical strength, ability to lift heavy loads.
 - Army man: This proxy may refer to ability to endure stress and physical hardship.
- Point out that in this job advertisement it seems that instead of describing the job requirements objectively in terms of the abilities and skills needed for the job the employer made assumptions on what kind of persons might have these abilities.
- Point out that from the non-discrimination point of view it is very important not to make assumptions, but to assess all applicants’ suitability for the job based on his or her individual abilities and skills. For example, while it may be very true that army men are able to endure stress, it is not fair to assume that persons who have not been in the army cannot. Also, while it is true that height may tell something about a person’s physical strength, setting specific height requirements is unreasonable as there are many shorter persons who have the required physical abilities.

- Conclude that certain requirements listed in the job advertisements are clearly not related to the job and would exclude many good drivers. In some cases information is lacking to decide properly on whether a criterion is required for the job or not.
- Continue the discussion by referring to example **No. 7 “National Police Force Trainee”** from Indonesia, and point specifically to the requirement that female candidates must pass a virginity test. Ask the participants whether this requirement is a proxy for something else, and whether they find this requirement reasonable. Suggest that the virginity requirement is a proxy for reliability and good character, and solicit further views from the participants. Question whether reliability and good character could be verified in any other way that does not infringe in the applicants’ physical integrity. Ask further why men are not required to pass the same test. Discuss also whether police officers need to be single, or whether persons who are married and/or have children should also be allowed to apply, if they so choose.

Step 3 – Re-writing the job advertisement (Optional – 20 minutes)

- Ask participants to rewrite the job advertisement, describing the skills, abilities and experience needed in the job in a non-discriminatory way. Emphasize that the job advertisements should include a job description stating the job contents and key tasks. The requirements should reflect the actual job contents and be written in an objective manner.
- Show participants the flipchart prepared in advance with the job advertisement written in a non-discriminatory manner. Ask a volunteer to read the rewritten job advertisement aloud. Invite participants to share their comments on the rewritten job advertisement, and facilitate further discussion.

Job advertisement No.3: Driver, Beijing Whosawho Culture Group – China

Job description:

Driver needed to dispatch and deliver orders in Beijing and all over China. The job requires ability to lift heavy weights (up to 30 kg) and to work flexible hours. The work involves spending 10-15 nights away from Beijing every month.

Requirements:

1. B type driving licence; over three years of safe driving experience and strong sense of safe driving.
2. Familiar with roads of Beijing.
3. Ability to lift heavy weights and to endure stress related to long shifts and night work.
4. Strong personal integrity and professional attitude.
5. All applicants are required to provide one reference.

Step 4 – Round-up

- Conclude with the key learning points:
 - Employers can set selection criteria for the skills, qualifications and ability, effort, responsibility and working conditions required for a job, and can choose the applicants who are most suitable and qualified for the job.
 - Employers should not discriminate, by excluding possible applicants on the basis of assumptions about personal characteristics that are not job-related.

 For further reference, see the Guidelines on non-discriminatory job advertisements in Chapter 4, Checklist 6. Guidelines for employers on fair recruitment procedures in the *Equality and non-discrimination at work in East and South-East Asia: Guide*.

Exercise 21. Writing non-discriminatory job advertisements



Handout 1. Sample job advertisements from China

1. Business Manager, Kangbaolai Healthcare Products Co. Ltd. Xian Branch

Requirements:

- ☐ Female only, age 30-45.
- ☐ Six to seven years of work experience.
- ☐ Educated, strong verbal and communication skills.
- ☐ Passionate and ambitious.
- ☐ Proactive in acquiring new clients.
- ☐ Teamwork and learning oriented.
- ☐ Can cope with work pressure.

2. Assistant to President, Shanghai Runxin Sci. & Tech. Co. Ltd.

Requirements:

- University degree or above in management, economics, finance or other related fields.
- Younger than 30, married with child.
- Minimum five years of managerial experience in large enterprises.
- Fluent in international tax law account systems.
- Strong team management and coordination skills.
- Familiar with internal management systems of large enterprises.
- Excellent English language skills in listening, reading, writing and speaking, with Chinese English proficiency certification of level 6 or above.

3. Driver, Beijing Whosawho Culture Group

Requirements:

- Age 21-24, must be no less than 175 cm.
- Army-man transferred to civilian work, Party member.
- No family responsibility, can live in dormitory.
- Healthy, can work overtime (male.)
- Over three years of safe driving experience, B-type license, familiar with roads in Beijing strong sense of safe driving.
- Guarantor with Beijing residence and work permit required for non Beijing residence and work permit applicants.

Source: Support to Promote and Apply ILO Convention No. 111 Project (ILO, Beijing, 2008).

Sample job advertisements from Thailand

Waiter/waitress, Swensen's

Requirements:

- Male/Female.
- 18-24 years old.
- Good personality and has proper figure
- Male: Minimum height is 168 cm., weight does not exceed 70 kg.
- Female: Minimum height is 155 cm., weight does not exceed 55 kg.

- Must be cheerful, speak clearly, active and has service mind.
- Ability to do shift work (Special consideration for applicants who have ability to work on weekend).

5. Messenger, LP Hitech Engineering co, ltd

Requirements:

- Male.
- Any level of education.
- Has driving license.
- Buddhist.
- No tattoo.
- Good interpersonal skills.
- Responsible and diligence.

6. Cabin crew, Asiana Airlines

Requirements:

- Thai female, single, born on or after 1 January 1986 and minimum 162 cm in height.
- University graduate with a bachelor degree.
- Fluent in spoken and written English, with minimum TOEIC score of 550, knowledge of Korean will be an advantage.
- Healthy, clear complexion, excellent eyesight.

Source: Bangkok Post: *Jobs Thailand*, <http://www.jobth.com> (accessed 1 June 2010).

Sample job advertisements from Indonesia

7. National Police Force Trainee

Requirements:

- Must be at least 18 years old, Indonesian citizen.
- High school graduate.
- Academic exam.
- Health test – candidate must be fit and healthy – must pass HIV and Aids, TB & HBV tests.
- Female candidates must pass a virginity test.
- Pass psychological test.
- Candidates must be single.

8. Government official, Banda Aceh

Requirements:

- University degree or higher in labour relations, business, economics, politics or related field.
- Recent graduates allowed.
- Strong management, coordination and analytical skills.
- Excellent communication skills.
- Ability to travel with work.
- Must pass full health examination.
- Able to read the Koran.

9. Flight attendant Garuda, Indonesia

Requirements:

- Female, 160 – 180 cm tall.
- Attractive, slender, nice smile.
- Single, must guarantee to remain single for at least three years upon signing contract (or will be liable to repay all training fees).
- Must have completed high school education.
- Fluency in English and excellent communication skills.
- Can travel and be away from home for periods of up to one month.

Source: Local newspapers from Banda Aceh, Papua and Jakarta (May-July 2011); National police force website, www.penerimaan.polri.go.id (accessed 28 June 2011).

Sample job advertisements from Viet Nam

10. Vietnam-Taiwan Sugar Company Ltd.

Recruitment Announcement:

The company is seeking candidates to work in the following sectors:

- Construction work.
- Electro mechanics.
- Plantation.
- Chinese-Vietnamese translator.
- Driver.

Requirements:

- Men.
- Education: College diploma or higher.
- An application profile as required by regulations should be submitted with a certificate of personal ethics, a copy of national ID, two passport photos (3x4) and notarized true copy of relevant degrees and diplomas.
- Salary: Negotiable.

Source: VGCL: *Lao động (Labor)*, 4 July 2011 (Viet Nam).

Exercise 22. Discriminatory recruitment practices? Case studies



Aim – To identify different forms of discrimination in recruitment practices.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with participants and distribute **Handout 1**. Divide them into small groups. Give each group a different case study and ask them to read and discuss the questions provided. Tell each group to prepare a presentation on the case and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. Invite other participants to ask questions or comment on each presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Discrimination at the recruitment stage is very common and can take different forms. One manifestation of discrimination in recruitment is excluding applications from persons with names that indicate a specific sex, race, ethnicity or religion. Requirements to indicate one's religion or family status during the application process also frequently lead to discrimination. A common form of discrimination on the grounds of social origin may involve giving preference to persons with certain family background or those graduating from elite schools or universities. Discrimination in recruitment reinforces horizontal and vertical job segregation in the labour market.
 - International experience shows that most discrimination takes place at the recruitment stage. For this reason policy-makers and individual employers should prioritize measures against discrimination in recruitment practices – from job advertisements to short-listing, testing, and interview practices.

Exercise 22. Discriminatory recruitment practices? Case studies**Handout 1. Cases****Case A. Textile factory case – UK**

Mr Hussain recently applied, for the fourth time, for a job as a warper at a textile factory, close to where he lives in Bradford, England. Mr Hussain had 15 years' experience in textile work. As before, he did not receive a reply to his application. However, his daughter, who had applied at the same time, in the name of J A Taylor was called in for a trial. Mr Hussain comes and complains about discrimination.

Questions for discussion:

- What information would you collect to establish whether there is a case of discrimination?
- On what grounds could Mr Hussain have been discriminated?

Case B. Exemptions from recruitment criteria – Thailand

The Electricity Generating Authority of Thailand (EGAT) advertised a vacant position prescribing several selection criteria that candidates should meet. The selection criteria were partly standard requirements excerpted from the Standard Qualifications of Directors and State Enterprise Employees Act, B.E. 2518 (1975), and partly added as required for the position. However, children of current or former workers of EGAT staff members were exempted from the age requirement and from meeting the set Grade Point Average (GPA). These applicants were however still required to take examination in the same manner as other candidates. The exemption concerning children of the current or former EGAT staff members was the result of agreement between the company management and the trade union in a meeting organized by the EGAT labour relations committee.

Questions for discussion:

- Do you think the EGAT policy to exempt children of current or former staff members from certain recruitment criteria constitutes discrimination? On which grounds?
- When assessing whether the policy involves discrimination or not, does the fact that exemption was agreed upon by the company management and trade union make any difference?

Case C. Different standards in grading of applicants' qualifications – Republic of Korea

Ms Lee applied for a position as a temporary teacher in the "A" middle school located in Gwangju, Korea, but failed to be hired. During the recruitment process Ms Lee had however found out that the "A" middle school applied a different standard for grading candidates based on the high schools they graduated from. Feeling she had been treated unfairly, Ms Lee decided to file a discrimination complaint with the National Human Rights Commission of Korea (NHRCK).

Questions for discussion:

- How should the NHRCK assess the case?
- Does it involve discrimination? On what grounds?

Exercise 22. Discriminatory recruitment practices? Case studies



Handout 2. Case responses

Case A. Textile factory case – UK

This case is an adaptation of a real-life court case in the UK.⁵² In the real situation the court concluded that the case involved ethnic discrimination. In its assessment of the case the employment tribunal took account of the fact that, in four years, not one of the company's 70 workers had been from an ethnic minority group, even though the mill was very near a neighbourhood with a large ethnic minority population, many of whom had considerable skills in the textile trade. The complainant was awarded a total of around £7,000 in compensation, including £2,500 for injury to feelings.

This case illustrates what kind of information tribunals need to collect to assess whether discrimination has taken place. In this case the evidence in company employment records showed that the company had been practicing structural or systemic ethnic discrimination.

The case could have been considered also discriminatory on the grounds of sex or age, but these issues were not discussed in the real-life case. With regards to gender it can be noted that whereas textile work is considered a “women's job” in many South-East Asian countries, in Southern Asia it is considered a “men's job.” Both these views are based on stereotyped ideas about gender roles and presumed capabilities of both sexes. Promoting gender equality requires getting rid of such discriminatory biases, and assessing applicants' suitability for the job with reference to their merit in terms of individual capabilities, skills and experience.

Case B. Exemptions from recruitment criteria - Thailand

This real-life case from Thailand is a good example of discrimination on the grounds of social origin – or more specifically, family background.⁵³ The Electricity Generating Authority of Thailand (EGAT) sent a letter to the Council of State for advice as to whether the particular job advertisement constituted unlawful discrimination. The advertisement in question exempted the children of workers or former workers of EGAT from qualifications that “outside” applicants were expected to meet. The Council of State advised that an advertisement with such exemptions constituted unjust discrimination and contradict the principle of equality protected under Section 30 of the Constitution of the Kingdom of Thailand B.E. 2540 (1997).

The Council of State observed that, as EGAT is a state enterprise, all activities conducted under EGAT's authority, including issuing a job advertisement must be in line with Sections 26, 27 and 30 of the Constitution. It explained that Section 30 of the Constitution reaffirmed the principle of equality that “the State must treat persons who are the same in essence alike and treat person who are not the same in essence differently.”

The Council of State considered that the qualifications prescribed in EGAT's job advertisement should apply to all so that all candidates would be on equal footing. The exemption of some qualifications for

⁵² “Hussain v Alfred Brown (Worsted Mills) Ltd, Case No. 1805479/98,” in United Kingdom, Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).

⁵³ Council of State of Thailand: *Legal opinion No. 325/2547 (2004)*.

children of current or former workers of the EGAT meant different treatment and this constituted discrimination to benefit a certain group of people.

Case C. Different standards in grading applicants' qualifications – Republic of Korea

This case is a real-life complaint brought to the National Human Rights Commission of Korea (NHRCK) in February 2009.⁵⁴ The NHRCK conducted an investigation into Ms Lee's case and found that the "A" middle school had indeed applied different standards when grading candidates for temporary teacher positions. Applicants who had graduated from equalized high schools located in Gwangju were graded 100 per cent, while applicants who had graduated from non-equalized high schools located outside of Gwangju were graded 70 per cent. Regarding this, the NHRCK pointed out: "It should be questioned if it is reasonable to reflect high school records in hiring temporary teachers. Applying an unfair standard uniformly to the candidates graduated from non-equalized high schools is discrimination based on academic clique and the regions they are from." The NHRCK recommended that "A" middle school revise the related regulation. The principal of "A" middle school accepted the recommendation and removed the discriminative regulation.

The case is a good illustration of how perceptions of social status may be derived from the schools from which job applicants have graduated. If these perceptions interfere with a fair assessment of the relevant qualifications a person has acquired in the course of his or her education, the question of discrimination on the basis of social origin arises. The "school-ties" system may also give rise to vertical job segregation in the labour market, which occurs when career progression within a profession or certain levels of the corporate or civil service hierarchy is conditioned upon perceptions of social status.

Social status is among the 18 grounds on which discrimination is prohibited in Korean law. In 1995, the Constitutional Court of the Republic of Korea defined social status as the "status that a person occupies for a long term, and that is accompanied by social estimation."

⁵⁴ National Human Rights Commission of Korea: *Grading candidates based on the high schools they attended is discrimination*, Press release (17 December 2009), http://www.humanrights.go.kr/english/activities/view_01.jsp (accessed 24 Sep. 2010).

4.2 Pay equity

Exercise 23. Equal pay for work of equal value – Job evaluation: Case study

Instructions to trainers



Aim –To discuss the concept of equal pay for work of equal value and to test the use of objective job evaluation criteria.



Time – 60 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – Prepare a flipchart paper with a job evaluation table for each group. Draw the tables as in **Handout 2**. Give each group one flipchart with the job evaluation table and one marker pen.



Steps.

- Share the aims of the exercise with the participants.
- Introduce the exercise by explaining that equal remuneration for work of equal value is a concept that is not always easy to understand. There is broad agreement that pay equity between men and women is fair and just, and that equal pay must be provided to men and women who do exactly the same or very similar work. However, more understanding is needed on fairness in pay in the more usual labour market situations where women and men are found in jobs that are different but of equal value. This exercise introduces the concept of equal pay for work of equal value and demonstrates what kind of evaluation criteria can be used for an objective job evaluation of two jobs.
- Divide participants into small groups. Provide **Handout 1** to all groups and ask them to read the case study. You may also ask a volunteer to read the case aloud to all participants.
- After reading the case explain that in this exercise the groups are requested to assess the value of the two jobs, the librarian and the refuse collector, in the case study: Explain that job evaluation means rating various job elements of two or more jobs based on objective criteria to assess the value of the jobs. The evaluation criteria are usually related to skills and abilities, responsibility, effort and working conditions of the jobs in question.
- Give **Handout 2** to the participants and ask every group to:
 - Conduct an evaluation of the two jobs by filling in the job evaluation sheet on the flipchart.
 - Discuss whether or not they think the two jobs should be paid the same wage.
 - Select a spokesperson who will present the outcomes of their job evaluation to the plenary.

- When the groups are ready, ask the spokesperson from every group to show their flipchart and present the outcome of their discussion on a few job elements (three minutes maximum per group). After the presentations compare the job evaluation sheets of the groups and comment on the results. Usually the job of the librarian scores higher than the job of the waste collector. The men engaged in garbage collection get more points for bad and dangerous working conditions but the female librarians get more points for job elements such as clerical, computer and archiving skills, years of education and communication with the public.
- Distribute **Handout 3** and introduce the outcomes of the real case. In the real case the job evaluation the scores of the two jobs are almost equal, with the librarian scoring slightly higher in total than the garbage collector. Lucy and her colleagues in the real case find that there is discrimination in pay. Ask for more comments and answer any remaining questions.
- Round up the discussion as follows:
 - This case illustrates the common phenomenon of undervaluing of women's work. Library work is mostly done by women and therefore paid less than waste collection mostly done by men, even if the value of the two jobs are the same. Undervaluing women's work is a common problem in all labour markets and it leads to a gender pay gap, which is a serious form of structural sex discrimination. Gender pay gaps should be addressed as a matter of public policy.
 - Conducting objective jobs evaluations is an important practical measure to promote pay equity. The outcomes of the job evaluation should be used to inform wage negotiations and/or review payment practices in companies. In many countries job evaluation outcomes have also led to the revision of public sector wage regulations and payment practices.
 - When conducting a job evaluation, it is very important to use objective criteria free from discriminatory bias. The evaluation criteria should be selected carefully so that the selected job elements and the weight they are given reflect the content of the jobs in a fair and transparent manner.



Notes to trainers

If comparison of librarians and refuse collectors does not adequately illustrate the male-female job segregation and wage situation in your country, some other occupations may be chosen for comparison in this exercise. In the roundup of the exercise it is, however, good to refer back to the “Lucy” case, as it presents the outcomes of a real life job evaluation conducted in the United States.

Some participants may ask how differences in seniority, supply and demand in the labour market, collective agreements or some other factors should be taken into account when conducting job evaluations. If the impact of these external factors comes up in the discussion, refer to the Swedish case concerning equal pay for midwives and medical technicians below, and explain how the Labour Court assessed the impact of external factors in that case.

It may also be useful to mention that collective agreements negotiated by workers' and employers' organizations should always respect the principle of equal of opportunity and treatment (Recommendation No. 111 Art. 2(e)). In many countries collective agreements violating the legal equality provisions would be considered void.

Box. Equal pay for midwives and medical technicians – Sweden

The Swedish Labour Court approved in February 2001, for the first time, the use of a job evaluation procedure in a wage discrimination case involving two midwives and a medical technician all working in the Örebro regional hospital. The dispute in question related to whether the two female midwives (claimants) represented by the Swedish Equal opportunities Ombudsman, had been subjected to unlawful wage discrimination, as their employer, the county council (respondent) had paid a lower salary to them than to the male medical technician.

The Labour Court used the job evaluation procedure to determine the value of the job of a midwife and a medical technician by looking at assessment criteria related to “knowledge and competence”, “effort”, “responsibility” and “working conditions.” The Court found that in all these four areas the demands of the two midwives’ work were not less than the medical technician’s work, and that these workers carried out tasks of equal value.

The Court went on to analyze whether the county council (respondent) had sufficiently shown that the wage differences identified in the case had no connection to the sex of the workers, but arose from other factors – such as **collective agreements, differences in seniority, and the labour market situation**. The Court asserted that the fact the salaries had been set by collective agreements did not automatically mean that no wage discrimination had occurred. However, the Court found that a part of the identified wage difference was related to the age of the workers, meaning that the two midwives would have had a higher salary had they been the same age as the medical technician. In addition, the Court noted that there was a large alternative labour market for medical technicians in the private sector, but not for midwives. The county council had no alternative but to pay a competitive salary to the medical technician in order to counter the market forces and retain him as an employee.

Based on the above analysis the Labour Court concluded that work performed by the two midwives and the medical technician was of equal value, and that there was thus a presumption for wage discrimination. The county council had, however, in referring to the age differences, the labour market situation and the existing collective agreements proved that the wage differences had no connection with the sex of the three employees. There was thus no unlawful wage discrimination.

However, the Labour Court’s decision was far from unanimous. Three out of seven members of the Court had a dissenting opinion as they considered that the county council had not provided sufficient evidence about their claim that medical technicians had such a high value in the private labour market.

Source: Swedish Labour Court: “Dom nr 13/01, mål nr A 190/97”, in EIROnline: *Labour Court approves job evaluation in wage discrimination case* (28 March 2001).

Exercise 23. Equal remuneration for work of equal value: Job evaluation: Case study**Handout 1. Case study****Lucy – Librarian and union leader⁵⁵**

Lucy Parsons worked for the city as a Librarian. As the Union Steward, she was getting ready for negotiations with the city by looking at the pay schedules for all the different departments. One thing grabbed her attention. The lowest paying job for the Department of Public Works (DPW) paid more than the highest paid job in the Library. Lucy asked some of the people with high seniority why that was. Basically she was told it had always been that way because mainly men worked for the DPW and mainly women worked in the Library. "That is not right," Lucy thought, "jobs should not be paid according to which sex works on them."

All union people know that a basic way to achieve fairness is to apply the rule "Equal Pay for Equal Work." This means that people doing the same job should receive the same base pay. There may be some differences added to people's pay to reflect working second or third shift, or bonuses added for years of service, but the base pay is equal. This prevents management from playing favourites and discriminating against workers.

Lucy's problem is about "Pay Equity" which means equal pay for work of equal value. This means that jobs can be totally different but when you add up everything that is required for these jobs, they are equal and have the same value.

The fight for pay equity has shown that in many cases the basis of the difference in pay is because of discrimination, either against women or ethnic or religious minorities. In the past many companies openly based job rates upon sex. For example, in the USA, the steel industry was notorious for only hiring African-American male workers for the worst, most dangerous jobs, which were the lowest paid.

Job evaluation allows for the comparison of different jobs to determine the appropriate pay or wage. Job evaluation consists of analysing the content of a job by breaking it down into job components and assigning value to these components.

In Lucy's situation, the city has written job evaluations that give points on a scale of 0 to 5 for the different job elements criteria such as skills, effort, responsibility and working conditions. Five points means working conditions are very bad or a high level of education is needed, while zero or one point mean good working conditions or very little education needed.

⁵⁵ Adapted from United Electrical, Radio and Machine Workers of America (UE): *UE Information for workers, Bargaining for pay equity*, http://www.ueunion.org/stwd_fairpay.html (accessed 8 Aug. 2009).

Exercise 23. Equal remuneration for work of equal value: Job evaluation: Case study



Handout 2. Job evaluation sheet

Most job evaluation systems rate jobs based upon different job elements to assess the value of a job. A typical set of job evaluation elements is given in the table below.

Instructions:

1. Complete the job evaluation sheet.
2. Prepare a short presentation as if you were Lucy on: How did you score the two jobs (criteria used) and whether your group thinks the two jobs should be paid the same or differently.

Sample Job evaluation comparison sheet

Criteria*	Librarian	Garbage collector
1. Knowledge & education level		
2. Experience		
3. Initiative and ingenuity		
4. Physical demand		
5. Mental or visual demand		
6. Responsibility for equipment or process		
7. Responsibility for material or product		
8. Responsibility for safety of others		
9. Responsibility for work of others		
10. Working conditions, and hazards		
11. Complexity of duties		
12. Importance of not making errors		
13. Contact with others		
14. Ability to work with confidential data		
Total points		

* Points are given on a scale of 0-5: 0 is not important; 5 means very important.

Exercise 23. Equal remuneration for work of equal value: Job evaluation: Case study



Handout 3. Responses: Job evaluation results

Lucy and the other Librarians sit down and take a look at the job evaluations. The men on the refuse trucks get more points for bad and dangerous working conditions but the women get more points for having clerical skills, library skills, education, and for working with the public.

When they add up the points that each job was allotted they find out that the two jobs have just about equal points. Why the pay difference? Discrimination. There is no other answer. Many years ago when the pay was set, the people in charge decided that “women's work” was not worth as much as “men's work.” This is a good example of what is meant by “pay equity for jobs of equal value.”

Results: Job evaluation comparison sheet⁵⁶

Criteria*	Librarian	Garbage collector
1. Knowledge & education level	4	2
2. Experience	3	1
3. Initiative and ingenuity	2	2
4. Physical demand	1	5
5. Mental or visual demand	4	2
6. Responsibility for equipment or process	2	4
7. Responsibility for material or product	3	2
8. Responsibility for safety of others	1	5
9. Responsibility for work of others	2	0
10. Working conditions, and hazards	1	5
11. Complexity of duties	4	2
12. Importance of not making errors	2	2
13. Contact with others	4	2
14. Ability to work with confidential data	3	1
Total points	36	35
* Points are given on a scale of 0-5		

⁵⁶ Adapted from United Electrical, Radio and Machine Workers of America (UE): *Information for workers, Bargaining for pay equity*, http://www.ueunion.org/stwd_fairpay.html (accessed 8 Aug. 2009).

Exercise 24. Discrimination in pay and benefits: Case studies

Instructions to trainers



Aim – To identify various forms of indirect sex discrimination in remuneration.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise and distribute **Handout 1** to participants. Divide them into small groups. Give each group a different case, and ask them to read and discuss the questions provided. Tell each group to prepare a presentation on their case and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to introduce and give a brief presentation on their case. Invite other participants to ask questions or comment on each presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Cases A-C in this exercise highlight the definition of **remuneration** given in the **Equal Remuneration Convention, 1951 (No. 100)**: “the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment” (Art.1 (a)). This means that family and household benefits, private health insurance, over-time pay are all part of remuneration and should be paid to all workers without any discrimination.
 - Cases B-C in this exercise clearly illustrate the different forms of **indirect discrimination**. Discrimination is not always visible and many forms of sex discrimination are hidden. It is therefore, important to seek more information about the characteristics of the disadvantaged target groups.
 - Sometimes there is obvious differential treatment between different groups of workers, for example full-time and part-time workers, but not all forms of differential treatment are discrimination prohibited by (international and/or national) law. However, if the great majority of workers of the disadvantaged group share a personal characteristic, such as the same sex, ethnicity, migrant or health status, it is likely that indirect discrimination against the disadvantaged group is taking place based on these characteristics.
 - Indirect discrimination is often invisible when looking at individual cases as these may appear to be isolated cases. However, statistics can help identify forms of indirect discrimination.

Exercise 24. Discrimination in pay and benefits: Case studies



Handout 1. Cases

Case A. Family and household allowances - Japan

Ms X, the mother of one child, worked as a bank clerk for the Iwate Bank (the Bank). Since 1976 she had received both a family allowance and a household allowance on the basis that she was the head of her household. The worker's wage agreement of the Bank made provision for the allowances to be paid to "a clerk who is a head of household." This was defined as a clerk who was "supporting the household with his or her income." However, the agreement also stated that if the clerk was a woman and her husband earned more than the maximum income permitted to qualify for a family support tax deduction the allowances would not be paid. By contrast, for a male employee, the allowances would be paid regardless of the income of his wife. In 1981, when X's husband received income above the limit for the tax deduction, the Bank stopped paying Ms X the allowances. Ms X began court proceedings claiming that the worker's wage agreement discriminated against women, and claimed a back payment of the allowances. Do you think the provisions of the Bank wage agreement on family and household allowances are discriminatory? What type of discrimination is it? What would the outcomes of the case be in your country?

Case B. Voluntary health insurance

A trade union from the local branch of a multinational supermarket chain comes and complains about discrimination. The company pays contributions to a private health-care scheme, but only for staff members from the upper-middle management upwards. The private health-care scheme provided for the upper-middle managers allows them to use the services of a private health clinic and covers additional benefits such as dental care. In contrast the other employees can only use the services of public health clinics and do not receive any additional benefits. Is this discrimination? If so, what type of discrimination? What information would you collect to establish whether there is discrimination? Would the current law in your country permit a staff member of the lower-middle management to file a lawsuit for discrimination? What remedial options does the staff member have?

Case C. Part-time work

A group of workers from a local IT service provider comes and complains to you about discrimination. They are all part-time workers. The collective agreement within the company provides that overtime on normal days is paid at 150 per cent. However, overtime is defined as working time performed over and above the full-time schedule. Is this discrimination? What information would you collect to establish whether there is discrimination?

Case D. Children and animals - US

The staff of educational institutions for children with disabilities is represented by a national association. One day, the association finds out that workers taking care of wild animals in local zoos earn on average 25 – 50 per cent more than their own workers. Does the association have a case for discrimination? What information would you collect to establish whether there is a case of discrimination? What remedial options would the association currently have in your country?

Exercise 24. Discrimination in pay and benefits: Case studies



Handout 2. Case responses

Case A. Family and household allowances

This is a real-life case from Japan.⁵⁷ The Sendai court held that the family and household allowance provisions of the Iwate Bank (the Bank) wage agreement constituted direct pay discrimination against women. The Court ordered the Bank to pay Ms X the family and household allowances that it had withheld from her.

During the proceedings the Bank argued that the family and household allowances were not a “wage” because the allowances were not given in exchange for labour, but instead to provide livelihood assistance for families. The Bank further argued that if both the husband and the wife were employed, it was socially accepted to recognize the man as the head of the household and the different allowances for men and women were acceptable because they accorded with social norms.

The Court did not accept the arguments presented by the Bank. It held that the household and family allowances were a “wage” within the meaning of the Japanese Labour Standards Law. The Bank did not therefore have discretion in relation to the allowances. The Court stated that when determining whether the allowances were payable, the main factor should be whether or not that person contributed to the family income, rather than whether the person was the “head” of the household. In this case, Ms X provided for her family and was therefore entitled to the allowances. The Court further held that the equality principle between men and women must be implemented, even in private arrangements such as the Bank’s worker’s wage agreement.

Case B. Voluntary health insurance

This case discusses remuneration practices in an imaginary supermarket chain in an urban area. Generally speaking, it is a quite common and legitimate practice to pay higher management higher remuneration and better benefits as compensation for their higher level of responsibility. However, this type of remuneration practices may sometimes lead to discriminatory outcomes.

When assessing whether a case involves discrimination, it is usually necessary to find out more about the composition of the upper-middle management and the lower-middle management in terms of sex, ethnicity, migrant status, and other personal characteristics. For example, if the large majority of the upper-middle management are men and the large majority of the lower-middle management are women, this may point to indirect discrimination of women – and they could file a claim on sex discrimination. Similarly, a claim on indirect discrimination on the grounds of social origin could be made if it was found that the lower-middle management is dominated by rural migrant workers and the upper-middle management by local workers from the city.

Health care benefits financed by the employer, company or industry have cash value, and are thus considered as part of the salary paid by the employer to the employee. The ILO Equal Remuneration

⁵⁷ “Iwate Bank Case, The Hanreijihou, No. 1410 pp. 37-43, Sendai High Court, 10 January 1992”, in C. Forster et al.: *A digest of case law on the human rights of women (Asia Pacific)*, Chiang Mai, 2003. See also ILO: “Individual observation on Convention No. 100 with respect to Japan” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 96st Session, Geneva, 2007.

Convention, 1950 (No. 100) requires that these types of “emoluments [...] payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment” should be paid to all workers without any discrimination (Art. 1 (a)). This means that the salaries of lower-middle management and upper-middle management (including the base salary, all salary increments, bonuses and additional health care benefits, etc.) should be set at levels that correspond to the “value” of their work. The “value” of the jobs should be assessed by comparing the skills and abilities, responsibility, effort, and working conditions of the two jobs in question.

It may be stressed, however, that allowances made under a **public** system of social security are not considered as a form of remuneration as they are not “payable directly or indirectly by the employer.” Any difference in contribution paid by the employer or received in the form of benefits by the employee may still be discriminatory, but is not a form of discrimination for which the employer should be held accountable in the case at hand.⁵⁸

Case C. Part-time work

Part-time workers have a right to equal pay for work of equal value compared to full-time employees – including an equal right to overtime compensation for work beyond the agreed work schedule. The ILO Part-Time Work Convention, 1994 (No. 175) requires that “part-time workers do not, solely because they work part time, receive a basic wage which, calculated proportionately, is lower than the basic wage of comparable full-time workers”. The ILO Part-Time Work Recommendation, 1994 (No. 182) clarifies further that if the employer needs the employee to work beyond agreed work hours, changes in agreed schedules should be subject to prior notice and the compensation for the overtime work should be negotiated. The starting point is that the employer needs to provide overtime pay to compensate for the extra working time put in by the workers.

Wage discrimination against part-time workers is widespread especially in countries like Japan where part-time work by women is very common. In these circumstances the wage discrimination becomes much more problematic, as it gets intertwined with indirect sex discrimination. Indirect discrimination may also emerge on other grounds (e.g. ethnicity, rural migrant status), depending on the staff composition among part-time and full-time workers.

To identify possible indirect discrimination in the case at hand, further analysis is needed of the composition of the full-time and part-time groups of workers. If the majority of the full-time employees are men (or belong to the mainstream ethnic group in society, or are urban residents), and the part-time employees are women (or belong to a different ethnic group, or are rural migrant workers), this is most likely a case of indirect discrimination on the grounds of sex, (or ethnicity or social origin).

Case D. Children and animals

In order to establish whether this case involves discrimination it is first necessary to review the staff composition among the carers of disabled children and the zoo-keepers. If significant differences exist in the staff composition in terms of sex, ethnicity or rural migrant status etc., the case may involve pay discrimination on the grounds of sex, ethnicity or social origin.

⁵⁸ ILO: “Equal Remuneration, General survey,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, International Labour Conference, 72nd Session (Geneva, 1986), para’s 17 and 88.

To establish whether differences in remuneration levels for the carers of disabled children and the zoo keepers involve wage discrimination requires conducting a job evaluation free of gender bias. The two jobs should be assessed based on objective criteria relating to skills and abilities, responsibility, effort and working conditions of jobs. The pay levels for the two jobs should reflect the “value” of the job, as determined in the job evaluation. If any discriminatory differences were identified, these should be removed by adjusting the wage levels. When conducting a job evaluation, it is important to note that there is often a tendency to downplay the importance of job characteristics in “female-dominated” jobs and to give higher value to job characteristics of “male-dominated” jobs. For example, the effort required for a job can be “physically demanding” or require “mental concentration and emotional involvement.”

This case study is based on a real-life job evaluation conducted in the state of Minnesota in the United States in early 1980’s. In the actual case, the overall majority of the carers of disabled children were women and most of the zoo keepers were men. The job evaluation revealed a clear case of wage discrimination, as the women who cared for disabled children were being paid less than the male zoo keepers – even if on the job evaluation scale caring for disabled children received higher points. Following a series of similar evaluations of pay levels in female and male dominated public sector jobs the legislature of the State of Minnesota enacted the State Employees Pay Equity Act (1982) and made adjustments to the public sector remuneration practices. The measures taken by the state government made a significant contribution to gender equality.⁵⁹ This case is a classical example of wage discrimination that resurfaces every now and then in different contexts. Just recently, similar situations were discussed in another testimony on equal pay.⁶⁰

⁵⁹ C. Petersen: *An introduction to pay equity mechanisms in the United States* (Manoa, University of Hawaii, 2008).

⁶⁰ H. Boushey: *Strengthening the middle class: Ensuring equal pay for women*, Testimony before the U.S. Senate Committee on Health, Education, Labour and Pensions (Washington, 11 March 2010).

4.3 Conditions of work

Exercise 25. Identifying sexual harassment at the workplace: Case studies



Aim – To identify what acts constitute sexual harassment and discuss the rationale for preventing it at work.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise and distribute **Handout 1**. Divide participants into small groups. Give each group a different case study, and ask them to read and discuss the questions provided. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. After each presentation, invite other participants to ask questions or comment. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Sexual harassment is a serious form of sex discrimination that mostly but not only women face when applying for jobs and at the workplace. Sexual harassment refers to conduct of a sexual nature or other conduct based on sex, affecting the dignity of women and men, which is unwelcome, unreasonable and offensive to the recipient.
 - Sexual harassment undermines equality at work by calling into question the integrity, dignity and well-being of workers.
 - Sexual harassment also impairs the productivity of enterprises as it weakens the basis upon which work relationships are built and creates an abusive and hostile working environment.

Exercise 25. Identifying sexual harassment at the workplace: Case studies



Handout 1. Cases

Case A. Sexual harassment at the workplace – China

Ms Shen worked at a company in Beijing. Mr Pak, her direct superior, often sent her emails and SMS's, saying he liked her, and repeatedly asking her to go out with him. He also forcedly touched her in the office while discussing work, saying her obedience could get her a raise and promotion. Ms Shen repeatedly hinted that she was married and it was inappropriate for him to do so. However, Mr Pak kept harassing Ms Shen and Ms Shen had to repeatedly turn Mr Pak's dinner invitations down. Ms Shen also had her hair cut short and only wore long trousers, because she knew that Ms Pak liked women with long hair and skirts.

When Ms Shen continuously refused to go out with Mr Pak, he became angry and started to retaliate. Firstly, when he learned that Ms Shen was the only child in her family and her mother needed her care because of cancer, Mr Pak purposely dispatched her to work in another city. Secondly, he spread insulting rumors and slanders about Ms Shen among other company employees. In addition, Mr Pak also tried to falsify evidence on illegal and irregular practice with which to fire Ms Shen. As a result of the heavy mental stress, Ms Shen suffered severe depression.

Furthermore, Mr Pak raised the salary of his mistress to over RMB15,000, while Ms Shen and other people in the same post only received RMB6,000. Everybody felt it was quite unfair.

Questions for discussion:

- Does Mr Pak's conduct in this case constitute sexual harassment? If yes, make a list of the acts or conduct by Mr Pak that you consider as sexual harassment.
- Does Mr Pak's conduct constitute discrimination?
- Analyze the impacts of Mr Pak's conduct on the working environment and well-being of workers. Do you think it would be in the company management's interest to take action to address the situation?
- What can the company management do to address the situation and prevent similar situations from emerging in the future?

Case B. Disciplinary action for sexual harassment – Thailand

Mr Polwat had been working for a leasing company (the Company) as an assistant manager of the credit control division since 1 July 1993 until he was dismissed on 30 July 1999. He filed a lawsuit against the Company claiming that he was dismissed without cause and was not given advance notice. Mr Polwat claimed severance, compensation instead of advance notice, pension and bonus amounting to Baht467,154 including interest thereof.

The Company argued that it was entitled to dismiss Mr Polwat without paying severance or compensation instead of advance notice since Mr Polwat severely violated the law and work regulations. Moreover, the actions of Mr Polwat were in contradiction to those of decent moral people as the plaintiff attempted to sexually harass the Company's female employees who were mostly under Mr Polwat's supervision at the time.

Mr Polwat, who was an assistant manager of the credit control division, made use of both female and male workers as “middle persons” to ask female workers under the plaintiff’s supervision to go out on dates with him in the evening after work, watching movies, having dinner and listening to music. Mr Polwat sometimes offered benefits to the middle persons and sometimes flirted with attractive female workers himself. If the female workers who were approached by the middle persons did not want to go out with Mr Polwat or the middle persons did not want to contact female workers for the plaintiff, the plaintiff would not approve their legitimate job requests. For example, the plaintiff would render opinions not to approve the workers’ overtime or not to let them pass the trial period. Apart from conducting such acts towards permanent workers, during job interviews, Mr Polwat also asked female applicants about family and personal matters beyond the limit and invited female applicants to go out with him afterwards.

Questions for discussion:

- Do you think the Company had a legitimate reason to dismiss Mr Polwat? Explain why.
- Does Mr Polwat’s conduct in this case constitute sexual harassment?
- Does Mr Polwat’s conduct constitute discrimination?
- Analyze the impacts of Mr Polwat’s conduct on the working environment and well-being of workers. Do you think it would be in the company management’s interest to take action to address the situation?

Case C. Sexual harassment by a university teacher – Viet Nam

Ms C was a 22-year-old student at the economics and business administration department of the Tay Nguyen University in Dac Lac Province in Viet Nam. When she was writing her graduation thesis, the teacher assigned as her supervisor, Mr X, started to act in a manner that Ms C found very disturbing. During the process of Ms C’s thesis writing, Mr X started to repeatedly send her SMS’s and call her on her mobile phone to ask her out for dates in coffee bars and suggesting her to have a sexual relationship with him. In some of the SMS’s and calls he directly threatened to make Ms C fail the final thesis defense if she would not consent to have sexual intercourse with him. Ms C repeatedly turned Mr X’s requests down and asked him to stop making such requests. Mr X became frustrated about Ms C’s repeated refusal. On one night in June 2011 he sent her several SMS’s with threats and an ultimatum to come to a specific guest house on Nguyen Cong Tru street in a nearby city. After receiving these threatening SMS’s Ms C decided to bring a complaint to the competent authorities claiming that Mr X’s conduct constituted sexual harassment.

Questions for discussion:

- Do you think Mr X’s action constituted sexual harassment? Explain.
- What would the outcome of this case be in your country? Which laws apply?
- Do you think the case constitutes discrimination in employment and occupation in the meaning of ILO Convention No. 111?

Case D. Is it sexual harassment?

Ms A was an accountant clerk working for a financial holding company. Mr B, a Senior Manager was giving her a lot of attention for a number of months. Ms A privately indicated to Mr B on a number of occasions that his observations were inappropriate and made her feel uncomfortable, but to no avail. At some point, the incidents in the course of a single week included: (a) a question in a public meeting on what colour of underwear she is wearing; (b) a question in private on what method of contraception she is using; (c) a picture she receives by e-mail from Mr X showing a couple intimately fondling each other, accompanied by text “for your eyes only ...”; (d) a remark in passing that “it is time to think of procuring

a bigger size of bra.” Ms A ultimately complained to the General Manager. The General Manager said that he could not take any action because there is no law against making such jokes.

Questions for discussion:

- Did Mr B commit sexual harassment or not? Explain why.
- Do you think the case constitutes discrimination in employment and occupation in the meaning of ILO Convention No. 111?
- What are the roles and responsibilities of the General Manager to respond to Ms A?

Exercise 25. Identifying sexual harassment at the workplace: Case studies**Handout 2. Case responses**

Some examples of acts constituting sexual harassment mentioned in the cases include:

- Unwelcome suggestions to go on a date or to become lovers (presented directly, through intermediaries or by SMS).
- Unwelcome touching and kissing.
- Asking questions about personal matters and family situation.

The most serious forms of sexual harassment and violence are physical assault and rape which are criminal behaviour covered under criminal law in most countries. Sexual harassment can be physical (sexual touching), verbal (comments and questions), or non-verbal (whistling or sexually suggestive gestures). Sexual harassment may take two forms:

- “Sexual blackmail” (“quid pro quo” or “this for that”): Conduct which makes a job benefit – such as a pay rise, a promotion, or even continued employment – conditional on sexual favours.
- “Hostile working environment”: Conduct that creates an intimidating, hostile or humiliating working environment for the recipient.

All cases describe situations of sexual harassment as the conduct is unwelcome to the recipients. Cases A, B and C provide clear examples of different types of sexual blackmail, like promises of job benefits or threats of withholding job benefits or passing a university examination. Cases A, B and D provide examples of conduct that creates an intimidating and hostile working environment.

Noting the clear linkage between sexual harassment and discrimination the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a serious form of sex discrimination and should be addressed within the requirements of Convention No. 111.⁶¹ Sexual 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. For this purpose it is in employers’ direct interest to ensure that their workplaces are free from sexual harassment.

With regards to the question on whether the leasing company had a legitimate reason to dismiss Mr Polwat, the Supreme Court of Thailand⁶² held that the plaintiff’s behaviour of making use of his position by inviting female workers out, persecuting them if they did not comply and asking applicants out during the period of recruiting such persons, expressed the plaintiff’s intention to conduct sexual harassment against female employees and job applicants. The plaintiff’s actions were not only contradictory to decent morals and customs, but also blatantly violated the Company’s work regulations. Furthermore, the plaintiff’s actions also affected the Company’s human resource management and development since the persecuted employees would not be able to do their work well. The Supreme Court held that Mr Polwat had violated the Company’s work regulations in such a serious manner that the Company was entitled to dismiss the plaintiff without paying severance and without giving advance notice according

⁶¹ ILO: “General observation on Convention No. 111: Discrimination (Employment and Occupation), 1958” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 91st Session, Geneva, 2003, pp. 463-464.

⁶² Supreme Court of Thailand, *Polwat Sunthornwutthikrai vs. Toyota Leasing (Thailand) Co., Ltd*, Case no. No. 1372/2545 (2002).

to Section 119 (4) of the Labour Protection Act B.E. 2541 and Section 583 of the Civil and Commercial Code. Mr Polwat's case was therefore dismissed.

The real-life case from Dac Lac Province⁶³ in Viet Nam also constitutes discrimination in employment and occupation within the meaning of ILO Convention No. 111 as it covers the full employment cycle, including preparation for work in the form of education and training.

Countries in Asia are increasingly developing specific legislation to outlaw sexual harassment.  See Exercise 32. Action against sexual harassment for further information.

However, even if specific laws are not available, sexual harassment is a form of sex-based discrimination and, therefore, prohibited in most national legislations. Enterprises which fail to respond to complaints of sexual harassment, implicitly accept such behaviour and allow discrimination on the basis of sex to occur. Taking no action in such cases means committing an act of sex-based discrimination. Therefore, in case D, Ms A (the victim) could bring a case against the General Manager to the Labour Court on the grounds of sex-based discrimination if the General Manager fails to respond to her complaint.

Appropriate action by employers in response to complaints includes:

- Conducting a fact-finding process. Managers or designated staff should investigate and listen to the accounts of incidences by the alleged perpetrator and victim and third parties if necessary (while maintaining confidentiality for both parties).
- Determining an appropriate response to resolve the situation and to ensure such behaviour does not occur again in the company. The appropriate response will depend on the nature and sextent of sexual harassment and the working relationship between the perpetrator and the victim. The priority for most victims is to stop the behaviour to stop and to have their respect restored. An apology and assurance that such behaviour will cease completely may often go a long way in solving and addressing the problem.

⁶³ VGCL: *Lao động* (Labour daily newspaper), 4 July 2011, No. 151/2011 (Dac Lac Province, Viet Nam), p.7.

Exercise 26. Use and display of religious symbols at work: Case studies

Instructions for trainers



Aim – To analyze how female dress codes inspired by belief or non-belief in a religion may compromise women's equal opportunities in the labour market.



Target group – Audiences with some previous understanding on non-discrimination.



Time – 20-30 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with the participants and divide them into small groups. Distribute **Handout 1** with the case to the groups and ask them to discuss the questions. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each of the groups to give a brief presentation and discuss the case. Encourage participants to give further comments on whether these kinds of issues are discussed and how they are addressed in their country. Facilitate the discussion, add points not mentioned by the group and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Finding a right balance between freedom of religious expressions and other interests such as equal access to training and employment is not easy, and different views can be taken towards this issue. The question of allowing or not allowing Muslim headscarves (hijab) in schools and at the workplace has spurred a lot of debate in different countries, and has led to different political decisions sometimes prohibiting and sometimes requiring the use of such headscarves.
 - For the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) the most important value is to ensure that Muslim and non-Muslim women have equal access to and opportunity in employment regardless whether they choose to wear a headscarf or not. This view is put clearly forward in the CEACR observations on the application of Convention No. 111 in France, Turkey and the Islamic Republic of Iran.

Exercise 26. Use and display of religious symbols at work: Case studies



Handout 1. Cases

France is a secular state with a majority Roman Catholic (Christian) population. The Constitution of France requires the State and public authorities to remain neutral in the treatment of various religions. The Constitution further specifies that the teachings of a specific religion must not interfere with state affairs and the provision of public goods, including public schools. A law adopted in 2004 **prohibits** the wearing of any conspicuous religious signs or apparel (including Muslim headscarves) in public schools. Wearing of religious signs or apparel can lead to disciplinary measures, including expulsion from school.

Turkey is also a secular state with a majority Muslim population. Since the 1980s, Turkey **prohibited** the wearing of a headscarf in universities, arguing that headscarves are a symbol of backwardness and of rising Muslim fundamentalism. In early 2011, the government lifted the ban.

Iran is not a secular state, but an Islamic republic, although its Constitution also recognizes Judaism, Christianity and Zoroastrianism as legitimate religions. Iran **requires** female public servants to wear a headscarf in the public service, on pain of disciplinary sanctions.

Questions for discussion:

1. Do you see scope for discrimination in any of the above cases? If so, on which ground? Would this be direct or indirect discrimination? From the equality point of view, how would you argue for or against banning headscarves in schools and at work?
2. What are the key discussions on the use of religious symbols at work or in schools in your country? What is the position adopted by Courts or different authorities towards this issue? What other laws or policies restrict or promote the use of religious symbols in public?



Handout 2. Case responses

The discussion on Muslim headscarves, or the “**hijab**,” is a good illustration of the fact that issues related to discrimination on the basis of ethnicity and religion are not easy. Different countries have taken different approaches to the issue. When deciding whether headscarves should be allowed, banned or promoted, from a non-discrimination point of view the main point is to consider what the impacts on labour market outcomes for Muslim and non-Muslim women are. It should be ensured that both Muslim and non-Muslim women’s equal opportunity and treatment in employment and occupation is not hampered.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has addressed the issue of the headscarves in its Observations on the application of Convention No. 111 by France, Turkey and Iran. The main points raised in these Observations are as follows:

In the case of **France**, the CEACR was concerned that the prohibition on wearing any religious signs or apparel, including headscarves, in public schools imposed by Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 might in practice result in some children, particularly girls, being kept away from public schools for reasons associated with their religious convictions. This would reduce their capacity to find employment which is contrary to the Convention. The Committee reminded the Government of the importance of ensuring that the application of this Act did not have the effect of reducing girls’ capacity for finding employment in the future, which would be contrary to the principle of non-discrimination on religious grounds. The CEACR is following up on the issue.⁶⁴

In the case of **Turkey**, the issue was discussed in 2001 and 2006. The CEACR expressed its concern that the requirement that public servants and students uncover their heads would in fact disproportionately affect Muslim women, possibly impairing or precluding altogether their right to equal access to education and employment due to their religious practice. The CEACR maintained that restrictions on the wearing of head coverings may have the effect of nullifying or impairing the access to university education of women who feel obliged to, or wish to wear, a headscarf out of religious obligation or conviction. The Committee trusted that the Government would keep the evolving situation under continuous review in order to determine whether such a general restriction is still necessary, and to ensure that the right of equal access to education and training at the university level of women who feel obliged to or wish to wear a headscarf out of religious conviction was not restricted, contrary to the Convention. The Committee remained concerned that the restrictions might, in practice, keep women away from university education and training.⁶⁵

In the case of the **Islamic Republic of Iran**, the CEACR raised concerns with respect to the obligatory dress code for women, including wearing a head covering (hijab), and the imposition of sanctions in accordance with the Act on administrative infringements for violations of the Code. The CEACR was particularly concerned over “the negative impact that such a requirement could have on the employment of non-Islamic women in the public sector.” For a number of years, the Committee also expressed

⁶⁴ ILO: “Individual observation on Convention No. 111 with respect to France,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 93rd Session, Geneva, 2005; 95th Session, Geneva, 2006; and 97th Session, Geneva, 2008.

⁶⁵ ILO: “Individual observation on Convention No. 111 with respect to Turkey,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 89th Session, Geneva, 2001; 91st Session, Geneva, 2003; 95th Session, Geneva, 2006.

concern regarding the Disciplinary Rules for University and Higher Education Institutes Students, which classify non-observance of Islamic veil requirements as a political and moral offence, with sanctions including dismissal from university or permanent exclusion from all universities. The Committee had noted the Government's reply that "Islamic covering is considered a women's uniform protecting her against misbehaviour in the workplace" and that the "Hijab so far has not led to any dismissals nor has it had any adverse impact on the employment of non-Muslim applicants." The Committee requested the Government to provide more detailed information on the manner in which the abovementioned administrative and disciplinary rules regarding the dress code are being applied in practice with respect to education and employment, including information on the number of violations of the dress code by women and the sanctions imposed.⁶⁶

⁶⁶ ILO: "Individual observation on Convention No. 111 with respect to the Islamic Republic of Iran," in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95th Session, Geneva, 2006 (Geneva).

Exercise 27. Employment agencies and equality: Case study

Instructions for trainers



Aim – To analyze the labour dispatch (outsourcing or temporary staffing) system and the discriminatory effects of seemingly neutral labour practices on rural migrant workers.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Divide participants into small groups. Distribute **Handout 1** and ask the groups to read and discuss the case. Advise each group to select a spokesperson who will present the case study and answers in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready (10-15 minutes). Ask each group to give a brief presentation. Ask other participants to ask questions or comment and have the groups reply. Add points not mentioned by the groups or correct misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Violations of labour standards, such as timely payment of wages or decent working hours, are unfortunately very common all around the world. While such violations clearly breach labour law, they only constitute discrimination against, for example, rural migrant workers if a comparable but socially distinct group of workers, such as local urban citizens, is not or significantly less affected.
 - To analyze whether a labour practice constitutes discrimination it is necessary to collect factual information on the composition of the group(s) negatively affected to assess whether any group has been disproportionately disadvantaged compared to other groups.
 - While legal frameworks to protect dispatched workers have been put in place both at the international and the national level, dispatched workers are still often treated in less favourable terms in companies.
 - It is fairly common for enterprises to seek to cut cost by outsourcing services that were previously provided by regular workers (directly recruited workers in a long-term labour relationship) to a dispatch or temporary staffing agency. Sometimes arrangements are made to transfer previous company staff to a dispatch agency which then rehires them to the company as dispatched workers. If such recruitment practices affect mostly employees with a rural migrant background, and the decision has a disproportionate negative impact on these workers, it constitutes indirect discrimination on the grounds of social origin or national extraction.

Exercise 27. Employment agencies and equality: Case study



Handout 1.

A letter to the Farmers' Daily – China⁶⁷

I am an ordinary rural migrant worker. I have encountered some problems that rural migrant workers like me always face. Hopefully, my claim to the newspaper might call the attention of the entire society to the hardship and puzzles in our lives. Meanwhile, I do expect that the news agency may help us to solve this.

On 1 September 1999, I was hired as an electrician by the Beijing Water Conservancy Hospital. Until now, I have been working there for seven years. However, during the past seven years, I have never enjoyed leave on Sundays and Saturdays and legal national holidays during the May Day, National Day and Spring Festival. I could not get double wages for working on Sundays and Saturdays, or the triple wages for working on national holidays. The hospital demanded me to work for 24 hours, without [compensating me for any overtime]. If I go home for ten days (leave of absence), the hospital will deduct 10 days from my wage. I am not entitled to annual leave and I do not have a labour contract.

In September 2005, the hospital fired Liu Yongde, a rural migrant worker responsible for the maintenance of pressure vessels. Liu lodged a lawsuit through the labour mediation authority against the hospital, and the hospital eventually paid a compensation of RMB20,000 to Liu. As a result, the hospital started to provide the three basic social insurances [basic pension insurance, basic medical insurance and work-related injury insurance] to all the employed rural migrant workers from 1 January 2006 onwards. However, it continued to only pay us the minimum wage rates and refused to sign labour contracts with us.

In February 2006, I again talked with all the hospital leaders and urged them to sign labour contracts with us. My colleagues come from different cities. Among them, Li Chunlong (medical waste cleaner) is a resident from Mentougou District, a Beijing suburb, with 11 years of work experience in the hospital. Wang Shuguo from Hebei has nine years of work experience. Song Weicai also from Hebei has seven years of work experience. The hospital leaders felt that they could not postpone action any longer. They then set up a labour management company to manage us. However, we were obliged to work for two years on probation to formally get employed by this company. This means that our earlier working years in the hospital had been in vain. And this company made no promise to let rural migrant workers enjoy Sundays and Saturdays, nor did they provide other legal holidays and compensation for extended working hours.

On the afternoon of 3 March 2006, Hou Xianrong, the director responsible for personnel affairs met with us, but did not allow us to ask any questions or give any explanations. Then, Huang Can who works in the registration room asked why we did not receive extra payments for additional work on Sundays and Saturdays. Hou interrupted and sternly criticized Huang without letting her finish, telling her that he would talk about her issues alone with her afterwards. We also mentioned that we had been working around the clock, without holidays, not to mention legal holidays and festivals, holiday bonuses and compensation. Hou more sternly shouted: "No way."

⁶⁷ "A letter to Farmers' Daily from rural migrant workers in Beijing Water Conservancy Hospital" in *Farmers' Daily*, 20 Mar. 2006.

To prevent us from resorting to the authorities, the hospital will soon have the property management company take us over completely. What shall we do?

Questions for discussion:

1. What violations of labour legislation can you identify in the case that would apply in your country?
2. Do these labour law violations involve discrimination? If yes, on what grounds?
3. What information would you need to collect to analyze whether the case involves discrimination?
4. Why would a hospital transfer its long-time employed migrant rural workers to a dispatch company?
5. If the writer and his colleagues are transferred to the property management company, what rights would they have towards the property management company (the labour dispatch agency) and the hospital (the user company) in your country?



Handout 2. Case responses

A letter to the Farmers' Daily – China

This letter is a real letter sent by a rural migrant worker to a Farmer's Daily newspaper in China. Similar cases can be found in most countries in East and South-East Asia. The case involves multiple violations of the labour laws in China, including failure to sign a labour contract, violation of working time and annual leave provisions, and failure to pay overtime compensation, etc. The victims have the right to ask the competent authorities to handle the complaint according to the law and seek relief from the labour dispute settlement or arbitration authorities or the people's court (Labour Law Art. 77, Labour Contract Law Art. 77, Law on the Mediation and Arbitration of Disputes Art. 2).

To determine whether the above violations also constitute discrimination, it is important to analyze who the adversely affected workers are in terms of their social origin or rural migrant status, their sex, ethnicity, or any other ground covered in a country's non-discrimination legislation. If it is found that a large majority of workers who were denied labour contracts and labour protection in accordance with the law are rural migrant workers, and the majority of workers who do have proper labour contracts and labour protection in accordance with the law are local urban residents, then the case involves discrimination on the grounds of social origin and internal migrant status. This type of discrimination against rural migrant workers is prohibited under Chinese law, and the writer and his colleagues could take the case to the people's court under the Employment Promotion Law (Art. 62).

In China, the supply of workers through labour dispatch or temporary staffing agencies is governed by the Labour Contract Law. The law regulates both the establishment of a labour dispatch agency and the rights and responsibilities of the three parties, that is, the worker, the dispatch agency and the user company. An employing unit is not allowed to establish a labour dispatch unit within the company to dispatch workers to the company or its subsidiaries (Art. 67). With reference to this it seems the Beijing Water Conservancy Hospital's plans in the current case are against the Labour Contract Law.

The labour dispatch unit is the workers' legal employer, and it should fulfill its related responsibilities in accordance with the law. It should also sign an employment contract of minimum two years with the worker (Art. 58). In China the user company should fulfill the following responsibilities:

1. Abide by the work standards set out by the State and provide corresponding working conditions and protection.
2. Inform the dispatched workers of the work requirements and remuneration.
3. Pay overtime work and performance bonuses, and provide welfare benefits related to job positions.
4. Provide necessary training required by the job positions for the dispatched workers.
5. Apply the normal wage adjustment mechanism to the dispatched workers who are employed continually (Art. 62).

Furthermore, the dispatched workers enjoy the same rights of equal pay for equal work as the regular workers in the employing unit (Art 63).

Worldwide, the hiring of employees through labour dispatch or outsourcing companies has become a more and more frequent employment practice in the past few decades to provide employers with temporary work and a measure of flexibility in response to rapidly changing market situations. The increase in this type of atypical employment and supply of workers through labour dispatch companies does away with the traditional employer–employee relationship, and gives birth to a new type of “**triangular**

employment relationship” – involving a worker, his or her legal employer (the labour dispatch agency) and a third party (the user company). The **ILO Private Employment Agencies Convention (No. 181)** was adopted in 1997 to provide an institutional framework for regulating labour dispatch agencies and protecting workers in this type of triangular employment relationships.⁶⁸

Convention No. 181 requires member States to determine in their national law and practice the **respective responsibilities of the labour dispatch agencies and user enterprises** in relation to collective bargaining, minimum wages, working time, occupational safety and health, statutory social security benefits and other terms and conditions of employment (Art. 12). The allocation of these responsibilities between the labour dispatch agency and the user enterprise differs from country to country. The labour laws of many Asian countries are only starting to catch up with the need to adequately protect the workers in these types of triangular employment relationships. Articles 58 and 62 of the Chinese Labour Contract Law above provide one example of clear allocation of responsibilities between the labour dispatch company and the user company.

Outsourcing is especially common for supplementary support functions, such as cleaning, security, caring and catering. Sometimes, the practice meets a genuine need of the employer, such as when the job for which the person is hired is temporary in nature (for example, to cope with a temporary increase in the workload or to replace a regular worker who is ill or on maternity leave). It may happen, however, that the choice to recruit a worker through a dispatch or temporary work agency is not inspired by legitimate business needs, but by a desire to dilute the employment relationship and so evade the need to comply with labour law. When the operation of dispatch companies is not properly regulated in a country, uncertainty arises as to where employer obligations rest with regard to issues such as signing a labour contract, overtime work, legal holidays, dismissal and minimum wage.

To avoid abuse of labour dispatch arrangements, many countries have restricted the use of dispatch labour allowing it only in limited situations. For example, in many European countries, workers’ and employers’ organizations have broadly agreed that temporary work – and so the use of temporary work agencies – is only permitted for (1) the temporary placement of an employee (e.g. an employee on maternity leave, but not an employee on strike), (2) a sudden increase in work (e.g. an unexpected large order), and (3) exceptional work (e.g. temporary staffing during a fair).

The status of a dispatched worker in a company is in many ways less stable and less protected than that of a regular worker, and the transfer to a dispatch agency usually has negative impacts on the workers. From a discrimination point of view, the question to always ask is who the negatively affected workers are. If the employment records show that the majority of workers transferred to a dispatch agency are women or rural migrants and they are subject to inferior treatment, the transfer decision may be considered indirect discrimination on the ground of sex or social origin and rural migrant status.

⁶⁸ A. Bronstein: *International and comparative labour law* (Geneva, ILO, 2009), pp. 12-16, 39-42.

4.4 Termination of employment

Exercise 28. Dismissal during pregnancy: Case studies

Instructions for trainers



Aim – To distinguish discrimination on the basis of pregnancy as one of the most persistent forms of discrimination against women.



Time – 40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise and distribute **Handout 1**. Divide participants into small groups. Give each group one of the case studies, and ask them to read and discuss the questions. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to briefly present their case. Invite other participants to ask questions or comment after each presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - These two cases clearly illustrate the types of discrimination that women of child bearing age face in the labour market. While the law of most countries prohibits dismissal of pregnant women, in practice many problems remain. Employers commonly try to find an excuse – such as “dishonesty” in Ms Tang’s case or a clause in an agreement in Ms Savitree’s case – to justify the dismissal of pregnant women.
 - To ensure that women can be protected against dismissal on the grounds of pregnancy, many countries apply the principle of the reversal of the burden of proof in the hearing of pregnancy discrimination cases. This means that the employer needs to produce evidence that the dismissal was not due to pregnancy, but to some other valid reason(s).

Exercise 28. Dismissal during pregnancy: Case studies**Handout 1. Cases****Case A. Ms Tang's dismissal – Breach of honesty?**

In August 2004,⁶⁹ Ms Tang, a new university graduate was recruited by a Ministry in China to work in the General Office of the Personnel and Labour Department, under a contract with a probation of one year. In a health check in November 2004, she was found to be pregnant. She decided to have the child and reported the situation to her supervisor, Director Li of the General Office. He talked to her, giving her two options: Having an abortion or leave the Ministry. Later investigation found that Ms Tang had filled out her marriage status as "single" in the Household Registration (Hukou) Transfer Card and the Personal History Form at the time of recruitment, and the marriage certificate she provided later was not hers.

Based on these facts, the Personnel and Labour Department of the Ministry charged that Ms Tang had "practiced fraud and deceived leaders and colleagues," which is an act against the principle of sincerity and honesty required of civil servants. According to the provisions on probation in the Temporary Regulations on Civil Service, the agreement signed at the time of recruitment and Ms Tang's act, the Ministry decided to revoke the recruitment of Ms Tang. On 21 December, Ms Tang left the Ministry with the dismissal documents.

Questions for discussion:

- Is there discrimination in this case?
- What does the law in your country say about similar situations? What would be the outcome of this case in your country?

Case B. Ms Savitree's dismissal – Agreement to terminate contract during pregnancy?

Ms Savitree worked as a flight attendant for Air Andaman Co. Ltd (the Company) in Thailand. In October 2003 she found out that she was pregnant, and informed an officer who oversees the work schedule of the flight attendants about her status. She requested the Company to offer her a more appropriate position during her pregnancy, but the Company was unable to do so. When the flight attendant's schedule was released, Ms Savitree's name was not on the list. On 11 November, the Company asked her to write a resignation letter and offered her an extra month salary even if she would not be working. Ms Savitree disagreed and the parties could not compromise. When her salary was due, the Company merely paid the salary up to 10 November, her last day of work. As she felt that she was treated unfairly, Ms Savitree contacted labour inspector Mr Surachet and explained her situation. Mr Surachet ordered the Company to pay Ms Savitree Baht60,561 of compensation for her dismissal.

The Company filed a law suit requesting the Court to revoke Mr Surachet's order. The Company noted that the employment contract between the Company and Ms Savitree contained a clause which states: "If an officer becomes pregnant within two years after entering into the contract it is considered that the officer terminates the contract" (clause 6.1). The Company indicated that Ms Savitree was well aware of the specific qualifications of being a flight attendant and had agreed with the Company that if she would

⁶⁹ "Ministry of Commerce may have exercised pregnancy discrimination" in *China Women's News* (Beijing, 31 Mar. 2005); "There may be another explanation on revoking the recruitment of Ms Tang into civil service" in *China Women's News* (Beijing, 2 Apr. 2005).

become pregnant within two years after entering into the contract, she would voluntarily terminate the contract. The Company argued that it did not dismiss Ms Savitree and, therefore, should not be ordered to pay the compensation.

Questions for discussion:

- Was Ms Savitree dismissed or did she resign voluntarily? Should she be entitled to compensation?
- What does the law in your country say about similar situations? What would be the outcome of this case in your country?

**Handout 2. Case responses****Case A. Ms Tang's dismissal – Breach of honesty?**

This case is a real-life case from China which illustrates a problem faced by many women worldwide.⁷⁰ The dismissal of Ms Tang is a clear case of sex discrimination on the grounds of pregnancy. The two options – abortion or dismissal – presented by Director Li clearly violate the principle of protecting pregnant women, outlined in the ILO Maternity Protection Convention, 2000 (No. 183) and national legislation in most Asian countries – including legislation in China.

The argument about “sincerity and honesty” in relation to civil service positions can be questioned given the prejudices that women workers of reproductive age face in finding a job. If Ms Tang would have lied about anything else but her marital status, her sincerity or honesty could be doubted. However, young women in the Chinese labour market know about the widespread discrimination of women on the ground of married status and pregnancy and therefore choose to hide their marriage status when applying for jobs. In such cases, courts in many countries consider that a woman's dishonesty about her marital status or a pregnancy during or after recruitment can not be used against her.

Factors, such as being single or married, being pregnant and/or having children or not, are not inherent requirements of a civil service job. In many countries it is unlawful to ask job candidates questions that are not related to the inherent requirements of a job during recruitment. However, in China and other Asian countries, private and public sector employers frequently ask such non-job related questions. Chances are high that honesty will lead to non-recruitment and will be used against female job applicants because gender discrimination in the labour market is still common, especially in countries where employers are responsible for covering the full cost of maternity protection when their employees get pregnant.

While laws in many countries prohibit the dismissal of pregnant women, in practice many problems remain. To ensure that pregnant women can be protected against dismissal, many courts apply the reversal of the burden of proof in the hearing of pregnancy discrimination cases. This means that dismissing a pregnant woman creates a “prima facie” presumption of discrimination on the grounds of pregnancy. To rebut the presumption, the employer needs to produce the evidence that the dismissal was not due to pregnancy, but due to another reason. In several countries the legal practice has become very strict and it is difficult for an employer to justify the dismissal of a pregnant woman.  See Section 3.2 in Chapter 3 in the *Equality and non-discrimination at work in Asia: Guide* for more information.

Case B. Ms Savitree's dismissal – Agreement to terminate contract during pregnancy?

This is a real-life Supreme Court case from Thailand.⁷¹ It illustrates a situation that is common in labour markets throughout the world, including in East and South-East Asia, even if many national laws prohibit dismissal on the grounds of pregnancy. Employers may often try to circumvent this prohibition by including clauses on voluntary resignation in case of pregnancy in labour contracts. Often this is accompanied by a declaration that the employee is single and should not marry for a given time period. These clauses are contrary to the purpose and intent of the law, and are explicitly prohibited in an increasing number of Asian countries, for example in the Chinese Employment Promotion Law (2007).

⁷⁰ B. Liu, *Unpublished training materials* (Beijing, 2008).

⁷¹ Supreme Court of Thailand, *Air Andaman Co., Ltd vs. Surachet Wiriyasirikul*, Case No. 865/2548 (2006).

Similar court cases concerning clauses on voluntary resignation in case of pregnancy have been heard, among others, in Malaysia.⁷² However, the practice of verbal or written clauses on voluntary resignation in case of pregnancy is still widespread, leading to discriminatory dismissals of women who may not be aware of their legal rights.

In Ms Savitree's case, the Supreme Court of Thailand rejected the argument of the Company (the Plaintiff) and held that clause 6.1 in the labour agreement had the objective of dismissing Ms Savitree because of her pregnancy. The clause is therefore contradictory to the Thai Labour Protection Act B.E. 2541. This law clearly stipulates: "An Employer shall not terminate the employment of a female Employee on the grounds of her pregnancy" (Section 43). Hence, the Court reasoned that clause 6.1 of the agreement is void pursuant to Section 150 of the Civil and Commercial Code. On these grounds the Court rejected the plaintiff's appeal on this issue.

⁷² Federal Court of Malaysia: *Fernandez vs. Malaysia Airline System*, , Part 2 Case 12 (2005).

Exercise 29. Retrenchment: Case discussion

Aim – To analyze the discriminatory effects of retrenchment policies and discuss discrimination on the grounds of marital status and sex.



Time – 20 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.

**Steps.**

- Share the aims of the exercise and distribute **Handout 1** to participants. Divide them into small groups. Ask the groups to read the case study and discuss the questions. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask one group to present the case. Invite the other participants to ask questions, or add comments on the case. Facilitate the discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - When retrenchment measures are needed, it is important to ensure that all retrenchment policies, procedures and practices are fair and non-discriminatory. Any actions that could unjustifiably and disparately have negative effects on specific groups of employees, such as women or ethnic groups should be removed.
 - Statistical data on retrenchments shows that women are still more likely to be laid off than men in case of economic restructuring or downturns. For example in China, data from 2005 show that, during the economic restructuring in the 1990's, the total employment rate of men decreased from 90 to 81.5 per cent (a drop of 8.5 per cent), whereas the female rate decreased from 86.3 to 63.7 per cent (a drop of 12.6 per cent). Asian women workers also were the earliest and most serious casualties of the global economic crisis which began in 2008, especially those engaged in casual, temporary or contract work or other informal employment at the end of global supply chains.⁷³
 - The tendency of employers to lay off women first seems to reflect the traditional assumption that they are secondary income earners. However, women may earn the main family income and many families depend on their income.

⁷³ National Bureau of Statistics and All-China Women's Federation: *2nd National survey on the social status of Chinese women* (Beijing, 2005); ILO; ADB: *Women and labour markets in Asia: rebalancing for gender equality* (Bangkok, 2011).

Exercise 29. Retrenchment: Case discussion



Handout 1. Case

Retrenchment at Allianz Life Insurance – Republic of Korea

In July 1998, a director of the Allianz Life Insurance (the Company) Seoul Head Office notified branch heads that workforce cuts were inevitable due to the financial difficulties of the Company. Therefore, they should persuade one spouse of married couples who were working for the Company to leave, reasoning that such retirement would not be an immediate threat to the families' living. The director also sent a list of the "married couple workers" to each branch. Branch heads repeatedly asked the husbands of the married couples to persuade their wives to retire. They even told the workers that "they would be unfavourably treated if their wives did not leave the Company." Between 3-24 August 1998, 86 of the total of 88 married couples in the Company had one spouse tender a resignation letter.

The trade union strongly protested against married women being the first target of dismissal and distributed messages that urged employees not to succumb to the pressure of the Company. The union requested the Company to meet for a working-level discussion on the forceful dismissals, but the Company replied that it had no idea about such dismissals. Alleging that the employer violated the Korean Labour Standards Act, 79 retired workers made a complaint against the head of the Company before the Seoul Regional Labour Administration.

Questions for discussion:

- Who do you think resigned: Men, women or both?
- Does this case involve discrimination? On which grounds?



Handout 2. Case responses

The case is a real-life case from the Republic of Korea.⁷⁴ It illustrates how company retrenchment policies and decisions may have a disproportionately negative effect on certain groups of employees – in this case married women. In case retrenchment measures are needed, for example, due to changes in business volume, it is important to pay specific attention to non-discriminatory design and implementation of the austerity arrangements. All retrenchment policies, procedures and practices need to be fair and non-discriminatory.

In the actual case of Allianz Life Insurance (the Company), the Korea Supreme Court ruled that the 86 persons who had been forced into retirement had been unfairly dismissed. The married couples had been subject to repeated pressures that one of them should retire from the Company or they might be unfavourably treated. Therefore, the request by the middle-level managers to tender the letter of resignation was seen as a forceful act. The Court held that the Company had violated Article 31 of the Labor Standards Act, which specifies justifiable causes and procedures of dismissal as well as the requirements for corporate dismissal. As the dismissed persons were spouses of a married couple, and most of them were women, the retrenchment policy constituted discrimination on the grounds of marital status and sex.

⁷⁴ “The Case of Allianz Life Insurance: Supreme Court 2002 Da 19292 (Ruling: July 26, 2002)”, in Korea International Labour Foundation (KOILAF): “Court rulings on cases of dismissal for restructuring purpose” in *Labor Today*, No. 3, Sep. 2002.

Exercise 30. Aptitude tests and discriminatory dismissal: Case discussion

Instructions for trainers



Aim – To analyze how the use of aptitude tests can lead to discrimination on the grounds of race and ethnicity.



Time – 30 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with participants. Distribute **Handout 1** and divide them in small groups. Ask the groups to read the case and discuss the questions. Tell each group to prepare a presentation on the case and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask a few groups to give a brief presentation. Invite other participants to ask questions, or add comments on the case. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Ethnic or religious discrimination may take different forms and may appear at all stages of the employment cycle. Establishing a non-discriminatory workplace requires that all human resource management practices – from recruitment procedures to dismissal – are based on non-discriminatory criteria and are applied in a non-discriminatory way.
 - A decision to dismiss an employee should always be based on documented facts related to poor performance or misconduct. If aptitude tests are used when recruiting or promoting workers, the tests need to be designed and applied so that they effectively assess the genuine key competences required in the job, without prejudicing any ethnic, religious or language group.

Exercise 30. Aptitude tests and discriminatory dismissal: Case discussion



Handout 1. Case

Dismissal at a Post Office

Ms Mallidi, a woman belonging to an ethnic minority group, had worked for her local Post Office in the United Kingdom (UK) on a casual basis for a number of years. One day she was asked to take a written aptitude test to check her suitability for contractual employment in the Post Office. She failed the test and her employment was terminated.

Before leaving the post office, Ms Mallidi found out that the workers belonging to the majority ethnic group in the same employment situation had been given temporary or permanent employment contracts without having to take a test. She complained about this to the responsible managers, but her complaint was not investigated.

Questions for discussion:

- Could Ms Mallidi's case involve discrimination?
- What kind of information would you collect to establish whether Ms Mallidi was discriminated?



Handout 2. Case responses

This case is a real-life court case from the UK.⁷⁵ It illustrates how aptitude tests may sometimes constitute disguised indirect discrimination against certain ethnic or language groups. In the real case the tribunal found that the aptitude test was discriminatory and had been applied in a discriminatory way. As a result the dismissal of Ms Mallidi was discriminatory on the basis of race.

When assessing the case the tribunal found that whole batches of workers had been given contracts without passing a test. The Post Office was also unable to provide any reasonable explanation on why workers had to sit the test at certain times and in certain cases, but not in others. The tribunal inferred that the only explanation for the Asian woman's dismissal was her race. In addition, the tribunal found that the aptitude test in itself was indirectly discriminatory. The Post Office had an equal opportunities policy, but the tribunal found no evidence showing that it was actually implemented on a day-to-day basis. The tribunal awarded the complainant compensation of nearly £20,000, including £10,000 for injury to feelings.”

This case shows that, while well-designed, properly administered and professionally validated ability tests can be a useful method of predicting applicants' suitability for a specific job or assessing workers' job performance, the use of tests may also imply problems. Tests need to be designed so that they effectively assess the genuine key abilities and competences required in the job, without prejudicing any ethnic, religious or language group. Tests should also always be applied in a non-discriminatory way. All applicants must take the same test and their performance should be assessed against the same criteria.

The Commission for Racial Equality in the UK has developed the following guidelines for use of assessment tests as part of a selection process or performance evaluation:

- Tests should correspond to the job in question, and measure as closely as possible the appropriate levels of the skills and abilities included in the job specification.
- Special care should be taken to make sure that candidates who speak a different language as their first language understand the instructions.
- All the candidates, without exception, should take the same test.
- Test papers, assessment notes and records of decisions should be kept on file for at least 12 months.
- Employers should analyze the test results and disaggregate the data by ethnicity to see whether the tests and assessment methods used may have contributed to any significant disparities between the success rates for different ethnic groups. If so, they should investigate further and take steps to make the tests free from racial and ethnic bias.

⁷⁵ United Kingdom, Commission for Racial Equality: “Mallidi v The Post Office, Case No. 2403719/98 [2001] DCLD 47,” in *Statutory code of practice on racial equality in employment* (London, 2005).

Exercise 31. Different retirement age for women and men: Case studies

Aim – To recognize different retirement age for women and men as a form of sex discrimination.



Time – 30 minutes



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.

**Steps.**

- Share the aims of the exercise with the participants, and divide them in small groups. Distribute **Handout 1**, assign each group one of the cases, ask them to discuss it, prepare a presentation and select a spokesperson to present it for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask volunteers to give a brief presentation on each of the cases. After each presentation, invite the others to add comments on the case. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round-up the discussion as follows:
 - Obliging women to retire earlier than men is a form of direct discrimination against women. In East and South-East Asia this form of discrimination is still quite common. It can be stipulated in the law such as in China and Viet Nam or emanate from company level regulations and practices (as in the two cases in this exercise).
 - A lower retirement age for women was designed in the past to protect them and to acknowledge their contribution to unpaid household and family care. However, the practice is outdated and leads to unintended negative effects on women's income during and after their working life.
 - Negative impacts of early retirement are the pay inequities at the end of women's career. As women need to stop paid work and retire earlier than men, they cannot progress into senior, higher-paying jobs. For example, in Ms Piyaporn's case the calculated loss of income amounted to Baht1,565,100.
 - Another disadvantage of early retirement is access to 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. For example, in Ms Hasibuan's case she was not eligible for the same benefits as her male colleagues, because her age prevented her from qualifying for the pension.⁷⁶

⁷⁶ N. Haspels; E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

Exercise 31. Different retirement age for women and men: Case studies



Handout 1.

Case A. Early retirement of Ms Hasibuan – Indonesia

On 27 April 1987, Ms Hasibuan received a notice from her employer Indonesia Toray Synthetics (the Company) stating that she would be required to resign from her job as she would be turning 40 the following month. The Mutual Working Agreement 1954 (the Working Agreement) under which Ms Hasibuan was employed included a mandatory age for retirement of 55 years for men and 40 years for women. For Ms Hasibuan, this meant that she would not be eligible for the same benefits as her male colleagues, because her age would prevent her from qualifying for the pension. Ms Hasibuan felt unfairly treated, and applied to the Court for an order requiring her employer to change the mandatory retirement age so that it would be the same for men and women. She also asked the Court to issue an order requiring her employer to employ her until she reached the age of 55. Ms Hasibuan argued that the Working Agreement breached Article 2 of the 1969 Labour Act, which states that employers should not discriminate on the basis of sex, and also violated Indonesia's international obligations under the Convention on the Elimination of Discrimination against Women (CEDAW).

The Company argued that the different retirement ages for women and men stipulated in the Working Agreement were not unlawful discrimination, but acceptable protection measures. They argued that the biological difference between men and women justified a lower age of retirement for women. Women, for example, were more likely to experience work-related stress and illness. The Company argued that the purpose of the provision was protective, similar to legislation that prohibits women from working in mines or at night. Further, differences in retirement ages could also be found among other groups of employees in the workforce such as government positions where women were subject to a lower retirement age. This, the Company argued, was allowed as acceptable discrimination.

Questions for discussion:

- Do you think requiring female employees to retire when they turn 40 years and male employees when they turn 55 is discrimination?
- What are your views on the Company's arguments about the need to protect women?
- What is the situation in your country, company or organization? Are changes needed or not and why?

Case B. Early retirement of Ms Piyaporn – Thailand

Ms Piyaporn Taothong had been employed by Thai Honda Manufacturing Co., Ltd. (the Company) since 2 May 1967. The Company had a work regulation (Regulation A) stating that male employees shall retire when turning 55 years and female employees shall retire when turning 50 years old. As required under Regulation A, when Ms Piyaporn turned 50 on 16 August 1999 she handed in a resignation letter and retired.

At the time of Ms Piyaporn's retirement the Labour Protection Act B.E. 2541 (LPA) (1998) had already come into force. Section 15 of the LPA prescribed the principle of equality between men and women. The trade union which represented workers of the Company had hence started petitioning for an amendment of Regulation A to be in line with Section 15 of the LPA, but the Company refused. However, eventually less than a year after the Plaintiff retired the Company gave in and its welfare committee rendered a resolution, which became effective on 21 June 2000, to have equal retirement ages for female and male employees at 55 years of age (Regulation B).

Ms Piyaporn felt that she had resigned in vain. She filed a lawsuit against the Defendant claiming that the Company's failure to change Regulation A before her retirement was discriminatory and unfair for her. She requested the Court to order the Company to reemploy her until she would reach 55 years of age and pay 10 months' salary as of the date that she retired until the date on which she filed the law suit amounting to Baht260,850. Alternatively, if the Company would not wish to reemploy her, Ms Piyaporn requested the Court to order that the Company would pay a compensation amounting to Baht1,565,100 which would have been the value of her salary from the day she retired until the new retirement age and 7.5 per cent interest thereof.

Questions for discussion:

- Do you think Ms Piyaporn was discriminated?
- How should the Court assess the case?
- What is the situation in your country, company or organization? Are changes needed or not and why?



Handout 2. Case responses

Case A. Early retirement of Ms Hasibuan – Indonesia⁷⁷

In Ms Hasibuan's case the Court decided in her favour. It ordered the company to immediately amend the Working Agreement making the mandatory retirement age the same for men and women and imposed a daily fine for any delay in making the requisite changes. The Court also ordered the company to maintain Ms Hasibuan as an employee until she reached the new retirement age of 55 years.

In its decision, the Court expressly adopted the definition of discrimination used in the Convention on the Elimination of Discrimination against Women (CEDAW). This decision was very progressive for women's rights in the country. The Court applied CEDAW directly and did not accept the argument that CEDAW must adapt to local social norms. Furthermore, the Court recognized the importance of women's labour not only to themselves, but also to the family and society.

In this case the Court heard expert evidence with regard to biological and psychological differences between men and women that sought to establish that women were more likely than men to suffer mental and physical illnesses in the context of work. The Court did not find this argument persuasive. The case is an excellent precedent for advocates in any situation where a "mental or physical difference" argument is being used to support discrimination against women.

Case B. Early retirement of Ms Piyaporn – Thailand⁷⁸

The Central Labour Court rejected the Company's arguments and ruled in Ms Piyaporn's favour. It ordered the Company to pay her Baht180,000 including 7.5 per cent interest thereof. The decision was later upheld in the Supreme Court

The Court ruled on two issues: whether Ms Piyaporn's resignation due to the mandatory retirement age was related to Ms Piyaporn's intention to terminate the employment contract or to the employer's intention to dismiss her, and whether the Company's regulation was void. On the first issue the Court considered that normally, an employee's resignation represents an intention of the employee to quit working for the employer. However, the Court reasoned that the resignation because of the retirement age is different. It is custom for employees who reach the mandatory retirement age to hand in a resignation letter to inform the employer to prepare for the due salary, severance pay and support money, and to remind the employer to notify the provident fund to prepare for the remit of allowances and savings. In this case, when Ms Piyaporn reached the retirement age and handed in the resignation letter, the Court considered it to be a dismissal by the Company and not a termination of contract by Ms Piyaporn.

On the second issue the Court ruled that the Company's regulation was void. The different retirement age between male and female workers under regulation A is contradictory to Section 15 of the Labour Protection Act B.E. 2541. The section on retirement age under regulation A was therefore void pursuant to Section 150 of the Civil and Commercial Code. Moreover, the act of the Company which made Ms Piyaporn retire and did not allow her to continue working was tantamount to dismissal without cause or fault. It was therefore a dismissal without reasonable cause and Ms Piyaporn was entitled to compensation.

⁷⁷ C. Forster et al: *A digest of case law on the human rights of women* (Asia Pacific) (Chiang Mai, 2003).

⁷⁸ Supreme Court of Thailand, *Piyaporn Taotbong vs. Thai Honda Manufacturing Co., Ltd.*, Case No. 865/2548 (2005).

5. Exercises to review strategies for equality promotion

5.1 Legislation and local regulations

Exercise 32. Action against sexual harassment

Instruction for trainers



Aim – To identify what type of measures are needed to implement the requirements of Convention No. 111 through a case analysis of regulations on sexual harassment in China, Indonesia, Mongolia and Viet Nam.



Time – 60-70 minutes.



Seating arrangements – Small group seating around tables enabling participants to work in groups of three to six persons.



Training materials and preparation – Prepare flipchart papers and marker pens for all groups. Note that this case discusses the current situation in China, Indonesia, Mongolia and Viet Nam, but can be used in any country. Trainers should know the legal status quo on sexual harassment in employment in their own country and collect information on contacts for assistance and legal aid for distribution at the end of the session.



Steps.

Step 1 – Introduction and discussion – 5-15 minutes)

- Share the aims of the exercise with participants. Explain that the exercise discusses the implementation of Convention No. 111 at national level through a case study on the implementation of national provisions on sexual harassment in four Asian countries.



Note to trainers: If the group has already completed Exercise 25. Identifying sexual harassment at the workplace: Case studies, the discussion in Step 1 can be kept very brief by recalling the earlier discussion on the topic.

- Start by asking the participants whether sexual harassment at work is legally prohibited in their country and what type of acts constitute sexual harassment. Invite volunteers to share their views, and write the examples given on a flipchart. After a few examples, sum up the discussion by noting that sexual harassment can be physical (sexual violence or unwelcome physical contact), verbal (comments, jokes or intrusive questions of a sexual nature about one's private life) or non-verbal (staring, leering, whistling or sexually suggestive gestures, written or visual materials or graphics).

- Discuss and explain the three main forms of sexual harassment: sexual assault and rape, sexual blackmail ('quid pro quo' or 'this for that'), and creating a hostile working environment, using examples from Exercise 25. Identifying sexual harassment at the workplace: Case studies, as needed.

Step 2 – Implementation of laws and regulations on sexual harassment – 30-40 minutes)

- Divide the participants in small groups and distribute **Handout 1**. Ask them to discuss the questions and prepare a brief presentation of three minutes maximum in plenary.
- When the groups are ready, reconvene in plenary and ask each group to present the outcome of their discussion. Invite participants to share their views and facilitate discussion. Highlight the observations made by the groups and sum up the key features of the provincial regulations in China and the national provisions in Indonesia, Mongolia and Viet Nam, using **Handout 2** with the case responses as needed.

Step 3 – Implementation of national laws on discrimination – 5 minutes

- After finishing the discussion on sexual harassment, point out that the same principles apply to the overall implementation of national discrimination legislation. Ask participants to brainstorm and make a list of essential elements in non-discrimination legislation on a flipchart, using the discussion on sexual harassment in the previous steps. Summarize some of the main elements as appropriate from the list in the Case responses.

 For further information see Section 2.2 Legislation in Chapter 3 of the *Equality and Non-Discrimination at Work in Asia: Guide*.

Step 4 – Roundup – 5-10 minutes

- Round up the discussion as follows:
 - The principles of non-discrimination and equality can only be implemented and enforced effectively if national and/or lower level law provide a clear definition of the type of action that is prohibited and the liabilities and responsibilities of the different actors.
 - Sexual harassment at work is a serious form of sex discrimination. The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has highlighted the importance of addressing sexual harassment within the requirements of Convention No. 111 and encourages member States to take practical action.⁷⁹ To fulfill the requirements of Convention No. 111, member States need to ensure effective implementation of non-discrimination law at local level and adopt policy measures that show concrete results in elimination of discrimination and realization of equal opportunity and treatment at work for everybody.
 - Action on sexual harassment against women is an area where substantial developments have taken place in many countries in Asia over the past years. The provincial measures for implementing the Law on the Protection of the Rights and Interests of Women (2005) in China show how local regulations specify what needs to be done to ensure effective implementation of national non-discrimination standards in practice. Another example is

⁷⁹ ILO: "General observation on Convention No. 111: Discrimination (Employment and Occupation), 1958," in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 91st Session, Geneva, 2003, pp. 463-464.

Pakistan where the Protection against Harassment of Women at the Workplace Act (2010) is supplemented by a Code of Conduct included in the Schedule to the Act, which outlines the measures that employers should take to address sexual harassment at the workplace as part of their management policy.⁸⁰

- Both women and men need protection against sexual harassment under the law.
- It is important to develop and promote both legal and practical measures to prevent and redress acts of sexual harassment in the workplace and in society. Voluntary guidelines for employers are a step in the right direction, but usually these are not sufficient to ban sexual harassment practices in workplaces.

 See the Malaysia Code of practice on the prevention and eradication of sexual harassment in the workplace (1999) in Chapter 4 of the *Equality and Non-Discrimination at Work in Asia: Guide*. For further reading, see: N. Haspels et al.: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok and Geneva, ILO, 2001).

⁸⁰ Government of Pakistan: *Protection against Harassment of Women at the Workplace Act and Code of Conduct* (2010), <http://www.aasha.org.pk> (accessed 22 Jan 2011).

Exercise 32. Action against sexual harassment



Handout 1. Case analysis

Questions for discussion:

1. Read the national and provincial regulations in China. What practical measures do the provincial regulations add to the national legislation? What are some of the drawbacks of these legal provisions?
2. Read the national legal provisions relating to sexual harassment from Indonesia, Mongolia and Viet Nam and discuss whether these are adequate to prevent and address instances of sexual harassment.
3. What provisions are needed at the national, provincial or workplace level to make the prohibition of sexual harassment more effective and enforceable in your country, company or organization?

1. Provisions on sexual harassment in Chinese national laws

Law on the Protection of the Rights and Interests of Women (revised in 2005)

Article 40 – Sexual harassment against women is prohibited. The victims have the right to lodge a complaint to the unit or organ concerned.

Article 58 – If anyone commits sexual harassment or domestic violence against a woman to violate this Law, and if the act constitutes a violation of the public security administration, the victim may require the public security organ to give the violator an administrative punishment or may initiate a civil action in the people's court.

Criminal Law (1997)

Article 237 – Whoever acts indecently against or insults a woman by violence, coercion or any other forcible means shall be sentenced to fixed-term imprisonment of not more than five years or criminal detention.

2. Summary of selected provincial implementation regulations in China

A. Anhui province. The Anhui provincial regulation on implementing the Law on the Protection of Rights and Interests of Women states, “it is forbidden to carry out sex harassment purposely against the will of the women in forms including body contacts, language, text, picture (video) and electronic information with sex contents or related with sex” (Article 34). This provision defines sexual harassment as an intentional act, unwanted by the woman, and lists the types of acts that may constitute sexual harassment. The authorities responsible for investigating cases of sexual harassment in Anhui are the public security departments (the Police) and the Civil Courts, who can try cases of sexual harassment using the civil process, in the same way as they try other cases of violating the security administration (Article 42).

B. Guangdong province. In Guangdong, the provincial regulation on implementing the Law on the Protection of Rights and Interest of Women defines sexual harassment in the same way as the above regulation in Anhui (Article 29). In addition, in Guangdong employing units are required to ensure a good working environment and to establish necessary monitoring and grievances systems to prevent and stop sexual harassment towards women. The victims of sexual harassment have the right to file the case to their employing unit. If the act has violated security administration, the department of public security can give an administrative penalty to the violator. If the act constitutes a crime, civil sanctions will be applied in accordance with the law. (Article 44.)

C. Sichuan province. The Sichuan provincial methods on implementing the Law on the Protection of Rights and Interest of Women prohibit sexual harassments towards women “in forms of language, text, picture, information and body contact,” and oblige employing units and employers to take active measures at the work place to prevent sexual harassment (Article 33). The victim of sexual harassment can file a complaint against the violator at the department of security or file a case in the Civil Court. If the act constitutes a crime, criminal sanctions apply. The employing unit or the employer will also bear civil liability to pay damages to the victim due to physical and spiritual suffering and damage caused to her reputation due to sexual harassment. (Article 47).

3. Legal provisions related to sexual harassment in Indonesia

Law Number: 13, 2003 on Manpower

Article 38 (2) – Everyone has the right to free choice of employment and the right to just conditions of work.

Criminal Code (KUHP), Law No. 27 of 1999, Chapter XIV Crimes against decency

Article 282 (1) – Any person who either disseminates, openly demonstrates or puts up a writing of which he knows the content or a portrait of object known to him to be offensive against decency, or produces, imports, conveys in transit, exports or has in store, or openly or by dissemination of a writing, unrequestedly offers or indicates that said writing, portrait or object is procurable, in order that it be disseminated, openly demonstrated or put up, shall be punished....

Article 285 – Any person who by using force or threat of force forces a woman to have sexual intercourse outside of marriage, shall, being guilty of rape, be punished by a maximum imprisonment of 12 years.

Article 289 – Any person who by using force or threat of force forces someone to commit or tolerate obscene acts, shall, being guilty of factual assault of the chastity, be punished by a maximum imprisonment of nine years.

4. Legal provisions related to sexual harassment in Mongolia

Law on Promotion of Gender Equality (2011)

Article 4.1.7 – “sexual harassment” [is] an unwelcome sexual advance made in verbal, physical and/or other forms, intimidation, threat and/or other forms of coercion that makes sexual intercourse an unavoidable option for the victim or that creates an unbearable hostile environment and/or causes damage in terms of the person’s employment, professional, economic, psychological and/or any other form of well-being.

Article 11.4. In order to prevent and keep the workplace free of sexual harassment and to maintain zero tolerance of such harassment, an employer shall take the following measures:

- 11.4.1. Incorporate in organizations’ internal procedures specific norms for prevention of sexual harassment in a workplace and the redress of such complaints.
- 11.4.2. Design and conduct a program on training and retraining geared toward creating a working environment free from sexual harassment, and report on its impact in a transparent manner.

5. Legal provisions related to sexual harassment in Viet Nam

Labour Code (2007)

Article 111 (1) – Gender discrimination against female employees and abuse of their honor and dignity by the employer are strictly forbidden. The employer must observe the principle of gender equality in recruitment, utilization, pay raise and remuneration for work performed.

Criminal code (2000)

Article 111 Rape – Those who use violence, threaten to use violence, or take advantage of the victims' state of being unable for self-defense or resort to other tricks in order to have sexual intercourse with the victims against the latter's will shall be sentenced to between two and seven years of imprisonment.

Article 113 Forcible sexual intercourse – Those who employ trickery to induce persons dependent on them or persons being in dire straits to have sexual intercourse with them against their will shall be sentenced to between six months and five years of imprisonment.



Handout 2. Case responses

Legal regulations on sexual harassment in China

The three **Chinese** provincial regulations on sexual harassment provide a good example of measures that need to be taken at local level to implement and enforce the broad principles set in the national law. The regulations in all three provinces define types of sexual harassment and specify methods for redress. In addition, in Guangdong and Sichuan employers are required to take active measures for the prevention of sexual harassment.

The key features in Anhui, Sichuan and Guangdong provincial regulations to implement the law against sexual harassment are:

- Definition of acts constituting sexual harassment.
- Responsible authorities.
- Channels for seeking legal redress.
- Sanctions (civil and criminal).
- Employer responsibility for taking active measures to prevent sexual harassment and to ensure a workplace free from sexual harassment.
- Employer responsibility for establishing a monitoring and grievance mechanisms.

An overall drawback of the law and provincial regulations in China is that only women but not men are protected from sexual harassment. In addition, two local regulations define sexual harassment as an “intentional act, unwanted by the woman.” This definition does point out, that it is behaviour that is unwanted and unwelcome by the recipient. However, the reference to intent is less well chosen, given that the intent of the harasser is not determinative. In most jurisdictions it is the recipient who determines whether the conduct of a sexual nature is welcome or not. This is important as many persons who commit acts of sexual harassment consider that there is nothing wrong with their conduct.

Legal provisions on sexual harassment in Indonesia, Mongolia and Viet Nam

The legal provisions for prohibiting sexual harassment in these countries are a start in the right direction especially those in Mongolia. However, they seem rather broad, unless it involves the more overt and physical forms of sexual violations like forced intercourse. In case national and decentralized laws and regulations are virtually silent about sexual harassment at the workplace and only prohibit outright sexual assault and rape, other measures to start addressing the issue may include: Clarifying the concepts in judicial practice, issuing authoritative interpretations to guide the implementation of the law, or using voluntary measures to promote compliance with the law.

Examples of voluntary measures are the 1999 Code of practice on the prevention and eradication of sexual harassment in the workplace in Malaysia and the 2011 Guidelines on sexual harassment at the workplace in Indonesia which elaborate the nature and forms of sexual harassment and provide practical guidance to employers and workers on the steps to take to prevent and respond to instances of work related sexual harassment. Such codes and guidelines are useful for companies committed to take action but may not be sufficient to adequately eradicate sexual harassment at workplaces due to their voluntary nature.

 See Box 50 for a summary and a copy of the Malaysian Code of practice on the prevention and eradication of sexual harassment in the workplace in Chapter 4 of the *Equality and non-discrimination at work in Asia: Guide*.



Essential elements in non-discrimination 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 (including positive responsibilities to act to prevent sexual harassment).
- 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.

 See Section 2. Promoting and enforcing Convention No. 111 through policies and legislation in Chapter 3 of the *Equality and non-discrimination at work in Asia: Guide*.

Exercise 33. Religious local regulations and their impact on workers and businesses



Aim –To analyze religion-inspired bylaws to determine potential discriminatory effects in the world of work.



Time – 30 minutes.



Seating arrangements – Small group seating around tables enabling participants to work in groups of three to six persons.



Steps.

- Share the aim of the exercise with participants and divide them into small groups. Distribute **Handout 1** and allocate each group two bylaws. Ask them to discuss these, answer the questions and present these in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to briefly present the questions allocated to them. Invite others to comment, facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using **Handout 2** with the case responses as needed.
- Round up the discussion as follows:
 - One of the first things a member State should do after ratification of Convention No. 111 is to review national and local laws and repeal any discriminatory provisions.
 - In Indonesia, decentralization has led to the development of many regulations at the local levels. However, a review in 2010 found that since the start of the reformasi era between 1998 and 2009 as many as 154 local religious regulations were enacted which stand in clear violation of the Constitution; and 63 of these were found to discriminate against women.⁸¹ Based on the above report and other documentation on the discriminatory effects of these religious local regulations, the Government of Indonesia is currently conducting a broad-based review of provincial and district level local regulations to ensure their consistency with national legislation and to retract discriminatory bylaws.
 - In **Asia**, many countries still have discriminatory provisions in their national legislation on the grounds of sex, ethnicity or social origin. The review of the Indonesian local laws illustrates that in instances where one religion has been established as the main religion of a province, care needs to be taken that this will not lead to unintended negative consequences in employment and occupation for women and men with another or no religion.

⁸¹ Indonesia, National Commission on Violence Against Women (NCVW, Komnas Perempuan): *In the name of regional autonomy, the institutionalization of discrimination in Indonesia* (Jakarta, 2010).

Exercise 33. Religious local regulations and their impact on workers and businesses



Handout 1. Worksheet

Since the Reformasi in Indonesia, and, in some instances, in response to President Suharto's insistence on secular nationalism, a number of provinces and districts in Indonesia have developed religious-based local regulations ("perda" or "qanun"). The table below includes a selection of these regulations from several Indonesian provinces. Review the local regulations and analyze whether they may adversely impact some groups' ability to obtain employment or operate their business.

	Local regulations (perda)	Provisions	Is there discrimination? Yes/No	Identify the possible discriminatory effects
1	(South Sulawesi) Circular No.44/1857/VIII, Bone Infokom Public Relations Office, 22/08/2008 on Prohibitions during the Month of Ramadan (Aceh) Perda 5/2000 on the Implementation of Islamic Shari'a	Restricts the sale of food and drinks during the fasting month of Ramadan and operating hours of food and beverage businesses Art 8(4) Prohibits non-Muslims from performing activities that may disturb Muslims in observing their prayers (prohibition of movement and mobility during Friday prayer)		
2	(West Nusa Tenggara) Dompu District Head's Decree No. 140/2004 on the Obligation to Recite the Quran for Civil Servants	Requires all civil servants to be able to recite the Quran for promotion; requires all incoming junior and senior high school students to recite the Quran and students who wish to obtain diplomas must be able to recite the Quran.		
3	(South Sulawesi) Enrekang; Perda 10/2005	Muslim civil servants and students must wear Muslim clothing every day.		
4	(West Nusa Tenggara) Dompu District Head's Decree No. Kd. 19.05/1/HM.00/1330/2004 on the Expansion of Regional Regulation No. 1/2002	All civil servants are required to wear Islamic dress.		

5	Tangerang Regional Regulation No. 8/2005	Art 4: “Anyone whose behaviour or attitude is suspicious, to the extent that it gives the impression that she/he/they are a prostitute, is prohibited to be on public roads, squares, in lodgings, inns, hotels, dormitories, citizens’ homes/leased houses, coffee shops, at amusement sites, entertainment venues, on street corners or back streets or other places in areas that can be seen publicly.”		
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Note: The above local regulations have been selected for use in this exercise for educational purposes. As the Government of Indonesia is currently conducting a broad-based review of provincial and district level regulations to ensure their consistency with national legislation and to retract discriminatory bylaws, some of these regulations may no longer be in force at the time of reading.

Exercise 33. Religious local regulations and their impact on workers and business



Handout 2. Case responses

In 2007, the CEDAW Committee⁸² urged the Government of Indonesia to review, monitor and evaluate the implementation of local and regional laws to ensure that they fully comply with national human rights laws and the obligations of Indonesia under CEDAW, so that women's rights are fully protected throughout the country. In 2010, the Indonesian National Commission on Violence Against Women (NCVW, Komnas Perempuan) revealed that, since the beginning of the reformasi era until 2009, as many as 154 local regulations ("perda or qanun") were enacted which stand in violation of the 1945 Constitution.⁸³ Nineteen of these regulations were issued at the provincial level, 134 were district bylaws, and one was issued by village authorities; 63 of these were found to discriminate against women, including a total of 21 regulations on Islamic dress codes.

	Perda	Provisions	Is there discrimination? Yes/No
1	(South Sulawesi) Circular No.44/1857/VIII, Bone Infokom Public Relations Office, 22/08/2008 on Prohibitions during the month of Ramadan (Aceh) Perda 5/2000 on the Implementation of Islamic Shari'a	Restricts the sale of food and drinks during the fasting month of Ramadan and operating hours of food and beverage businesses. Art 8(4) Prohibits non-Muslims from performing activities that may disturb Muslims in observing their prayers (prohibition of movement and mobility during Friday prayer).	Yes Yes
	Response. Presuming this is implemented for all food and beverage outlets, the regulation has a discriminatory effect on non-Muslim business owners operating in the food and beverage industry. Whether or not discrimination occurs depends also on the interpretation of the restrictions. Respectful conduct, such as turning off loud music would be reasonable, while banning all operations may be considered discrimination. If the second regulation is implemented very strictly, this could have a discriminatory effect on non-Muslim business owners and employees whose operations require movement during the Friday praying hours. Again, respectful conduct, such as turning off loud music would be reasonable, while banning all operations may be considered discrimination.		
2	(West Nusa Tenggara) Dompu district: District Head's Decree No. 140/2004 on the Obligation to Recite the Quran for Civil Servants	Requires all civil servants to be able to recite the Quran for promotion; requires all incoming junior and senior high school students to recite the Quran and students who wish to obtain diplomas must be able to recite the Quran.	Yes
	Response. The relevant question to ask is whether the religion constitutes an inherent requirement of the job. If in-depth knowledge of the Quran is an essential element of adequate job performance, for instance, the requirements would seem to be justified for religious leaders, or parliamentarians representing Muslims. However, the ability to read the Quran is not an inherent requirement for many civil service jobs (office clerks, accountants), and in these cases these regulations are discriminatory, because they disproportionately affect and prevent persons of other religions from access to civil service jobs. The provisions could potentially also be discriminatory on the basis of social origin, given that not all provinces in Indonesia require the teaching of the Quran in public schools.		

⁸² CEDAW: *Concluding comments: Indonesia* (2007), CEDAW/C/IDN/CO/5.

⁸³ Indonesia, NCVW (Komnas Perempuan): *In the name of regional autonomy, the institutionalization of discrimination in Indonesia* (Jakarta, 2010), pp. 28-31.

	The requirement for students to be able to recite the Quran to access and graduate from public schools could have a discriminatory impact on students from minority religions whose families do not want them to participate in religious lessons of another religion. It could therefore prevent such students from accessing free education. Generally, teachings of one religion should not be obligatory for students of other religions or without religion. On the other hand, some argue that because West Nusa Tenggara province is largely populated by Muslims, all students should understand the history and traditions that impact on the dominant culture in their province.		
3	(South Sulawesi) Enrekang; Perda 10/2005	Muslim civil servants and students must wear Muslim clothing every day.	Yes
	Many local bylaws on dress codes (21) were created from 2000 to 2006. These regulations which make the wearing of Islamic dress obligatory are based on a single interpretation of religious identity. While the law applies to both men and women, it places far more stringent restrictions on women than it does on men.⁸⁴ These laws potentially impair Muslim women's ability to participate in employment in the civil service and in educational institutions on an equal basis with men if they chose to not wear the Islamic dress. The regulation can also have an affect on persons from other religions. According to the NCVW study, persons from religious minorities, particularly women, feel compelled to observe dress code regulations. They feel forced to conform to the norm because they are surrounded by a majority whose religion is Islam and consider they need to follow the Islam dress code to gain social acceptance, and importantly, employment. It was also reported that access to services such as Government services, education opportunities and health services can be denied for not complying with the dress code.⁸⁵		
4	((West Nusa Tenggara) Dompu District Head's Decree No. Kd. 19.05/1/HM.00/1330/2004 on the Expansion of Regional Regulation No. 1/2002	All civil servants are required to wear Islamic dress.	Yes
	Response. The imposition of religious dress code observance on Muslims and non-Muslims alike can be considered a restriction on freedom of religion and expression and creates a discriminatory effect on those who chose to express themselves differently. More importantly, these regulations discriminate against other religious groups in access to education and employment in community institutions and in the civil service. In some districts where similar bylaws exist, refusal by civil servants to wear the jilbab has resulted in public shaming. They could be reprimanded directly and publicly, or barred from standing in the front row during a ceremony. As the dress code is compulsory it can be seen as an indication of misconduct during promotion and ranking appraisals. This could impact on the opportunities for employment in the civil service for non-Muslim women or Muslim women who chose not to wear the headscarf.		
5	Tangerang Regional Regulation No. 8/2005	Art 4: "Anyone whose behaviour or attitude is suspicious, to the extent that it gives the impression that she/he/they are a	Yes

⁸⁴ Some consider that Muslim women are required to adhere to the Muslim dress code if they are true believers. However others contend that regulations that make the wearing of Islamic dress obligatory are based on a single interpretation of religious identity.

⁸⁵ The NCVW's analysis of the dress requirements explains "the factor that drove the creation of the policies was the manifestation of a religious region. Dress code could become a character or symbol and is easy to regulate as a criterion, compared to other activities." As such, women's choice of dress impacts on their perceived standard of morality. This affects individual's right to freely express their religion. The Commission indicated that these provisions violate the Indonesian Constitutional rights to self expression (Arts. 28E(2) and 28I(1)), rights to worship according to one's conviction (Art. 29(2)) and the right to be free from fear of doing anything that is within one's fundamental rights (Art. 28G(1)).

		prostitute, is prohibited to be on public roads, squares, in lodgings, inns, hotels, dormitories, citizens' homes/leased houses, coffee shops, at amusement sites, entertainment venues, on street corners or back streets or other places in areas that can be seen publicly."	
	Response. The main goal of this local regulation on prostitution is to support morality in Indonesia. However, the ambiguous nature of the term "suspicious behaviour" allows for arbitrary interpretation and application. The regulation is discriminatory because it constrains women's freedom of movement and ability to engage in night work. It has a particularly negative impact on women's ability to work at night as they can be identified as "prostitutes" during their journey to or from work at irregular hours. This was demonstrated in a real-life case that occurred in Tangerang in 2005, when a female waitress was arrested while waiting for a bus on the roadside to take her home after work. She spent three days in prison under a charge of prostitution and lewd behaviour. The bylaw was submitted for review to the Supreme Court by a local legal aid agency on the grounds that it is contrary to Indonesia's obligations under CEDAW and constitutes a fundamental violation of human rights. In April 2006, the Supreme Court declined its opportunity to review the discriminatory nature of the bylaw by announcing that the request for judicial review was rejected because its formulation sufficiently met necessary legal and political requirements for local ordinances. There was therefore no review of the substantive content of the bylaw carried out by the Court. Women's rights groups have expressed deep concern about this result and the case prompted considerable debate within Parliament on the constitutionality of Shari'a-inspired bylaws. In June 2006, 56 legislators signed a petition for the President requesting him to revoke all Sharia-inspired bylaws on the basis that they are unconstitutional, and inconsistent with the Indonesian concept of a "nation with unity in diversity" (Pancasila). However, opposing legislators (134), argued that Shari'a legislation is an effective means of combating various social "wrongs" such as gambling, alcoholism and prostitution.		

Exercise 34. Discriminatory effects of laws and policies: Case studies

Instruction for trainers



Aim – To identify possible discriminatory effects of laws and regulations and to discuss the importance of balancing the interests of employers and workers for well-functioning labour markets.



Time – 40 minutes.



Seating arrangements – Plenary or small group seating around tables enabling participants to work in groups of three to six persons.



Training materials and preparation – Prepare flipchart papers and marker pens for all groups. Read and select the relevant case studies for the participants prior to session.



Steps.

- Explain the aim of the exercise. Divide the participants into small groups and give each of the groups one of the cases. Distribute **Handout 1** and the flipchart papers. Ask participants to read, discuss, prepare a presentation and select a spokesperson to present it for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask for volunteers to present each case. Invite other participants to add or comment. Facilitate discussion, add points not mentioned and present the key learning points outlined in **Handout 2** highlighting the points raised in the presentations by the groups.
- Round-up the discussion as follows:
 - After ratification of Convention No. 111 member States should repeal any discriminatory provisions in their national laws and administrative regulations, and ensure that new laws do not cause discriminatory effects on any groups of workers.
 - While many countries in the region are in the process of aligning their laws and administrative practices with the Convention, discriminatory provisions can still be found in national legislations. Many countries also lack a systematic review mechanism to ensure that new laws do not have discriminatory effects.
 - Identifying discriminatory legal provisions is often not easy, especially in the case of indirect discrimination. However, statistical analysis of different groups in the labour market will show whether employment laws, rules or practices have negative effects on certain groups based on sex, ethnicity, social origin or other grounds under Convention No. 111 or other grounds covered in national legislation.
 - This evidence can then be used to start a process of tripartite or bipartite consultations and negotiations between governments, workers, employers and their organizations to strike a balance between meeting employers' needs for flexibility with workers' needs for protection.

Exercise 34. Discriminatory effects of laws and policies: Case studies



Handout 1. Cases

Case A. Small enterprise development and employment conditions

A country in Central Asia has an emerging private sector, with more and more people starting their own business. Most of the employees working in these small and medium enterprises (SMEs) are women. The employers' organization representing some of these SME's is convinced that administrative requirements and the burden of complying with the existing labour laws are too demanding for these budding SME's, and that it will reduce their capacity to generate employment. As part of its "regulatory streamlining" campaign, the employers' organization starts lobbying to amend the existing labour laws with a view to exempt SME's from the scope of application of these laws. Adoption of the exemption would mean that SMEs would not need to abide by the national standards on minimum wage, working time, occupational safety, etc. and would also not need to contribute to social insurance schemes, such as maternity protection.

Questions for discussion:

1. If you are a legislator in your country, how would you respond to the request made by an employers' organization to exempt SMEs from the labour laws?
2. The employers' organization argues that promoting SME growth and boosting employment creation requires looser regulation on SMEs. Is this argument valid? How will the workers' organizations respond to this argument?
3. If such an exemption would be accepted, would it lead to discrimination in the labour market? On which grounds?
4. Would passing such an exemption be possible in your country today? Are legal instruments or institutional mechanisms available that could prevent it from happening?

Case B. Special economic zones and employment conditions

Your country has prioritized foreign investment in its policies to promote faster economic growth and development. The development of a Special Economic Zone (SEZ) has been planned to attract direct foreign investment, granting special tax concessions and other benefits to multinational companies. Your Government has prioritized the development of an SEZ in an area that is lagging behind in terms of economic development. It is predicted that the local female population of an ethnic minority group, who are currently largely underemployed and unemployed, will comprise of approximately 90 per cent of the unskilled and semi-skilled workers employed in the new SEZ.

Some potential multinational companies in the textile sector have requested your Government to make the SEZ a "hassle-free" environment in order to be more competitive in the global market. The companies propose that the Government exclude the SEZ from the application of the national labour law. The labour costs of workers in the garment sector in other countries are much lower than in your country. If companies in the new SEZ would be exempt from the labour law, they would consider your country to have a more competitive business environment that is conducive to their investment.

Questions for discussion:

1. If you were a legislator, how would you respond to the request made by the multinationals to exempt the SEZ from the labour laws?
2. The multinational investors argue that the exemption of workers from the labour law in the new SEZ would lead to a cheaper labour force and produce a more competitive and conducive environment for foreign investment. Is this argument valid? How would the workers' organizations respond to this argument?
3. If such an exemption would be accepted, would it lead to discrimination in the labour market? On which grounds?
4. Would passing such an exemption be possible in your country today? Are legal instruments or institutional mechanisms available that could prevent this from happening?

Case C. Domestic workers and employment conditions

Domestic work conducted in private households for others provides employment to tens of millions of workers. Nevertheless, it is often not perceived as "employment" and for this reason domestic workers worldwide are often excluded from labour laws regulating domestic workers' wages, working hours, days of leave and other working conditions.

Statistical data on domestic workers' remuneration indicates that this occupation is among the lowest paid occupations in any labour market. Estimates indicate that domestic workers typically earn less than half of average wages – and sometimes no more than about 20 per cent of average wages. However, working hours are long and working days unlimited. Average weekly hours of workers employed in private households totaled 48 hours in Asia, the highest average worldwide (for example, 53.3 hours in the Philippines and 50.9 hours in Indonesia in 2007; and 49.8 hours in Thailand and 49.1 hours in Viet Nam in 2002). In most countries there is no obligation on employers to contribute payments to social security coverage for their domestic workers, and in some countries they are not allowed to join workers' organizations or become leaders of such organizations, especially if they are cross-border migrants.

Recent ILO estimates place the number of domestic workers at around 53 million. As this work is often hidden and unregistered the total number of domestic workers could be as high as 100 million. Around 83 per cent of these workers are women and girls and many are migrants who moved from rural areas to cities within their own country and/or across borders.⁸⁶

Questions for discussion:

1. Many employers of domestic workers argue that they would not be able to employ domestic workers if their employment and working conditions would be regulated under the labour law. Is this a valid argument? What are the views of workers' organizations on this issue? What are the views of domestic workers?
2. Does the situation of domestic workers constitute discrimination? On what grounds?
3. What is the situation in your country? Is domestic work covered under the law, and if yes, how? Can domestic workers join trade unions? Is the situation the same or different for migrant workers from other countries?

⁸⁶ ILO: *Remuneration in domestic work; Working hours in domestic work; Global and regional estimates on domestic workers*, Domestic work: Policy briefs 1, 2 and 4 (Geneva, Conditions of Work and Employment Programme, 2011); Rumpun Gema Perempuan: *Study on domestic workers in Pamulang (Tangerang), Bekasi, Depok and Kemuning (Pasar Minggu)* (Jakarta, 2008) and *Study on domestic workers in Kemuning Pasar Minggu, Pamulang, Parung, Depok and Rangkap* (Jakarta, 2005).

Exercise 34. Discriminatory effects of laws and policies: Case studies



Handout 2. Case responses

Case A. Small enterprise development and employment conditions

The case is based on a real-life situation in the Islamic Republic of Iran.⁸⁷ Similar situations are common in many countries, most often when the adoption of new labour laws or extension of labour protection to hitherto uncovered groups in informal employment is under public discussion and debate. Employers often argue that they can only generate employment and economic development if companies do not face too many obstacles to their establishment or growth. The employers' concern can be legitimate when the informal businesses are small or the employers may not be very well-off themselves.

One important issue that a legislator should consider when preparing labour laws, or exemptions from existing laws, is whether the proposed law, if adopted, could lead to increased inequality and social exclusion. Labour market information, in particular the workforce composition across various sizes of companies, is obviously important in this regard. In this case study, the proposed wholesale exemption of SMEs from the labour law could lead to a discriminatory outcome for women, ethnic or religious minorities, internal rural migrants working in cities or persons in certain age categories. These groups tend to predominate in SMEs and in self-employment in micro and small enterprises, as they often face difficulties in finding other jobs. Thus, exempting SMEs from protective labour regulations would disproportionately affect these groups of workers, and would, thus, result in indirect discrimination on the grounds of sex, ethnicity, religion, social origin or other grounds.

In **Iran**, the labour law does not require SMEs employing less than 20 persons to abide by the regulatory protection for employees in larger enterprises. This means that the employees in these enterprises are not covered by legal entitlements and facilities, including maternity protection. Referring to the fact that many of the employees in Iranian SMEs are women, the Committee of Experts on the Application of Conventions and Recommendations (CEARC) concluded that, in practice, women face serious discrimination in the labour market. The CEACR urged the Government to ensure that all entitlements and facilities are made available to women working in temporary contract employment in SMEs.

Labour market regulation requires balancing different kinds of interests in the society. While the employers' argument may be valid in some respects, the employees and workers in these enterprises, the trade unions and other rights groups may likely argue for extension of certain minimum standards of labour protection to all workers (for example, on minimum wages or safety equipment or other precautions in case of hazardous work) irrespective of the economic sector or size of enterprise they work for. Finding a solution that takes the needs and interests of both employers and workers into account requires dialogue between the two sides. In the end, it is the legislators' responsibility to ensure that the solution adopted in the law maintains a fine balance between the legitimate interests of the two sides.

From the viewpoint of public interest, the need to protect fair employment standards for vulnerable groups outweigh the regulatory burden on SMEs. Burdens on SMEs should and can be alleviated by other effective means, such as:

- An appropriate enforcement policy that at least initially favours promotion over enforcement, including grace periods.

⁸⁷ ILO: "Individual observation on the application of Convention No. 111 with respect to the Islamic Republic of Iran" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, International Labour Conference, 97th Session, Geneva, 2008.

- Information campaigns and awareness raising by labour inspection services.
- Support to employers' organizations to strengthen their coverage and advisory outreach to SMEs.
- Tax breaks for companies hiring a certain number of young persons, women, ethnic minorities, etc.
- Subsidies encouraging SMEs to comply with essential minimum labour standards and invest in training of discriminated groups.
- Subsidies to assist with specific accommodations required to employ, for example, workers with disabilities or from minority groups.
- Promotion of community-based networking that helps SMEs to tap into local expertise for developing low-cost solutions to compliance issues.

To support SMEs in complying with their legal obligations, effective SME service infrastructures should be developed. The ILO **Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)**, recommends that the SME service infrastructure covers, among others, “[...] assistance in understanding and applying labour legislation, including provisions on workers' rights, as well as in human resources development and the promotion of gender equality [...]”⁸⁸

Case B. Special economic zones and employment conditions

This case discusses a common issue faced by policy-makers and legislators when developing special economic zones or attempting to attract foreign investment. In the case of SEZs, it is important that policies to promote economic growth and foreign investment do not result in a “race to the bottom” in regards to labour standards. In response to the potential negative effects of globalization on workers, ILO constituents adopted the **ILO Declaration on Social Justice for a Fair Globalization** in 2008, demonstrating their commitment to promote decent work in an era of globalization.

Global production systems are now a significant source of employment growth for those developing countries that have managed to become part of them. The system of Special Economic Zones has become a prominent issue, particularly in developing countries. Persistent concerns have been expressed that SEZs are sometimes given exemptions from national labour laws or that there are obstacles to exercising rights in practice. There are also concerns that competition for foreign investment leads to damaging policies. For many countries, participation in SEZs is an important way to attract economic investment and increase technological capability. It is important, however, that a country's economic development is not promoted at the cost of social welfare or the well-being of its people. Social development should be pursued hand in hand with economic development.

In this case the proposed exemption of the SEZ from labour law regulation would, on the facts of the case, lead to a discriminatory outcome for women from ethnic minorities who were considered to be the main source of labour in the Zone. The exemption would disproportionately affect this group of workers and would thus result in indirect discrimination on the grounds of sex and ethnicity.

The CEARC has raised concerns in a number of individual country observations on law and practice concerning application of ratified conventions in SEZs. It has noted discrepancies between ratified Conventions and legislation and practice in particular in relation to the right to organize and join organizations, on the right to strike and on collective bargaining rights in SEZs. The CEARC urges countries to uphold ILO conventions and national legislation in SEZs in the interest of sustainable development and social justice.⁸⁹

⁸⁸ For more information, see C. Fenwick et al.: *Labour and labour-related laws in micro and small enterprises: Innovative regulatory approaches* (Geneva, ILO-SEED, 2007).

⁸⁹ ILO: *Employment and social policy in respect of export processing zones (EPZs)*, Governing Body Report, Committee on Employment and Social Policy, GB.286/ESP/3 286th Session. (Geneva, 2003).

From the perspective of long-term sustainable development, the need to protect fair employment standards for vulnerable groups and to prevent a “race to the bottom” outweigh the regulatory costs for foreign investors. Incentives for foreign investment could be pursued through other effective means, such as improvements to infrastructure; tax concessions; better and more efficient governance certainty of the rule of law; and more simple procedures to establish businesses. These concerns are more often of greater significance to foreign investors looking to establish companies in foreign countries than the labour costs.

Case C. Domestic workers and employment conditions

Since the overall majority of domestic workers are women, excluding this sector from labour law protection disproportionately disadvantages women, and thus constitutes indirect discrimination in law on the grounds of sex. As most domestic workers have a migrant background (domestic or international), discrimination against domestic workers can also amount to indirect discrimination on the grounds of race, ethnic origin, colour or nationality.

In 2011, the International Labour Conference adopted Convention No. 189 and Recommendation No. 201 to promote decent work for domestic workers. The Convention notes that domestic work is mainly carried out by women and girls, many of whom are migrants or members of disadvantaged communities and who are particularly vulnerable to discrimination in respect of conditions of employment and work. The Convention requires ratifying member States to take measures to respect, promote and realize domestic workers’ fundamental principles and rights at work, including eliminating discrimination, child labour and forced labour, and guaranteeing freedom of association and the right to collective bargaining. Each member State shall also ensure that domestic workers enjoy fair terms of employment and decent working conditions, and are protected against abuse, harassment and violence. Furthermore, the remuneration of domestic workers shall be established without any discrimination based on sex.

The new instruments specifically call for national standards that address some of the issues raised in the case, particularly: decent hours of work, including rest breaks and a recognition that, in principle, stand-by time counts as work (even if the extent of this recognition may vary from country to country); a weekly day-off; a minimum wage; a written employment contract; progressive realization of occupational health and safety and social security coverage no less favourable than for other workers.

5.2 Good practices

Exercise 35. New union strategies to protect the equal rights of migrant workers: Case study

Instructions for trainers



Aim – To discuss new trade union strategies to promote equality in employment for migrant workers in the context of economic globalization.



Time – 40 minutes.



Seating arrangements – Small group seating around tables enabling participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise and distribute **Handout 1**. Divide participants into small groups and ask them to read and discuss the case. Tell each group to select a spokesperson who will present the case for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask a few volunteers to present the case. Ask other participants to ask questions or comment. Add points not mentioned by the groups or correct misunderstandings using **Handout 2** as needed.
- Round-up the discussion as follows:
 - Migrant workers are often concentrated in menial low-end jobs with poor job security. Especially emergence of new forms of atypical and informal employment – such as temporary work, dispatch or outsourced work, part-time work and work as independent contractors or home-based subcontracted workers – makes it challenging for trade unions to organize and represent migrant workers.
 - When organizing and representing migrant workers it is important to note that the needs and interests of migrant workers are initially often different from those of the local trade union members. This requires union outreach to both groups.
 - Due to the precariousness of their employment status, migrant workers are more vulnerable in the labour market than local workers, and they need strong representation to protect their right to equal treatment and decent employment and working conditions.
 - The trade unions are identifying new ways to reach out to these new members, and to formulate effective strategies to protect the rights and interests of their membership in the changing market situation and the globalizing labour market.

Exercise 35. New trade union strategies to protect equal rights of migrant workers: Case study



Handout 1. Case

TESCO is a major supermarket chain in England and has hundreds of outlets in Asian countries, such as China, Japan, Malaysia, the Republic of Korea and Thailand. It buys its meat supplies from a wide range of small, local meat-processing companies. These small companies, in order to stay competitive in terms of price and delivery speed, are employing more and more workers through temporary work or staffing agencies – also known as private employment (service) agencies, labour dispatch or outsourcing agencies. The majority of workers recruited by these agencies are (temporary) international migrant workers. In recent years, the trade union has been reaching out to these workers, who earn significantly less than the permanent workers who are predominantly local, despite the demanding working conditions to which the migrant workers are exposed.

Questions for discussion:

1. Do you think the workers in the small meat-processing companies are discriminated?
2. Imagine that you are a trade union leader wanting to improve the salaries and working conditions of the agency workers in the meat industry. What issues would you raise and with which parties would you raise them?
3. Then imagine that you are the owner of one of the small meat-processing companies. How would you react to the arguments presented by the trade union?
4. Picture the whole meat supply chain from the local meat-processing companies up to the TESCO supermarkets. Brainstorm to come up with new and innovative approaches that trade unions and other stakeholders can take to improve wages and labour conditions in the whole supply chain. Make a list of these measures.



Handout 2. Case responses

This case study is an adaptation of a real-life situation involving the British trade union UNITE and the British transnational supermarket chain TESCO Lotus.⁹⁰ UNITE is a trade union with two million members covering a wide range of industrial sectors, including “food, drink and tobacco”. In recent years UNITE has reached out to the unorganized, among them migrant workers working in meat factories.

The retail sector in the UK is dominated by large retailers such as TESCO that are able to control the market prices for meat and other products. Under pressure to keep prices down and delivery periods short the meat factories increasingly rely on the employment of workers who are recruited by private employment service agencies, also known as labour dispatch, temporary work or staffing, or outsourcing agencies. The overwhelming majority of these temporary staffing agency workers are migrant workers, working at lower pay than the (mostly British) permanent workers. This has led to claims of racial discrimination.

When formulating a trade union strategy to raise wages of migrant workers working in the meat industry it is important to pay attention to the characteristics of the supply chain in this industry. The legal employers of the migrant workers are the employment agencies at the bottom of the supply chain. The traditional trade union approach would be to organize the workers and bargain collectively at the workplace level factory by factory. Due to the pressure from retailers to keep prices low, this approach would most likely not be very efficient.

Concluding that the traditional bottom-up collective bargaining strategy might not be successful in the meat industry, UNITE decided to try a new top-down approach. It decided not to target the suppliers (the meat factories and labour dispatch agencies), but the top of the supply chain, the transnational supermarket chains (TESCO and its competitors). It built its strategy on the assumption that large transnational companies such as TESCO would not wish to tarnish their brand images with allegations of racial discrimination in their supply chains.

In order to be able to exert influence on TESCO, UNITE bought a sufficient number of shares in the company to table a resolution at the shareholders’ meeting and to request board oversight of discriminatory practices in the supply chain. To ensure approval of its resolution in the shareholders’ meeting, UNITE contacted powerful shareholders such as the local pension funds in advance to secure their endorsement. In addition, it successfully lobbied with the Equality and Human Rights Commission to launch a formal inquiry into discrimination in the TESCO supply chain. Furthermore, UNITE contacted other more agreeable retailers such as Marks&Spencer (one of TESCO’s main competitors) to conclude “supply-chain-wide” agreements on improving labour conditions. Having TESCO’s competitors on its side and backed by the powerful shareholders and the Equality and Human Rights Commission, UNITE “forced” TESCO to undertake an internal review of labour conditions in its supply chain and to help the labour suppliers to raise wages for the migrant workers.

⁹⁰ “Union takes migrant worker fight to Tesco AGM” in *The Guardian* (30 June 2009).

The case illustrates that a company may become involved with allegations of discriminatory practices in a variety of ways, for example:

- As a defendant in an individual lawsuit alleging discriminatory employment practices.
- As a negotiating partner in a collective bargaining process in which the trade union aims to address certain discriminatory practices.
- As responsible for actions further down the supply chain ensuring that employment agencies eliminate discriminatory practices.
- As an executive board member instructed by the shareholders' meeting to negotiate supply chain-wide agreements to eliminate discriminatory practices.

The case also illustrates that changes in the market situation and business patterns require trade unions to find new, innovative ways to combat discrimination and secure decent labour conditions for current or prospective members. Emergence of different types of atypical employment relations such as the labour dispatch or outsourcing system makes this especially challenging.

Exercise 36. Review of good practice examples or model checklists

Instructions for trainers



Aim – To assess good practice examples and consider possible actions that different stakeholders can take to promote gender equality through their organization or in their workplace.



Time – 20-40 minutes.



Seating arrangements – Small group seating in round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – Select a few examples of practical measures or tools from the *Equality and non-discrimination in East and South-East Asia: Guide* for discussion based on participants' interest. Some examples of **good practices** described in the Guide are:

- Capacity building of law enforcement officials – Box 43. Capacity building of labour inspectors – Czech Republic.
- Mechanism to promote and enforce equality legislation – Box 44. The Equal Opportunities Commission – Hong Kong, China.
- Fair employment practices – Box 51. Good practices of fair employment – Philips Electronics Singapore Pte Ltd.
- Workplace cooperation to promote equality – Box 52. Good practice - A Joint Statement on Equal Opportunity in Ford Motor Company.
- Workplace cooperation to address discrimination and harassment – Box 57. Good practice: Plant agreement on sexual harassment, mobbing and discrimination – Germany.
- National tripartite mechanism to promote equality – Box 58. Tripartite cooperation mechanism – Singapore.
- Institutional mechanisms to protect indigenous peoples' rights – Box 59. Institutional mechanisms on to protect indigenous peoples' rights – The Philippines.
- Consultation of indigenous people – Box 60. Good practice – Consultation of indigenous people – Norway.

Example model checklists in the *Guide* include:

- Guidelines on equal opportunity in the workplace for labour inspectors – Checklist 4.
- Equal opportunity guidelines for union negotiators – Checklist 5.
- Guidelines for employers on fair recruitment procedures – Checklist 6.
- Guidelines on equal opportunity and treatment for employment agencies – Checklist 7.
- Guidelines for developing an inclusive workplace disability strategy – Checklist 8.

Photocopy the selected examples and the **Handout** for distribution to participants. Provide for one sheet of flipchart paper and one marker pen for each group.



Steps

- Share the aim of the exercise with the participants, and divide them into small groups. Distribute the **handouts** and flipchart papers, and allocate one good practice or one checklist to each group for discussion. Ask the groups to read the good practice or checklist allocated to them and discuss the questions in the **Handout**.
- After the groups have finished discussion, ask each group to hang their flipcharts on the wall, walk around, look at and discuss the work of the other groups. Encourage the participants to comment on each others' presentations.
- Collect suggestions for action by different stakeholders from all presentations and list them on a flipchart. Try to identify some practical suggestions for each of the following groups of stakeholders:
 - Employers' and workers' organizations.
 - Labour officials.
 - Judicial officials and legislators.
 - Policy-makers.
 - Women's or youth federations, Associations of persons with disabilities, etc.
- Reconvene in plenary and round up the discussion as follows:
 - Highlight some innovative actions or good practices  See Section 5. Role of social partners and strategic alliances in Chapter 3 of the *Equality and non-discrimination at work in East and South-East Asia: Guide* for examples.
 - Promoting equality and fighting discrimination require practical action by many stakeholders in the labour market and in society. Adoption of laws prohibiting discrimination is vital, but it is as important to put the equality principle into practice.
 - One important way to promote equality is to share good practices. There are many good practices of equality promotion in each country. Employers' organizations, workers' organizations, government agencies, the women's movement, organizations of indigenous peoples, persons with disabilities or living with HIV or AIDS, other mass and civil society organizations and other stakeholders can play an important role in raising awareness on practical measures to promote equality by collecting and disseminating good practices on equality promotion among their constituency.

Exercise 36. Review of good practice examples or model checklists

Handout

Questions for discussion:

1. What are the key characteristics of the good practice example or model checklist? Who is taking action, what are the objectives of the measure, and who are the beneficiaries of the measure?
2. Have similar practical measures or action been taken in your country, organization or workplace? Does your organization have experience with implementing such practical measures? If yes, what have been the strong and weak points? If no, go to the next question.
3. Is there a need for such practical equality measures in your country, organization or workplace? If yes, who should take action? Could your organization take the initiative? If yes, go to the next question. If no, why not?
4. Which practical actions from the good practice example or checklist would be applicable within your organization or workplace? What would be priority actions and how would you implement them?

5.3 Company policies and collective bargaining

Exercise 37. Review of company equal opportunity policies

Instructions for trainers



Aim – To review company equality policies and to analyze different management approaches to equality management in company human resource practices.



Target group – Employers' and workers' representatives, and other audiences interested in equality management at company level.



Time – 60–90 minutes.



Seating arrangements – Small group seating in round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – **Photocopy** the **handout** with the questions and the policies. Provide for one sheet of flipchart paper and one marker pen for each group.



Steps.

- Share aims of the exercise with the participants and divide participants into small groups. Distribute the **Handout** with the questions and the company policies to the groups and assign each of the groups one policy to read and discuss. Ask the groups to discuss the policies, prepare a presentation, and select a spokesperson to present it for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation.
- After the presentations, involve participants in a general discussion on what are the key elements of a company equality policy. Ask participants to highlight key points mentioned in the presentations by the different groups. Make a list of the key elements raised by participants on a flipchart, and add additional points as needed.



Key elements of a company equality policy:

- State the company's commitment to equality and explicit prohibition of discrimination and harassment in the company.
- Define the grounds of discrimination covered and the main issues to address.
- Define the scope of application of the policy (recruitment, career development, wages, etc.).
- Explicitly state the commitment of the company board and senior management.

- State which department or person is responsible for implementation.
- Provide for the development of an action plan to promote the policy.
- Establish a mechanism for handling discrimination related complaints.
- Define how the implementation of the policy will be monitored.

- Encourage participants to comment on the list. Ask them to reflect on whether their company should adopt an equality policy and what issues the policy should cover.
- Round-up the discussion as follows:
 - Promoting equality in company practices means ensuring that all company decisions related to human resource management are made in a transparent way, and are based on fair and objective criteria. Ensuring that all company human resource policies and practices are free from discrimination requires a systematic approach to managing equality in the workplace. For this purpose employers who take equality seriously usually adopt special management tools such as an equality policy and an equality action plan, and monitor implementation, for example, through an equality audit.
 - The equality policy should state the company's commitment to equality of opportunity and treatment in all company human resource practices and in fostering a workplace culture free from discrimination and harassment. The equality action plan outlines the practical steps to be taken to realize the objectives set in the policy, including adoption of special affirmative action measures.
 - The equality policy should be prepared carefully and approved by the company board. To ensure that the policy responds to the needs of different groups of company employees, workers' organizations and representatives of the directly concerned groups of workers (women, persons with disabilities etc.) should always be involved in development of the policy and the action plan.

Exercise 37. Review of company equal opportunity policies



Handout 1. Company policies⁹¹

Review the company policy assigned to your group and discuss the following questions:

1. What are the main aims of the policy?
2. What types and grounds of discrimination does it cover?
3. What practical measures or mechanisms does the policy put in place?
4. Who is covered by the policy?
5. Who has the responsibility to take action?

Company policy 1. Merck - United States

1. Equal employment opportunity and affirmative action

Policy Date: 1 January 1996

Supersedes: 1 July 1992

Policy Responsibility: Human resources

Policy

It is the policy of Merck & Co. Inc. to provide equal opportunity for all people without regard to race, color, national origin, sex, sexual orientation, age, marital status, religion, disability, or veteran status with respect to employment, or in any of the Company's terms or conditions of employment, including policies or practices affecting:

1. Recruitment and placement.
2. Promotions, demotions, or transfers.
3. Layoff, recall, or termination.
4. Training, educational, social, and recreational programs.
5. Compensation or benefits.

The Company is committed to actively promoting equal opportunity and pledges itself to a continuing program of Affirmative Action. Management is to make thoughtful and equitable efforts to correct imbalances in any areas of the workforce where particular groups of employees are not adequately represented.

The Company's employment practices will conform with the letter and spirit of all laws and regulations. The Company will continue to work cooperatively with and seek the assistance of appropriate government agencies, educational institutions, civic organizations, and other groups to carry out our Affirmative Action Programs.

Objectives

The objectives of this policy are:

1. To provide a work environment which will attract the best available people into our organization and provide our employees with an atmosphere conducive to development and advancement.
2. To utilize effectively all human resources available to the Company to better meet the Company's need for long term growth and operating efficiency.

⁹¹ ILO: *E.quality@work: An information base on equal employment opportunities for women and men*, CD-ROM, Gender Promotion Programme (Geneva, ILO, 2001); Beijing Zhongze Women's Legal Consultation and Service Center, Women Watch China, *Unpublished materials* (Beijing, 2009).

3. To meet the Company's social responsibility to provide equal opportunity for employment to a qualified applicants from all segments of the population.
4. To ensure Company compliance with federal, state and local laws.

Responsibility

The responsibility for carrying out this policy rests with every member of the Company's management. Each executive has the responsibility for ensuring that his/her managers and supervisors understand this policy and its objectives, and that each manager and supervisor implements them fully. Division/Area management is responsible for preparing an annual affirmative action plan and implementing the plan.

[...]

The Corporate Equal Employment Affairs Department has the responsibility for coordinating equal employment opportunity (EEO) programs, auditing EEO practices and affirmative action implementation, and providing guidance in this area throughout the Company.

Practices and programs

All recruiting, training, and human resource planning programs shall include objectives consistent with this policy.

Each year every domestic site and division shall develop and implement a written affirmative action plan which includes goals and timetables aimed at achievement of full utilization of minorities, females, veterans, disabled persons and other protected groups. Site and divisional management shall review their progress in achieving their annual goals on a regular basis and take corrective action where necessary.

Managers responsible for employment and placement shall actively seek applicants for employment and candidates for promotion from minority groups and females so as to ensure full implementation of this policy.

Communication of policy

Distribution of this policy should be made to all managers and supervisors and to all other employees engaged in employment, placement, and training. Suitable material should also be included in Company publications. Periodic restatements pertaining to our Equal Employment Opportunity posture should be made to all organizations and agencies used for personnel recruitment. Also, all recruitment literature and employment advertising will indicate that the Company is an Equal Opportunity Employer. Restatement of the policy on a continuing basis should be conducted at appropriate management conferences and in supervisory training courses.

2. Discrimination Complaints

Policy Date 1 July 1992

Scope

Applies to all employees of Merck & Co., Inc.

Policy

It is the policy of Merck & Co., Inc. to ensure that any employee who feels that he or she has been discriminated against because of race, color, national origin, sex, sexual orientation, age, marital status, religion, veteran status or disability, shall be given a fair and equitable review.

Procedure

All employees are encouraged to first use the normal channels available for the resolution of problems, complaints or grievances - the grievance procedure for organized employees and the problem resolution policy for unorganized employees. If the employee is still not satisfied, he or she may refer the situation to the Site Equal Employment Affairs representative, or, if he/she prefers, to the Corporate Director of Equal Employment Affairs, who will review the situation and make recommendations to the appropriate division/area head.

Company policy 2. Beijing Cuiwei Plaza Co. Ltd. – China

Code of conduct to prevent workplace sexual harassment, Beijing

In order to uphold a good corporate image by creating an equal, healthy and safe working environment to protect employees' individual dignity, rights to equal employment, privacy, and workplace health and safety, a Code of conduct to prevent workplace sexual harassment has been established within Beijing Cuiwei Plaza Co. Ltd.

A. Definition of workplace sexual harassment

Any unwanted words (including electronic messages) or physical behaviour that have sexual implications in the workplace, putting an employee into a disadvantaged position or harming the working environment. Whether sexual harassment is constituted depends on the reaction of the offended employee (see notes).

B. Obligations of employees and the Group in prevention of sexual harassment

- a. No one should conduct sexual harassment.
- b. All employees are obliged to report sexual harassment behaviours, and have the right to request the related department of the company to timely deal with harassment based on company policies.
- c. The harasser should not take reprisals against complainants or witnesses, otherwise the harasser will be subject to disciplinary action.
- d. The company is obliged to provide employees with a safe and pleasant working environment.
- e. Improper handling or breach of confidentiality of harassment cases will be subject to sanctions.
- f. The company will take disciplinary actions against harassers based on the degree of the offense, and a serious offense could lead to dismissal.

C. Institutions dealing with complaints

The harassment complaints centre is established under the Women Workers' Committee of the Trade Union of the company. It is comprised of five members, and the head of the center will be the director of the Women Workers' Committee. The complaints hotline: 68167748.

D. Responsibilities of the harassment complaints centre

- a. Carry out investigation after receiving complaints and keep records of the case.
- b. Make recommendations to the relevant department of the company to take appropriate actions to deal with harassment incidents in a timely fashion based on company policies, including warning, job suspension, or dismissal.
- c. Take measures to make sure no further harassment will be implemented towards the complainant by the same offender.
- d. Keep confidentiality as much as possible.
- e. Make sure no reprisals will take place against the complainant and witness.
- f. Conduct advocacy and training on the prevention of sexual harassment.

E. Training, advocacy and education on prevention of sexual harassment

The company will organize training on prevention of sexual harassment. Regular training on prevention of sexual harassment will be conducted for all employees, and training will be conducted in a timely manner for new recruits.

The company will regularly carry out advocacy on sexual harassment policies, the complaints handling department, and the roles and responsibilities of employees and the company in the prevention of sexual harassment.

Notes:

- a. Workplace covers:
 - i. The general workplace.
 - ii. Other places besides the general workplace – offices of clients, destinations of business travel, places for business lunch (dinner), operating sections, homes of clients.
 - iii. Places of proper extension from the workplace – places which the Company organizes trips to, and places for social activities and gathering.
 - iv. Changing rooms, bath rooms, dining rooms and workers' apartments of the company.
- b. Unwanted:
 - i. Language or behaviour that is unwanted or felt as uncomfortable by the recipient.
 - ii. Language or behaviour that seems acceptable but is unwanted by the intended recipient.
- c. Definition of language or behaviour of sexual implications:
 - i. Sex related joking or teasing.
 - ii. Persistent invitations to dinners and outings.
 - iii. Deliberately spreading sex related rumors.
 - iv. Asking or telling about sexual experiences.
 - v. Spreading or showing nude pictures or paintings with obvious sexual flavour.
 - vi. Unnecessary body contact.
 - vii. Asking for sexual relationship.
 - viii. Sexual relationship by force.

Company policy 3. Cable and Wireless - United Kingdom

1. Valuing diversity, what does it mean for Cable and Wireless Plc?

As a progressive employer in the UK and in order to meet our business objectives, we need to make the best use of all our resources - the most important being people. We can only do this if we ensure that we do not overlook valuable sources of talent, however, diverse these sources might be. We must maintain a highly skilled and motivated workforce, in an environment where all employees have an equal opportunity to progress within the Company, based on their own efforts and regardless of their sex, race, colour, marital status or special needs. This policy confirms the value we place on diversity amongst our employees, outlines rights and responsibilities and identifies the role that can be played by everybody in making this value a reality. [...]

2. Opportunities policy

As an employer in the UK, Cable & Wireless is committed to providing a working environment in which employees are able to realise their full potential and to contribute to business success. This is a key employment value to which all employees are expected to give their support.

Specifically, the Company aims to ensure that no employee or job applicant is discriminated against, either directly or indirectly, on the grounds of sex, race, colour, nationality, ethnic or racial origins, marital status, religion or disability ("sex, race, marital status, etc"). This applies to recruitment, training, promotion or any other aspect of employment.

The only exceptions to the policy are those situations where there are legal restrictions on employment (for example, where an individual cannot obtain a work permit).

Definitions

There are two forms of discrimination. Direct discrimination means treating a person less favourably on the grounds of sex, race, marital status, etc.

The second form of discrimination is indirect discrimination which occurs where any unjustifiable requirement or condition is placed on a job, the effect of which is that fewer people of one race or sex can comply with it.

Recruitment and development

Applicants will be informed that the Company provides equality of opportunity in employment.

Managers should only specify particular qualifications or requirements that are needed for the safe and effective performance of the job.

Interviews will only cover the applicant's suitability for employment and ability to fulfil job requirements.

All employees will be encouraged to discuss their career prospects and training needs with their line manager and opportunities for internal job moves will not be restricted on the basis of sex, race, marital status, etc.

Employment terms, benefits and facilities

The Company's terms and conditions of employment, access to benefits and other facilities will not differentiate between employees either directly or indirectly, on grounds of sex, race or marital status, etc.

Selection for redundancy

The Company will ensure that any criteria applicable from time to time for selection for redundancy are not directly or indirectly discriminatory on the grounds of sex, race or marital status, etc.

Training

Equal opportunities issues will be incorporated in training and development activities as an integral part of good employee relations. Human Resources will ensure that appropriate training or briefing is provided for all employees and that the policy is communicated effectively.

Monitoring and review

Each business unit is required to keep such records as are necessary to ensure that the policy is effectively monitored and maintained.

All aspects of Human Resources policies and procedures will be kept under review to ensure that they operate in a non-discriminatory manner.

3. Harassment policy

Purpose

The Company believes that all employees have the right to be treated with dignity and respect whilst at work and when representing the Company in any capacity outside of work. This policy statement has been prepared to make clear to employees that the Company will not tolerate the harassment of one employee by another, and to provide procedural guidance to complainants.

Definition

Harassment is unwanted conduct directed towards an employee by a fellow employee (or group of employees) which is regarded as unwelcome and offensive by the recipient. This could include:

- Unwanted physical contact.
- Sexual advances, propositions or pressure where it has been clear that these are unwelcome. Examples are suggestions that sexual favours might further an employee's career or refusal may hinder it or for social activity outside work.
- Conduct which is discriminatory, intimidatory, physically or verbally abusive, including the display of explicit material, humour or comments of a sexual or racial nature or related to a person's abilities or disabilities whether directed specifically at any particular individual or not.

Attitude of the company

The Company regards harassment as a form of intimidation which has the effect of insulting and demeaning the employee against whom it is perpetrated. It is therefore unacceptable in the working environment and the Company will take positive action to prevent its occurrence. Where an employee is found to have perpetrated an act or acts of harassment against a fellow employee then he or she will be subject to disciplinary action which may include dismissal.

Dealing with complaints

When an employee makes a complaint of harassment this will be taken seriously and fully investigated. As far as possible confidentiality will be maintained throughout the investigation.

An employee has the right to use the Company's Grievance Procedure (with advice from Human Resources if necessary) in order to pursue his or her complaint. However, the nature of harassment is such that the Company also offers the employee alternative means of pursuing a complaint and these are outlined below. It is emphasised that the complainant or the accused will not be victimised in any way. However, any false or malicious complaints may result in disciplinary action against the complainant.
[...]

Communication and training

The policy will be communicated to all employees and appropriate training and briefing will be provided for managers and employees on what constitutes harassment and how it should be dealt with.

Exercise 38. Review of collective agreements on equality promotion

Instructions for trainers⁹²



Aim – To review collective agreements on equality and discuss the role of collective bargaining in equality promotion.



Target group – Workers' and employers' representatives and any other audiences engaged in equality promotion through collective bargaining.



Time – 60-90 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – **Photocopy** the **handout** with the questions and the agreements. Provide for one sheet of flipchart paper and one marker pen for each group.



Steps.

- Share aims of the exercise with participants and divide them into small groups. Distribute **Handout 1** to the groups and assign each group one collective bargaining agreement. Ask the groups to discuss the questions and prepare a presentation or a role-play.
- Reconvene in plenary when the groups are ready. Ask each group to give a presentation or present their role-play highlighting the key findings of their group.
- After the presentations or role-plays, involve participants in a general discussion on what they consider to be priorities for equality bargaining within their organization or workplace. Make a list of the key issues raised by participants on a flipchart and add additional points as needed.
- Distribute **Handout 2** with a list of equality and non-discrimination issues in collective bargaining for further information. Ask participants whether their organization could include equality issues in their collective bargaining agenda, and what would be the priority issues to cover. Facilitate further discussion and answer questions.
- Round-up the discussion as follows:
 - Collecting bargaining refers to the process by which employers' and workers' organizations voluntarily (meaning without outside pressure such as from government) discuss and negotiate mutually acceptable terms and conditions of employment.

⁹² For further guidance see ILO: *Promoting gender equality: A resource kit for trade unions, Booklet 3: The issues and guidelines for gender equality bargaining* (Geneva, 2002); ILO: *Gender equality: A guide to collective bargaining. Booklet 1: Gender equality bargaining: An overview* (Geneva, 1998).

- Collective bargaining can be a key strategy to promote equality at work. Equality bargaining can be done at the enterprise, industry, sectoral, regional or national level. The agreement can cover either one or more industries or sectors of public administration. Both private and public sector workers can be covered by bargained collective agreements.
- Equality issues can be covered in a separate equality agreement or in specific provisions included in a general collective agreement with a broader scope. As demonstrated by the collective agreements discussed in this exercise, equality agreements can cover a wide range of issues, depending on the needs and interests of the workforce in the company, industry or sector.
- In equality bargaining – as in any collective bargaining – it is important to ensure that all groups of workers can voice their concerns and participate in negotiations and decision-making. For this reason it is important to ensure that each of the directly concerned groups of workers (e.g. women, persons with disabilities, ethnic minorities) are represented by their own spokespersons in the negotiations.

Exercise 38. Review of collective agreements on equality promotion⁹³



Handout 1

Review the collective agreement assigned to your group and discuss the following questions:

1. Which two parties concluded the collective agreement?
2. Who is covered by the collective agreement?
3. What are the main aims of the agreement?
4. What types and grounds of discrimination are addressed?
5. What kinds of practical measures and/or mechanisms does the collective agreement put in place?

Prepare a brief presentation or role-play highlighting the key findings of your group.

Collective agreement 1. Wilhelm Weber Company – Company level agreement
Wilhelm Weber GmbH – Plant agreement Schedule of women's promotion Catalogue of measures Preamble The aim of the agreement is - based on the agreed provisions in the following catalogue of measures - to achieve: • Equal opportunities in access to chances at the beginning and development. • To dismantle the underrepresentation of women in all fields. • To enable all female and male employees to coordinate family and work. Measures I. Advertisements of vacancies 1. In all advertisements of vacancies, internal and external the female and male (grammatical) form must be used. 2. In advertisements of vacancies for departments in which women are underrepresented, they will be addressed specifically by pointing out the aim of increasing the proportion of women. (For example: "The Wilhelm Weber Ltd. aims to increase the proportion of women in their departments. For that reason applications of women are specifically wanted.") II. Filling of vacancies and staffing 1. Female applicants will be invited to an interview corresponding to their proportion of the total number of applications (according to the multi-stage plan). 2. In the process of assessment the marital status and the income of the partner may not be considered. III. Training All trades requiring an apprenticeship are open to women and men equally. 1. In the case of an insufficient number of applications of women, the advertisement of a vacancy has to be repeated. A ratio of 50 per cent of female and male applicants should be targeted. [...]

⁹³ 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* (Anni Weiler), WP/97/16/EN (Dublin, 1997); ILO: *Promoting gender equality: A resource kit for trade unions, Booklet 3: The issues and guidelines for gender equality bargaining* (Geneva, 2002), pp.50-51; L. N'Daba; J. Hodges-Aeberhard: *HIV/AIDS and employment* (Geneva, ILO, 1998), pp.69-71.

2. Recruiting trainees for the industrial-technical sector (especially specialist staff for food techniques) special incentives (admission of additional trainees, school talks on the outline of the profession, video presentations etc.) should be created - in cooperation with schools and the women representative of the district.
3. The test and selection procedure for apprentices must do justice to the different socialisation respectively to the interests of life of young women and men and may not cause discrimination of women.

IV. Further training

Offers of further and vocational training are open to men and women equally:

1. The budget for further and vocational training will be shared among the departments corresponding to the percentage of the proportion of women.
2. Women should be specifically attracted, motivated and promoted in the sense of a phased qualification by their particular supervisor to take part in measures of further and vocational training.
3. The departments have to work out measures, respectively module systems for higher qualification of their female employees and present it to the "working group women's promotion."
4. The participation of part-time and full-time employees in further and vocational training is considered as working time. If the measure of qualification goes beyond the contractual working time it will be settled by spare time.
5. For part-time employees with reduced working time owing to child care or relatives needing care, offers of further and vocational training will be arranged favourably with regard to time and organization.
6. Offers of further and vocational training should be examined with regard to offers of child care as far as this is necessary for the female and male participants.
7. In courses for supervisors and female respectively male master craftsmen the special topic "Women in industrial-technical sector" must be implemented.

[...]

XI. Promotion of managers

In order to increase the proportion of women in leading and responsible positions of the enterprise the following measures are implemented:

1. Vacant management positions will be advertised openly and in gender-neutral terms.
2. Internal applications of qualified women will be treated preferentially.
3. In terms of planning an occupation and career the enterprise initiates a conversation on the perspectives within the enterprise.
4. Vacant management positions will be examined with regard to the possibility of an alteration into two part-time jobs and an appointment of two employees in accordance with job content and organization.
5. In order to develop managers in the enterprise, deputy positions will be appointed in a way that qualified women and men will be promoted by "training on the job."
6. A programme of further education in the sense of planning a career corresponding to the specific demands of the enterprise will be developed for future female managers.
7. Regularly courses on management will be offered to female managers and deputies in which they should participate twice a year.
8. An application of a female deputy for a corresponding vacant management position should be considered preferentially.

[...]

XIV. Scope of the plant agreement

The plant agreement applies to all subsidiary plants of the Wilhelm Weber Ltd. within the Federal Republic of Germany.

XV. Period during which the agreement is in force

The plant agreement enters into force on 1 January 1994 and is terminated by 1 July 2001. A prolongation is possible conjointly between the management and the works council.

Wilhelm Weber GmbH

General Works Council of Wilhelm Weber GmbH

Collective agreement 2. Ceramics industry – Industry level agreement

Ceramics industry – “Joint Declaration of Principles”

Equal opportunities for women and men in the ceramics industry

Between the

Employers' Federation for the Ceramics Industry, Frankfurt/Main

on the one hand

and the

Industry Trade Union Chemistry, Paper and Ceramics

on the other hand

the following Joint Declaration of Principles on Equal Opportunities for Women and Men in the Ceramics Industry is bargained:

The Employers' Federation for the Ceramics Industry Frankfurt/Main and the Industry Trade Union Chemistry, Paper and Ceramics have discussed equal opportunities of women and men in the ceramics industry in a series of conversations. They take the joint view that the guarantee of equal opportunities should be given special attention. Taking into account the initial situation that in several enterprises measures on realisation of equal opportunities of women and men in working life have already been taken up, the following principles are provided:

1. Staff planning system and personnel administration

Any measures of staff planning and personnel administration must pay particular attention to the principle of equality for women and men. Taking into account individual capability, equal opportunities must be given to each employee according to the company's means in the appointment of professional and management positions as well as in selections procedures and promotion of staff and in the legally provided gender-neutral formulation of external and internal advertisements of vacancies.

2. Vocational training

Apprenticeships are open to women and men principally in the same way. Therefore companies and training institutions must be prepared for the equal appointment of women and men.

3. Further education

Further education is an essential element of corporate culture and conceptions of (personnel) planning. Internal or internally induced measures of further education are carried out according to operational needs, suitability with regard to qualifications and individual interests of employees and independent from gender. Similarly, as far as the employer promotes measures of further education (for example based on release from work) this takes place independent from gender.

4. Designing of jobs

Working conditions contribute to the chances of female and male employees to develop their performances and their usable skills at the workplace. Improvement of working conditions should advantage women and men. Technical or other working conditions must consider the physiological distinctive features of the genders as well as scientific findings of ergonomics.

5. Flexible working time arrangement

A flexible arrangement of working time can comply with both the interests of female and male employees and operational requirements. All measures of flexibilization should be considered, in particular, part-time work, flexitime and the separation of personal working hours from the company's operating hours.

6. Work and family

Compatibility between employment and family care can be made easier by a series of measures. Besides a flexible arrangement of working time this encompasses measures with regard to return to work after family related interruption of employment. In this context the maintenance of contact to the enterprise is essential, especially maintaining professional qualifications during parental leave is of special interest for the enterprise. Temporary and deputy work in the enterprise during the period of interruption can in this context be useful for the later return.

7. Implementation in the company

The parties of collective bargaining assume that works councils and boards consider this declaration of principles with regard to all measures.

8. Continuing discussions

The topic of equal opportunities of women and men will continue to play an important role in the future. AKI (Employers' Federation for the Ceramics Industry) and Industry Trade Union Chemistry, Paper and Ceramics will remain in permanent contact on this topic. It would appear sensible, therefore, to monitor these proposals after a reasonable period and update this declaration of principles with regard to new findings.

Frankfurt/Main, 24 March 1994

Employers' Federation for the Ceramics Industry Frankfurt/Main
Industry Trade Union Chemistry, Paper and Ceramics, Headquarters, Hanover

Collective agreement 3. Mining industry – National industry level agreement

Agreement between the National Union of Mineworkers and the Chamber of Mines of South Africa

Objective

The objective of this agreement is to provide industry-level guidelines:

1. To minimize the effect of HIV in the mining industry.
2. To prevent the spread of HIV infection.
3. For the management of HIV infection in the employer/employee relationship.

Policy

1. General principle

Whilst recognizing that there are circumstances unique to HIV infection, the fundamental principle to be applied is that HIV infection and AIDS should be approached on the same basis as any other serious condition.

2. Rights of the individual employee

- 2.1. Rights of employees who are HIV-positive: HIV positive employees will be protected against discrimination, victimization or harassment.
- 2.2. Testing: No employee should be required to undergo an HIV test at the request, or upon the initiative of management or an employee organization, provided there where HIV testing is intended in specified occupations on medical grounds.
- 2.3. Employment opportunities and termination: No employee should suffer adverse consequences, whether dismissal or denial or appropriate alternative employment opportunities which exist, merely on the basis of HIV infection.
- 2.4. Counselling: Appropriate support and counselling services will be made available to employees.
- 2.5. Benefits: Employees who are clinically ill or medically unfit for work will enjoy benefits in terms of the relevant conditions of employment as negotiated from time to time between the parties.

[...]

5. Awareness and education programmes

- 5.1. In the absence of vaccine or cure, information and education are vital components of an AIDS prevention programme because the spread of the disease can be limited by informed and responsible behaviour.
- 5.2. Appropriate awareness and education programmes will be conducted to inform employees about AIDS and HIV which will enable them to protect themselves and others against infection by HIV.
- 5.3 The involvement of employees and their recognized representatives is of key importance in awareness, education and counselling programmes to prevent the spread of AIDS as well as in the support for HIV-positive employees.
- 5.4 The employer will consult with employees and their recognized representatives on current and future programmes and their implementation, at mine level.

6. Lifestyle changes

- 6.1. It is acknowledged that it is the role of each individual to prevent the transmission of HIV through informed and responsible behaviour and the parties also recognize that socio-economic circumstances can influence disease patterns in communities.
- 6.2. The parties agree to consider at mine level the socio-economic environment and lifestyles in relation to the effective prevention of HIV infection.

7. Health care workers

- 7.1. The policy recognizes the professional and ethical guidelines for health care workers as stipulated by the relevant statutory bodies.

Exercise 38. Review of collective agreements on equality promotion



Handout 2. Case responses⁹⁴

Possible issues for equality bargaining	
Non-discrimination and dignity at the workplace • Trade union activities. • Discrimination. • (Sexual) harassment. • Violence at the workplace. • Equal opportunities in hiring and promotion. • Equal access to education and training programmes. • Affirmative action to give all groups of workers a voice at all levels of the establishment. Wages and benefits • Equal pay. • Job classification. • Pensions. • Transport and housing benefits. • Medical benefits. • Overtime entitlements. • Bonus systems. • Dependent allowances. Maternity protection • Non-discrimination against pregnant and nursing women. • Maternity leave and cash benefits. • Job security. • Reproductive health care and leave for prenatal checkups. • Adoption. Family responsibilities • Paternity/parental/family leave. • Child care facilities. • Care of the elderly or disabled. • Protection against discrimination or victimization.	Hours of work • Basic hours and overtime. • Night work. • Part-time work and job sharing. • Flexible working time. • Needs of pregnant and nursing mothers. • Time off for family responsibilities. Leaves of absence • Paid annual leave. • Compassionate or bereavement leave. • Maternity/paternity/parental leave. • Medical or sick leave. • Paid education or training leave. • Other personal leave (for marriage, etc.). Health, safety and the work environment • Health and environmental hazards. • Ergonomics. • Health and safety committees and safety representatives. • Personal protective equipment. • Welfare facilities and services. • Needs of disabled workers. • Reasonable accommodation. • Reproductive health. • HIV and AIDS information. • Impact of new technologies. Defending rights of non-permanent and vulnerable workers • Categories – casual, temporary, piece-rate workers, seasonal, contract, part-time, rural, homeworkers, domestic, migrant, indigenous and tribal workers. • Avoid non-permanent status for permanent work. • Extend equal working conditions to non-permanent workers. • Eliminate child labour.

⁹⁴ ILO: *Promoting gender equality: A resource kit for trade unions, Booklet 3: The issues and guidelines for gender equality bargaining* (Geneva, 2002), pp. 9-11; ILO: *Gender equality: A guide to collective bargaining, Booklet 1: Gender equality bargaining: An overview* (Geneva, 1998), pp. 5-7.

Representation and voice

Ensure that all groups of workers (e.g. women, workers with disabilities migrant workers) are adequately represented by their own representatives.

At the workplace:

- Negotiating table.
- Occupational health, safety and environment committees.
- Grievance handling.
- Shop stewards and works committees.
- Company boards.
- Training and retraining.
- Representation at all levels of the establishment.

In the union:

- Representatives in all sectors and occupations and at all levels.
- Women's committees and departments.
- Education and training committees.
- Union organization.
- Negotiation committees/tables.
- Health, safety and environment committees.
- Building solidarity.

5.4 Consultation of indigenous groups and ethnic minorities

Exercise 39. Protection of traditional livelihoods of indigenous peoples: Case studies

Instructions for trainers



Aim – To analyze how Convention No. 111 applies to independent occupations, including the traditional livelihoods of indigenous peoples or ethnic groups, and to recognize the importance of consultation and participation of these groups in decision making processes that concern their rights and interests.



Target group – Audiences with some previous understanding on non-discrimination.



Time – 20-30 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials – One sheet of flipchart paper and one marker pen for each group.



Steps.

- Share the aims of the exercise with participants and divide them into small groups. Distribute **Handout 1**, assign one case to each group and ask them to discuss the case, prepare a presentation and select a spokesperson to present it in plenary for a maximum of three minutes.
- Reconvene in plenary when the groups are ready. Ask volunteers to present the case. Facilitate general discussion on the issue and encourage participants to share their views. Give the round-up points using **Handout 2** with the case responses as needed
- Round-up the discussion as follows:
 - Convention No. 111 applies to independent occupations, including traditional livelihoods of indigenous peoples and ethnic groups.
 - Indigenous peoples and ethnic groups need to participate in decision making on issues which concern their rights and interests. For this purpose appropriate and effective consultation mechanisms need to be established.

Exercise 39. Protection of traditional livelihoods of indigenous peoples: Case studies



Handout 1

Case A. Transmigration and discrimination in Indonesia⁹⁵

Indonesia has a long history of transmigration programmes. In fact, the idea of relocating people from Indonesia's heavily populated areas to sparsely populated areas was first proposed during the 19th century.

During the 1980s and 1990s thousands of Javanese (predominantly Madurese migrants) took part in a Government transmigration programme from Java to Kalimantan. The Madurese were given employment opportunities and land that was traditionally owned or used by local native populations (predominantly Dayaks) for farming purposes. Vast expanses of land were also given to the transmigrants for the cultivation of palm oil farms. This had the effect of displacing the local indigenous populations and groups. The Dayak communities in East Kalimantan have not yet been compensated for the lands acquired as part of the transmigration projects.

Jobs in the new industries that were developed as a result of the transmigration programme (such as logging and mining) were also reserved for the Madurese. This angered many Dayak people. Many Dayaks saw that the large companies in Kalimantan preferred to give the majority of jobs to people from outside the province. Employers claimed this was because there was a significant skills shortage within Kalimantan. Feelings of resentment towards the national and multinational companies and Madurese began to surface. Along with cultural and ethnic differences, the Madurese and the Dayak have different religions. The Madurese are predominantly Muslims and most Dayaks are Christians. The mass influx of Madurese migrants significantly altered the demographic make-up of Kalimantan. In 2000, it was estimated that around one-fifth of the population of Kalimantan was comprised of transmigrants.

Questions for discussion:

1. Based on the above information, has discrimination against the Dayaks occurred as a result of the transmigration programmes? List each form of discrimination.
2. Do you think the effects of transmigration could contribute to broader social and/or economic problems?
3. What policy (if any) should the Government introduce to prevent discrimination against local indigenous populations where transmigration programmes exist?

Case B. Protection of traditional livelihoods of the Ainu in Japan: Case Discussion⁹⁶

In 1971 the Japanese Government announced plans to construct a massive industrial park and a large dam on the Saru River to supply water and electricity. The dam would be built in Nibutani, on land sacred to the Ainu people. Although the industrial park never materialized, appropriation of Ainu land

⁹⁵ International Labour Office. 2008. "Individual observation on Convention No. 29 with respect to Indonesia," in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 97th Session, Geneva, 2008; (Geneva); World Bank. 1994. "Transmigration in Indonesia", in *Operations Evaluation Department Report No.72*, <http://lnweb90.worldbank.org/oed/oeddoclib.nsf/DocUNIDViewForJavaSearch/4B8B0E01445D8351852567F5005D87B8> (accessed 16 August 2011).

⁹⁶ R. Rice: *Ainu submergence and emergence: Human rights discourse and the expression of ethnicity in modern Japan* (2006).

and construction continued, and the dam was completed in 1997. The government did not consult the Ainu before or during the construction process, nor did it conduct environmental impact or cultural studies.

However, Kayano Shigeru and another Ainu activist, resisting both the government and some of their neighbours, refused to sell their land to the Government. Instead they filed a lawsuit in the Sapporo District Court against the Japanese Government on the basis of violation of their indigenous rights. In a landmark decision in 1997, the court recognized the indigenous rights of the Ainu and declared the land appropriation unconstitutional. However, by the time of this decision, the dam was completed and the reservoir filled, drowning sites sacred to the Ainu. A second dam is now being proposed.

The dam construction caused a wide range of problems for the Ainu. First of all, it caused considerable social and political conflict among the local Ainu community, especially among those who sold their land and the two who refused to sell. Many of the Ainu agreed to sell their land to the Government because they were poor and they could no longer make a living as farmers. Fish no longer filled the Saru River because of changes in water temperature; the places where the Ainu used to gather wild plants had disappeared; and the sacred sites that were central to Ainu ceremonies in Nibutani were now under water.

Still, the 1997 Nibutani case was a breakthrough in the recognition of the ethnic identity of the Ainu. Although the Ainu plaintiffs failed to stop construction, **the court ruled that the Ainu people were indigenous as defined by the United Nations (UN) protocols.** The court also criticized the Hokkaido Prefecture Government for its management of other Ainu properties. On 29 March 1997, the day after the decision was announced, Prime Minister Hashimoto Ryutaro for the first time referred to the Ainu as an indigenous people. A decade earlier the Government had conceded in a UN-ordered report that it recognized the Ainu as a minority, but they had not been officially considered as Japan's original inhabitants. On 6 June 2008, a "Resolution on Demand to Classify Ainu as Indigenous Peoples" was adopted unanimously at a plenary session of both houses of the Japanese Parliament.

Questions for discussion:

1. Was the appropriation of Ainu land by the Government discrimination against the Ainu?
2. If a similar kind of case threatening the traditional livelihood and areas of ethnic groups would happen in your country, how could the ethnic groups protect their rights? Which laws protect ethnic groups against acquisition of their land and traditional livelihoods in your country?
3. In case development projects require acquisitions of land, what are important steps to make the land acquisition process fair and transparent?

Exercise 39. Protection of traditional livelihoods of indigenous peoples: Case studies



Handout 2. Case responses

Transmigration is often proposed by governments as a solution to problems associated with overpopulation and poverty, and it is designed to benefit both the people migrating to a new area and the host area receiving them. Intended benefits for the migrants who move to new areas under transmigration programmes include access to land and opportunities for employment. For receiving areas and its inhabitants the potential benefits include enhancing the area's industrial capacity, which may lead to economic and social development and growth. However, many examples of transmigration programmes all over the world have shown that it is not always a simple “solution” to poverty and overpopulation. While transmigration may create many opportunities for people, it needs to be carefully planned and implemented to minimize the tensions that often arise between indigenous and migrant populations.

The first case about the Dayaks and the Madurese in Indonesia illustrates the types of unintended discriminatory effects that large scale transmigration to indigenous areas may have. Discrimination against the Dayaks manifests as discrimination in employment (limited access to jobs in new industries) and as discrimination in occupation (deprivation of the traditional means of livelihood through allocation of native farmlands to the transmigrants, without adequate compensation). Some of the transmigrants were also working under great hardship and poor working conditions. The second case about the Ainu in Japan discusses the need to protect ethnic groups' traditional occupations and right to maintain their traditional livelihoods. Denying ethnic groups their traditional methods of pursuing a livelihood is a common form of direct discrimination in occupation.

The ILO **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** provides useful guidance on the policy measures that governments need to take to prevent discrimination against local indigenous peoples, for example when planning and implementing transmigration programmes.

Convention No. 111 covers both those who are employed in employment relations as well as those who are self-employed or engaged in independent occupations, including rural occupations. All women and men working in independent occupations need to have equal access to credit, market facilities and support services. With regards to rights of indigenous peoples to their traditional livelihoods a recent ILO publication articulates the issue as follows:

“Equality in respect of access to particular occupations implies that nobody should be excluded from exercising the occupation of their choice on discriminatory grounds. Where indigenous peoples pursue their traditional occupations, they should enjoy access to credit, market facilities, agricultural extension and skills training facilities on an equal footing with other parts of the population. In all these cases, state policies will need to focus on equal opportunity in providing the skills, assets and resources on an equal basis.”⁹⁷

Some of the key principles established by Convention No. 169 include strengthening the traditional occupations of indigenous peoples by securing their access to land and resources, promoting their voluntary participation in vocational training programmes to support their access to new occupations, and taking measures to prevent discrimination in indigenous peoples' admission to employment and their promotion and advancement at work (Arts. 20-23).

⁹⁷ ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2007).

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.⁹⁸ Convention No. 169 states:

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.

 See Box 50 Good practice – Consultation of indigenous people – Norway in Chapter 3 of the *Equality and non-discrimination at work in East and South-East Asia: Guide* for further reference.

⁹⁸ ILO: “General observation concerning Convention No. 169” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 97st Session (Geneva, 2009).

6. Action planning exercises

Exercise 40. Action planning to promote equality at work

Instruction for trainers



Aim – To help participants to put into practice what they have learned during the training and plan concrete steps for action.



Time – 20-40 minutes



Seating arrangements – Small group seating around tables enabling participants to work in groups of three to six persons.

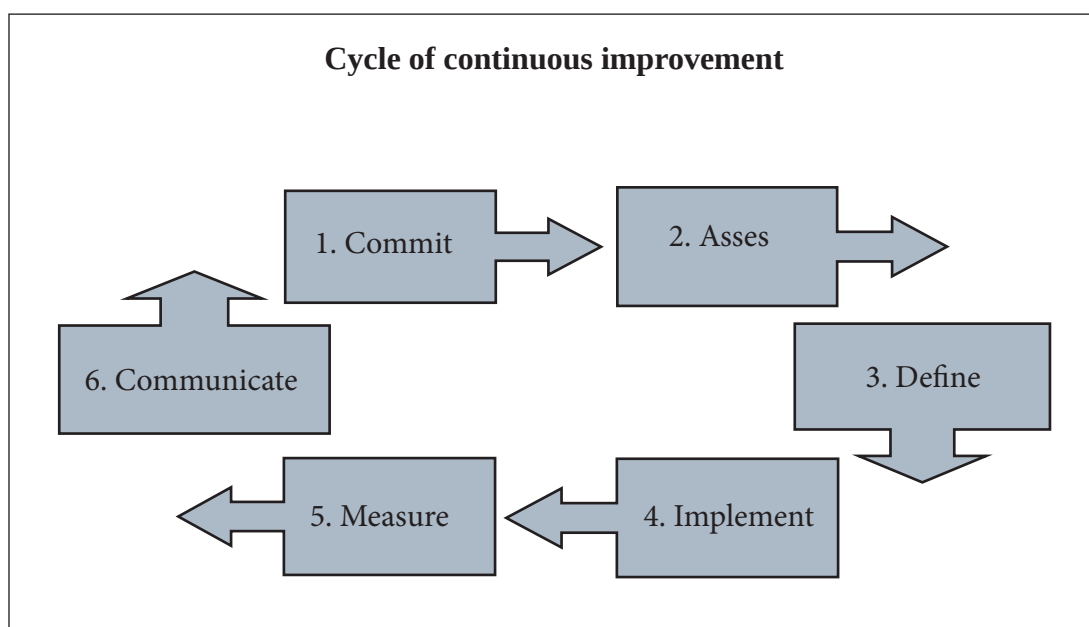


Training materials and preparation – One sheet of flipchart paper and one marker pen for each group. Draw the Cycle of continuous improvement on a flip chart or use the **slide presentation** for this exercise to show the cycle.



Steps

- Divide the participants in groups by location or organization. Show participants the cycle of continuous improvement and explain that action to promote equality and address discrimination is best done step-by-step, following a gradual approach of continuous improvement.⁹⁹



⁹⁹ United Nations Global Compact and Business for Social Responsibility: *Supply chain sustainability: A practical guide for continuous improvement* (2010).

- Explain that Convention No. 111 is a promotional convention, which recognizes that discrimination cannot be eliminated overnight. The Convention requires ILO member States and different organizations to commit to equality and take proactive action to address discrimination. The steps in the cycle are:
1. **Commit:** Make the commitment of your organization, company or workplace to equality promotion public both outside and within your organization. For example, issue a national, regional or organization level equality policy addressing one or more priority issues.
 2. **Assess:** Review existing policies and collect data on current equality related challenges in the field of your organization's mandate or within your organization, company or workplace.
 3. **Define:** Make an action plan to define the policy measures that need be put in place and the action that needs to be taken to address the priority issues.
 4. **Implement:** Carry out the action
 5. **Measure:** Assess the progress made and identify remaining or newly emerging challenges.
 6. **Communicate:** Publicize the work you have done and solicit feedback to further improve your strategy.

After one round of implementation **return to point 1**, make a new commitment, and define new priorities and a new round of measures to be implemented.

- Ask each group to develop an action plan for promoting equality in employment and occupation for their organization using the cycle of continuous improvement. Ask each group to select one or more key discrimination issue(s) that they would like to address in the future, and to define practical measures and the first practical steps to take for realizing equality in the world of work.
- After the groups have finished their work, conclude the exercise by asking each group to briefly present their action plans in plenary as follows:
- Do a "gallery walk": Ask all groups to hang their flipcharts on the wall and assign one or two members to stay with their chart and explain it to others. Ask the other participants to walk around and discuss the action plans in informal groups.
 - Do the reporting in plenary in the form of a competition: Ask people to vote for the presentation with the best action plan. Identify the winning group after a quick tally and present them with a small prize.
- Conclude the exercise by giving each participant a copy of the action plan for their location or organization and keep one copy for follow-up purposes.

Exercise 41. Developing and implementing an Inclusive workplace strategy

Instructions for trainers



Aim – To design practical strategies to reduce discrimination against people with disabilities and health conditions at the workplace.



Time – 20-40 minutes.



Seating arrangements – Small group seating at round tables or other arrangement that allows participants to work in groups of three to six persons.



Training materials and preparation – Copy the **handouts** and prepare flipchart papers and marker pens for each group.



Steps

- Share the aims of the exercise with participants and divide them into groups (from the same workplace or location or in similar types of companies or industries).
- Distribute the **Handout** with the Summary guide for developing an inclusive workplace strategy to participants. Ask the groups to review the Summary guide and develop an inclusive workplace strategy for their workplace (location, company or industry).
- Tell the groups to use the KISS and SMART principles when developing the strategy:
 - KISS: Keep It Short and Simple
 - SMART: Develop objectives and measures that are Specific, Measurable, Achievable, Relevant, Timely and time-bound.
- After the groups have finished their work, conclude the exercise by asking each group to briefly present their inclusive workplace strategies in plenary as follows:
 - Do a “gallery walk”: Ask all groups to hang their flipcharts on the wall and assign one or two members to stay with their chart and explain it to others. Ask the other participants to walk around and discuss their inclusive work place strategies in small groups.
 - Do the reporting in plenary in the form of a competition: Ask people to vote for the presentation with the best workplace strategies. Identify the winning group after a quick tally and present them with a small prize.
- Conclude the exercise by giving each participant a copy of their own strategy and keep one copy for follow-up purposes.

 See Checklist 8. Guidelines for developing an inclusive disability workplace strategy in Chapter 4 of the *Equality and non-discrimination at work in East and South-East Asia: Guide* for promoting inclusive workplaces for people with disabilities for further reference.

Exercise 41. Developing and implementing an Inclusive workplace strategy



Handout

Summary guide for developing an inclusive workplace strategy¹⁰⁰

An inclusive workplace strategy is a tool for understanding what barriers may exist within the physical, social and cultural working environment for persons with a disability or health condition and how to remove these obstacles to create an inclusive workplace.

The major steps to developing an inclusive workplace strategy include:

- Assess the current situation.
- Determine the need for an inclusive workplace strategy.
- Consult workers, supervisors, managers and people with disabilities or health conditions and draft the strategy.
- Provide information and training for supervisors and workers in and outside the company/organization.
- Adapt the workplace: Reasonable accommodation, universal design and standard precautions.
- Promote the strategy within and outside the company or employing unit.
- Evaluate and update the strategy.

The inclusive workplace strategy should include provisions for:

- Equal opportunity and non-discrimination for employees with disabilities or health conditions, such as HIV or HBV.
- Job retention by employees who acquire a disability or health condition.
- Recruitment of employees with disabilities or health conditions.

¹⁰⁰ Adapted from: ILO: *Disability in the workplace: Trainers' guide* (Bangkok and Geneva, Factory Improvement Programme, 2006).

7. Exercise to conclude a training workshop

Exercise 42. Workshop evaluation

Instructions for trainers



Aim – To identify whether and to what extent the training's aims were met and to seek participants' views on the training content and process, and what they have learned.



Time – 15-30 minutes.



Seating arrangements – Organize chairs in a big circle in the center of the room so that participants and trainers can sit together and see each other.



Training materials and preparation – Adapt and make a copy of the training evaluation form (**Training aid 7**) for all participants. Put the flipcharts with participants' expectations and contributions from Exercise 2 in a place where everybody can see them.



Steps.

Step 1. Discussion on the training's aims – 10 minutes

- Recall the aims of the training and the learning objectives of participants.
- Ask the participants whether they feel their expectations have been met and to what extent they have achieved their objectives. Generate some discussion and provide the trainers' assessment for each objective.

Step 2. Written or oral evaluation – 5-20 minutes

- Explain that evaluations are useful to improve future training. Both a written and oral evaluation will be carried out.
- Distribute the training evaluation form and give the participants time to complete it. Collect the forms before the closing ceremony for analysis by the trainers and organizers after the workshop.
- Optional – Ask participants to evaluate the training in the group. Each person will mention one strong point and one weak point of the training (for example, what they have discovered, what they liked and disliked, what they need further training on). The trainers join this evaluation.
- Summarize the main evaluation points, thank all for their participation and wish them good luck.

III. Training aids

Training aid 1. Information note – Equality and non-discrimination at work in East and South-East Asia: Training package

1. What is the training package about?

The training package introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment at work. It explains why the elimination of discrimination at work is fundamental for promoting social justice and economic development both within and across countries. The package provides a range of strategies, practical measures and tools from international and national experience to combat discrimination and promote equality in workplaces. It aims at helping policymakers and practitioners in the employment and labour fields to:

- Design and implement policies and practical measures to promote equal opportunities and treatment and eliminate discrimination in employment and occupation
- Strengthen and enforce regulatory frameworks for ensuring fair employment and working conditions for all workers in the country.

The *training package on equality and non-discrimination at work in East and South-East Asia* includes:

- A *guide* explaining the internationally recognized concepts, standards and approaches to eliminate discrimination and promote equality of opportunity and treatment in employment and occupation.
- An *exercise and tool book for trainers* to facilitate interactive training delivery on equality and non-discrimination at work.

2. Who can use it?

The training package is intended for officials, experts and trainers in the employment, labour, equality and human and workers' rights fields, including:

- Officials in labour and personnel departments at the national, provincial and municipal levels in charge of policy formulation, implementation, enforcement and promotion.
- Managers and human resource personnel from companies and organizations.
- Representatives of employers' and workers' organizations, universities, organizations of women, indigenous peoples, migrant workers, persons with disabilities or living with HIV and AIDS, other associations, mass organizations and federations and civil society leaders.

3. How did it come about?

The training package was developed and issued by the ILO to support the application of ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in East and South-East Asia. Since the onset of increasing global integration this core labour standard has been considered as one of the main, minimum ground rules for a fair globalization. Equality and non-discrimination are essential for realizing decent work, and sustainable economic and social development and efficiency.

Training aid 2. Checklist for trainers: Training preparation

The trainers can use the following checklist to facilitate training preparation.

No.	Trainers' tasks in training preparation	Yes	No
1	Am I clear about the training objectives?		
2	Do I have the following information about my participants? • Total number • Age groups • Numbers of male and female participants • Education, work and other background information		
3	Are there any participants with specific needs (disabilities, members of ethnic groups, particular gender or other cultural considerations, or other special circumstances) and are these needs addressed?		
4	Have I checked with the workshop organizer about the place and timing of the training?		
5	Have the training programme and schedule been developed?		
6	Have I discussed with other co-trainers (if any) about the content, training programme, training methods, and division of work in the preparation and the delivery of the training?		
7	Have I included participatory training methods that are suitable for the participants?		
8	Have I developed or adapted the session plans and the training materials for this group of participants?		
9	Am I clear about the key messages (what participants must know) for each training session?		
10	Are the training aids and materials appropriate for the learning style of the participants? Are they available in sufficient numbers?		
11	Do I have games and exercises for energizers and group dynamics?		
12	Do I have the training evaluation forms or a game or exercise for getting participants' feedback about the workshop?		
Before the training starts:			
13	Have I double-checked with the workshop organizer if all the logistical arrangements are in good order before the workshop begins, e.g., the training venue, rooms and other facilities, and workshop materials?		
14	Is the seating arrangement suitable for the workshop opening and my first session?		
15	Are my notes, computer, electrical equipment, and all training materials ready for use?		

Training aid 3. Checklist: How to address the gender dimension in training on equality and non-discrimination

If most of the answers to the following questions are 'yes', it means the training is gender-responsive. If more than half of the answers are 'no' or 'not sure', more attention is needed to integrate gender concerns into the training.

Strategic fit	Yes ✓	No ✓	Not sure ✓
1. Does the equality and non-discrimination training programme include explicit attention to gender issues?			
2. In case there are pronounced gender inequalities in employment and workplaces, how are these addressed during the training?			
3. In case women are barred from attending training for mixed male and female audiences, is there a need to train men and women separately?			
Planning & Design – Getting the right people and organizations	Yes ✓	No ✓	Not sure ✓
4. Does the planning document show that a gender perspective will be included in the equality and non-discrimination training programme?			
5. Have participants and resource persons been invited from organizations who are mandated, committed and capable of addressing gender equality in employment and occupation?			
6. Are gender issues reflected in the training materials for the meeting/workshop?			
7. If there are gender issues, are they reflected on the agenda?			
8. If gender expertise is required at the workshop, has it been included in the terms of reference as a prerequisite for selecting workshop trainers/facilitators and resource persons?			
9. Are sufficient resources for gender expertise included in the budget?			
10. Do logistical arrangements allow for equal, adequate and safe participation of women and men?			
11. Is there a gender balance among key speakers and participants?			
12. If it is expected that nominating organizations will mainly select men, have any specific measures been undertaken to encourage the selection of women as participants and resource persons?			
13. Is there a need for training more women to redress the effects of (past) discrimination or for rolemodel purposes?			

Preparation & Implementation	Yes ✓	No ✓	Not sure ✓
14. Do the trainers/facilitators and resource persons have sufficient gender knowledge in general and in relation to the training themes?			
15. Are the logistics organized in such a way that they facilitate participation of men and women (e.g. convenient meeting time, date and venue, safe transportation and lodging for women)?			
16. Are both men and women equally encouraged and given opportunity to give their views and provide inputs to the discussion and meeting activities?			
17. Is there a mechanism in place that checks and monitors the following during the training? • Results and outcomes of workshop discussions on gender equality • Balanced contributions by male and female participants • Sex balance among resource persons and participants • Resources allocated and spent on promoting gender equality			
Reporting	Yes ✓	No ✓	Not sure ✓
18. Does the report give a breakdown of male and female participants and indicate their status (e.g. junior, middle, senior)?			
19. Does the report specify whether gender issues were included on the agenda, how they were discussed and what progress was made in promoting gender equality?			
20. Does the report indicate how men and women took part in the discussion, activities and decision making (equally or unequally) during the training?			

Training aid 4. Example training programmes on equality and non-discrimination at work

The following model training agendas are intended to help trainers and training coordinators in designing training agendas for different types of training workshops on equality and non-discrimination at work. The following model training programmes are provided:

1. Model 1. 'Training of trainers' workshop on non-discrimination and equality at work - 5 days
2. Model 2. Workshop for labour officials, employers' and workers' organizations and other strategic partners (Generic) - 2.5 days
3. Model 3. Workshop with employers and their organizations – 2 days
4. Model 4. Workshop for workers' organizations – 2 days
5. Model 5. Workshop on non-discrimination and gender equality at work
6. Model 6. Workshop on addressing discrimination on the grounds of ethnicity, religion and social origin
7. Model 7. Workshop on addressing discrimination against persons with disabilities
8. Model 8. Workshop on addressing discrimination on the grounds of health status

Model 1. Training of trainers' workshop on non-discrimination and equality at work - 5 days

Time	Day 1	Day 2	Day 3	Day 4	Day 5
08.30-10.00	Opening ceremony Exercise 1. Introduction Exercise 2. Expectations	Round-up of Day 1 Exercise 4. Gender debate Presentation 5: Gender Exercise 17. Protection and equality	Round-up of Day 2 Presentation 7. Persons with disabilities Exercise 19. Disability and reasonable accommodation	Round-up of Day 3 Training by Group 1 Peer reviews & Comments	Round-up of Day 4 Presentation 4: Methods Exercise 32. Sexual harassment Exercise 18. Affirmative action
Morning break 10.00 – 10.30 hrs					
10.30-12.00	Exercise 3. Bias Presentation 1. Origins Exercise 6. Discrimination Presentation 2. Concepts Exercise 20. Job-ads	Exercise 23. Equal pay Exercise 25. Sexual harassment	Exercise 12. HIV Presentation 8. Health status Exercise 16. Health status	Training by Group 2 Peer reviews & Comments	Exercise 36. Action planning to promote equality at work
Lunch 12.00 – 13.30 hrs					
13.30-15.00	Exercise 7. “Do I have a chance to get the job?” Exercise 10. Why equality? Presentation 3. Why is equality good?	Presentation 6. Ethnicity, religion and social origin Exercise 22. Recruitment practices Exercise 20. Religion	Presentation 12. Design and planning of a training workshop Group work	Training by Group 3 Peer Reviews & Comments	Presentation 9. Non- discriminatory human resource management Presentation 10. Strategies Exercise 38. Evaluation
Afternoon break 15.00 – 15.30 hrs					
15.30-17.00	Exercise 13. What type of discrimination is it?	Presentation 11. Training methodology	Group work continued	Training by Group 4 Peer reviews & Comments	

Model 2. Workshop for labour officials, employers' and workers' organizations and other strategic partners (Generic) - 2.5 days

Time	Day 1	Day 2	Day 3
08.30-10.00	Session I. Opening Opening ceremony Exercise 1: Jigsaw puzzle: Self introduction Exercise 3. Be aware of your own bias Presentation 1. Origins and standards	Session VI. Gender Review of Day 1 Exercise 4. Gender stereotypes: Debate Presentation 5. Gender equality at work Exercise 17. Protection and equality, Q&A	Session X. Strategies to promote equality Review of Day 2 Presentation 4. Methods Exercise 32. Action against sexual harassment
	Morning break 10.00 – 10.30 hrs		
10.30-12.00	Session II. Key concepts Exercise 6. Identifying discrimination: Discussion Presentation 2. Concepts and principles Exercise 21. Job-ads	Session VII. Gender (cont.) Exercise 23. Equal pay for work of equal value Exercise 25. Sexual harassment	Session XI. Action planning Exercise 40. Action planning Session X. Conclusion Exercise 42. Workshop evaluation & closing
	Lunch 12.00 – 13.30 hrs		
13.30-15.00	Session III. Why is equality important? Exercise 7. "Do I have a chance to get the job?" Exercise 10. Why is equality good? Session IV. Types of Discrimination Exercise 13. What type of discrimination is it?	Session VIII. Ethnicity, religion and social origin Exercise 8. Rules of the game: Role-play Presentation 6. Ethnicity, religion & social origin Exercise 22. Discriminatory recruitment?	
	Afternoon break 15.00 – 15.30 hrs		
15.30-17.00	Session V. Implementation at national level Presentation: National legal framework on non-discrimination and equality, Q&A	Session IX. Disability and health status Exercise 12. Quiz and discussion on HIV Presentations 7 & 8 Health conditions Exercise 19. Disability Exercise 16. Health status	

Model 3. Workshop with employers and their organizations – 2 days

Time	Day 1	Day 2
08.30-10.00	Session I. Opening Opening ceremony Exercise 1: Jigsaw puzzle: Self introduction Session II. Key concepts: Equality and non-discrimination at work Exercise 3. Be aware of your own bias Presentation 1. Discrimination & Equality: Origins and standards	Review of Day 1 Session VI. Disability and health status Exercise 12. Quiz and discussion on HIV Presentations 7 & 8. Discrimination based on disability and health status Exercise 16. Health status and inherent requirements of the work Exercise 19. Disability and reasonable accommodation: Case studies, Q&A
	Morning break 10.00 – 10.30 hrs	
10.30-12.00	Exercise 6. Identifying discrimination: Discussion Presentation 2. Discrimination & Equality: Concepts and principles Exercise 21. Writing non-discriminatory job advertisements, Q&A Session III. Why is equality important? Exercise 7. “Do I have a chance to get the job?” Role-play Exercise 10. Why is equality good for people, society and business?	Session VII. Practical guidance for employers Presentation 4. Methods of application of Convention No. 111 Exercise 37. Review of company equal opportunity policies, Q&A
	Lunch 12.00 – 13.30 hrs	
13.30-15.00	Session IV. Gender equality Exercise 4. Gender stereotypes: Debate Presentation 5. Gender equality at work: Key issues and strategies Exercise 24. Discrimination in pay and benefits Exercise 28. Dismissal during pregnancy: Case studies	Session VIII. Action planning Exercise 40. Action planning to promote equality at work Session IX. Conclusion Exercise 42. Workshop evaluation Closing
	Afternoon break 15.00 – 15.30 hrs	
15.30-17.00	Session V. Ethnicity, religion and social origin Presentation 6. Addressing discrimination based on ethnicity, religion and social origin: Key issues and strategies Exercise 22. Discriminatory recruitment practices? Case studies Exercise 27. Employment agencies and equality: case study	

Model 4. Workshop for workers' organizations – 2 days

Time	Day 1	Day 2
08.30-10.00	Session I. Opening Opening ceremony Exercise 1: Jigsaw puzzle: Self introduction Session II. Key concepts: Equality and non-discrimination at work Exercise 3. Be aware of your own bias Presentation 1. Discrimination & Equality: Origins and standards	Review of Day 1 Session VI. Disability and health status Presentations 7 & 8. Discrimination based on disability and health status Exercise 12. Quiz and discussion on “Hometown fellows” movie Exercise 16. Health status and inherent requirements of the work Exercise 19. Disability and reasonable accommodation: Case studies, Q&A
	Morning break 10.00 – 10.30 hrs	
10.30-12.00	Exercise 6. Identifying discrimination: Discussion Presentation 2. Discrimination & Equality: Concepts and principles Exercise 21. Writing non-discriminatory job advertisements, Q&A Session III. Why is equality important? Exercise 7. “Do I have a chance to get the job?” Role-play Exercise 10. Why is equality good for people, society and business?	Session VII. Trade union strategies to promote equality Presentation 4. Method of application of Convention No. 111 Exercise 38. Review of collective agreements on equality promotion Q&A
	Lunch 12.00 – 13.30 hrs	
13.30-15.00	Session IV. Gender equality Exercise 4. Gender stereotypes: Debate Presentation 5. Gender equality at work: Key issues and strategies Exercise 24. Discrimination in pay and benefits Exercise 28. Dismissal during pregnancy: Case studies	Session VIII. Trade union strategies to promote equality (cont.) Exercise 35. New union strategies to protect equal rights of migrant workers Session IX. Action planning Exercise 40. Action planning to promote equality at work
	Afternoon break 15.00 – 15.30 hrs	
15.30-17.00	Session V. Ethnicity, religion and social origin Presentation 6. Discrimination based on ethnicity, religion and social origin Exercise 22. Discriminatory recruitment practices? Case studies Exercise 27. Employment agencies and equality: case study	Session X. Conclusion Exercise 42. Workshop evaluation Closing

Model 5. Workshop on non-discrimination and gender equality at work – 2.5 days

Time	Day 1	Day 2	Day 3
08.30-10.00	Session I. Opening Opening ceremony Exercise 1. Jigsaw puzzle: Self introduction Session II. Key concepts: Equality and non-discrimination at work Exercise 3. Be aware of your own bias Presentation 1. Discrimination & Equality: Origins and standards	Round-up of Day 1 Session VII. Access to employment Exercise 17. Protection and equality: Case studies Presentation: Gender equality in the national labour market, Q&A	Round-up of Day 4 Session XI. Strategies to promote equality (cont.) Presentation 4. Methods of application of Convention No. 111 Exercise 32. Action against sexual harassment
	Morning break 10.00 – 10.30 hrs		
10.30-12.00	Session III. Key concepts: Equality and non-discrimination at work Exercise 6. Identifying discrimination: Discussion Presentation 2. Discrimination & Equality: Concepts and principles Exercise 21. Writing non-discriminatory job advertisements, Q&A	Session VIII. Pay equity Exercise 23. Equal pay for work of equal value: Job evaluation: Case studies Exercise 24. Discrimination in pay and benefits Q&A	Session XII. Action planning Exercise 40. Action planning to promote equality at work Session XIII. Conclusion Exercise 42. Workshop evaluation & Closing
	Lunch 12.00 – 13.30 hrs		
13.30-15.00	Session IV. Why and how? Exercise 7. “Do I have a chance to get the job?” Role-play Exercise 10. Why is equality good for people, society and business? Presentation 3. Why is equality important?	Session IX. Conditions of work Exercise 25. Identifying sexual harassment at the workplace: Case studies Exercise 18 Affirmative action for gender and ethnic equality	
	Afternoon break 15.00 – 15.30 hrs		
15.30-17.00	Session V. Types of discrimination Exercise 13. What type of discrimination is it? Session VI. Gender equality at work: Key issues and strategies Exercise 4. Gender stereotypes: Debate Presentation 5. Gender equality at work	Session X. Termination of employment Exercise 28. Dismissal during pregnancy Exercise 29. Retrenchment at Allianz life Exercise 31. Retirement age	

Model 6. Workshop on addressing discrimination on the grounds of ethnicity, religion and social origin – 2.5 days

Time	Day 1	Day 2	Day 3
08.30-10.00	Session I. Opening Exercise 1. Jigsaw puzzle: Self introduction Session II. Key concepts Exercise 3. Be aware of your own bias Presentation 1. Origins and standards	Round-up of Day 1 Session VII. Access to employment Exercise 5. Multiculturalism: Game Exercise 20. Religion	Round-up of Day 4 Presentation 4. Methods Exercise 37. Review of good practice examples
	Morning break 10.00 – 10.30 hrs		
10.30-12.00	Session III. Key concepts Exercise 6. Discrimination: Discussion Presentation 2. Concepts and principles Exercise 21. Job-ads	Session VIII. Fair treatment at work Presentation 6. Ethnicity, religion, origin Exercise 26. Religion	Session XII. Action planning Exercise 40. Action planning Session XIII. Conclusion Exercise 42. Workshop evaluation & closing
	Lunch 12.00 – 13.30 hrs		
13.30-15.00	Session IV: Why and how? Exercise 7. “Do I have a chance to get the job?” Exercise 10. Why is equality good? Presentation 3. Why is equality important?	Session IX. Access to occupation and protection of traditional livelihoods Exercise 39. Protection of traditional livelihoods of indigenous peoples: Case studies, Q&A	
	Afternoon break 15.00 – 15.30 hrs		
15.30-17.00	Session V. Types of discrimination Exercise 13. What type of discrimination is it? Session VI. Ethnicity, religion, origin Exercise 8. Rules of the game: Role-play Exercise 22. Recruitment practices	Session X. Employment agencies and equality Exercise 27. Employment agencies and equality Session XI. Strategies to promote equality Exercise 18. Affirmative action	

Model 7. Workshop on addressing discrimination against persons with disabilities – 2 days

Time	Day 1	Day 2
08.30-10.00	Session I. Opening Opening ceremony Exercise 1. Jigsaw puzzle: Self introduction exercise (Icebreaker) Session II. Key concepts: Equality and non-discrimination at work Exercise 3. Be aware of your own bias Presentation 1. Discrimination & Equality: Origins and standards	Round-up of Day 1 Session VII. Employment situation of persons with disabilities Presentation: Persons with disabilities in the national labour market Session VIII. Reasonable accommodation Exercise 18. Disability and reasonable accommodation: Case studies, Q&A
	Morning break 10.00 – 10.30 hrs	
10.30-12.00	Session III. Key concepts: Equality and non-discrimination at work Exercise 6. Identifying discrimination: Discussion Presentation 2. Discrimination & Equality: Concepts and principles Exercise 21. Writing non-discriminatory job advertisements, Q&A	Session IX. Reasonable accommodation (cont.) Exercise 9. Blind walk Exercise 41. Developing and implementing an Inclusive Workplace strategy
	Lunch 12.00 – 13.30 hrs	
13.30-15.00	Session IV. Why and how? Exercise 7. “Do I have a chance to get the job?” Role-play Exercise 10. Why is equality good for people, society and business?	Session X. Strategies to promote equality Presentation 4. Methods of application of Convention No. 111 Exercise 37. Review of good practice examples
	Afternoon break 15.00 – 15.30 hrs	
15.30-17.00	Session V. Types of discrimination Exercise 13. What type of discrimination is it? Session VI. Key concepts: Disabilities and equality at work Exercise 11. Disability and ability Presentation 7. Discrimination against persons with disabilities Exercise 14. Is it height discrimination? Case studies, Q&A	Session XI. Action planning Exercise 40. Action planning to promote equality at work Session XII. Conclusion Exercise 42. Workshop evaluation Closing

Model 8. Workshop on addressing discrimination on the grounds of health status – 2 days

Time	Day 1	Day 2
08.30-10.00	Session I. Opening Opening ceremony Exercise 1. Jigsaw puzzle: Self introduction Session II. Key concepts: Equality and non-discrimination at work Exercise 3. Be aware of your own bias Presentation 1. Discrimination & Equality: Origins and standards	Round-up of Day 1 Session VII. Reasonable accommodation Presentation 8. Discrimination based on health status: Key issues and strategies Exercise 19. Disability and reasonable accommodation: Case studies, Q&A
	Morning break 10.00 – 10.30 hrs	
10.30-12.00	Session III. Key concepts: Equality and non-discrimination at work Exercise 6. Identifying discrimination: Discussion Presentation 2. Discrimination & Equality: Concepts and principles Exercise 21. Writing non-discriminatory job advertisements, Q&A	Session VIII. Employment situation of persons living with HIV and other health conditions Presentation: Employment situation of persons living with HIV and other health conditions in the national labour market
	Lunch 12.00 – 13.30 hrs	
13.30-15.00	Session IV. Why and how? Exercise 7. “Do I have a chance to get the job?” Role-play Exercise 10. Why is equality good for people, society and business?	Session IX. Strategies to promote equality Presentation 4. Methods of application of Convention No.111 Exercise 37. Review of good practice examples, Q&A
	Afternoon break 15.00 – 15.30 hrs	
15.30-17.00	Session V. Types of discrimination Exercise 13. What type of discrimination is it? Session VI. Key concepts: Health status and equality at work Exercise 12. Quiz and discussion on HIV Exercise 19. Health status and inherent requirements of the job: Case studies	Session X. Action planning Exercise 40. Action planning to promote equality at work Session XI. Conclusion Exercise 42. Workshop evaluation Closing

Training aid 5. Checklist for organizers: Planning of training

No.	Trainers' tasks in training preparation	Yes	No
1.	Have I conducted a training needs analysis?		
2.	Do I understand the nature of the problems and am I sure these will be addressed by providing training?		
3.	Have the priority training needs been identified? Are they clear? Can they be met during the planned training?		
4.	Do I have a training strategy? Do I know what type of programme to organize and how to deliver it?		
5.	Am I clear about the objectives of the training?		
6.	Have I identified the participants who will most likely benefit from the training and/or have the potential to share the knowledge and skills from the training?		
7.	Have I considered cooperation with other groups or organizations that may benefit from the same types of training?		
8.	Do I have trainers?		
9.	Will an interpreter be needed in the training?		
10.	Are the inputs and resources available for this training?		
11.	Have I checked the time and place of the training with the participants and the trainers?		
12.	Do I have the training programme from the trainers?		
13.	Have I sent letters of invitation and the nomination forms to participating groups or organizations?		
14.	Have I received confirmation of participation and the nomination forms from all participants or participating agencies?		
15.	Have I organized and consulted with the trainers on other logistical details, including: • Finalization of the list of participants with contact information and other information, including sex, age, education or job title/years of experience? • Preparation of training materials and handouts for distribution? • Check and confirmation of the training venue and facilities? • Arrangements for transportation and accommodation for participants? • Organization of food and refreshments for the workshop? • Preparation of daily allowance for participants, if any? • Confirmation of the availability of the interpreter(s), if needed? • Arrangements for the workshop evaluation and reporting?		

Training aid 6. Pre-and post- training questionnaire

Pre- and post-training questionnaire					
Filling out this form will help us better understand your background and training needs, so the training can be made more beneficial for you. There are no right or wrong answers.					
1.	Your sex:				
	☐ Male	☐ Female			
2.	You are from:				
	☐ Labour/ personnel department	☐ Labour inspection bureau	☐ Workers' organization	☐ Employers' organization	☐ Other Please specify:
3.	Are you aware of your country's participation in international conventions related to discrimination in employment?				
	☐ Not at all	☐ A little bit	☐ Partly	☐ Mostly	☐ Fully aware
4.	Are you familiar with the national laws and regulations prohibiting discrimination in employment?				
	☐ Not at all	☐ A little bit	☐ Partly	☐ Mostly	☐ Fully aware
5.	Is discrimination in employment a serious issue in your country?				
	☐ Definitely not	☐ No	☐ Hard to say	☐ Yes	☐ Definitely
6.	What do you think are the most serious grounds of discrimination in employment in your country? (multiple choice)				
	☐ Gender	☐ Disability	☐ Social origin	☐ Age	☐ Ethnic minority
	☐ Health	☐ Religion	☐ Political opinion	☐ Other (please specify) _ _____	
7.	Employers should be free to select one sex over the other for all jobs				
	☐ Strongly disagree	☐ Disagree	☐ Hard to say	☐ Agree	☐ Strongly agree
8.	Sexual harassment is an important workplace issue which needs to be promptly addressed				
	☐ Strongly disagree	☐ Disagree	☐ Hard to say	☐ Agree	☐ Strongly agree
9.	People with disabilities are not fit for well-paid jobs				
	☐ Strongly disagree	☐ Disagree	☐ Hard to say	☐ Agree	☐ Strongly agree
10.	Preferential treatment in job recruitment for ethnic minorities is not justified				
	☐ Strongly disagree	☐ Disagree	☐ Hard to say	☐ Agree	☐ Strongly agree
11.	Non-local workers in cities should only do jobs that local residents do not want				
	☐ Strongly disagree	☐ Disagree	☐ Hard to say	☐ Agree	☐ Strongly agree

Training aid 7. Training evaluation form

Please answer the questions below.

1. Overall, how do you rate this Workshop? (Check (✓) in the box that applies.)

😊😊	😊	😐	😞	😞😞
Excellent	Good	So-so	Poor	Very poor

2. Which three (3) subjects were the most useful to you?

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.....

.....

3. Which three (3) subjects were the least useful to you?

.....

.....

.....

4. What additional topics would you like to include in this training?

.....

.....

.....

5. Do you think the workshop was:
- ☐ Too long
- ☐ Too short
- ☐ Right length

6. Which training methods used in the programme would you like more of (e.g., trainers' presentations, handouts, energizers, games, role-play, case studies, group work)?

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7. Which training methods used in the programme (as mentioned in No. 6 above) would you like less of?

.....

.....

.....

8. How would you rate the trainers' overall performance?

😊😊	😊	😐	😞	😞😞
Excellent	Good	So-so	Poor	Very poor

Remarks:

.....

9. How would you rate the overall organization of this workshop (e.g., accommodation, breaks for refreshments, interpretation, administrative and logistical support, etc.)?

😊😊	😊	😐	😞	😞😞
Excellent	Good	So-so	Poor	Very poor

Remarks:

.....

10. Do you feel adequately equipped to use the knowledge acquired through the workshop and take further action to combat discrimination and promote equality at work?

☐ Yes ☐ No

11. How would you like to modify/adapt the training for your target groups?

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.....
.....

12. Any other suggestions you may wish to make:

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.....
.....

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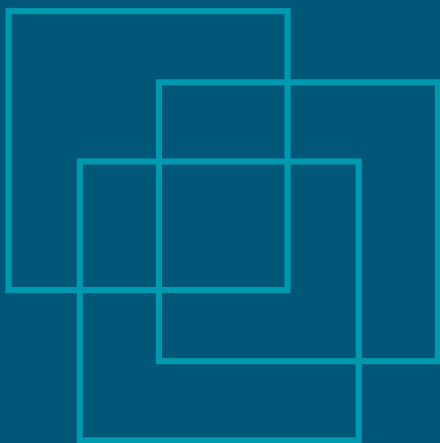
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