



International
Labour
Organization

Equality and non-discrimination at work in China: Training package

Equality and non-discrimination at work in China

Handbook



ILO Country Office for China and Mongolia, Beijing
ILO DWT for East and South-East Asia and the Pacific, Bangkok



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Foreword

Equality of opportunity and treatment in employment is among the fundamental principles and rights at work that form the foundation of social justice. It is an integral part of the ILO's Decent Work Agenda which promotes opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. ILO's Convention concerning Discrimination in Respect of Employment and Occupation (No. 111) is the most comprehensive international instrument dedicated to the promotion of equality of opportunity and treatment in the world of work.

In order to contribute to the Chinese Government's objective of realizing harmonious and equitable development, the ILO and the Ministry of Human Resources and Social Security, with the financial support of the Government of Norway, partnered to promote the application of equality and non-discrimination principles at work in China.

The training package which you have before you is one of the fruits of this collaboration. It was originally conceived as a tool for knowledge sharing and capacity building for officials in labour and personnel departments, the business community, trade unionists, academics and civil society leaders in China, following China's ratification of Convention No. 111 in 2006. However, thanks to the rich contributions of many experts, both Chinese and international, the materials grew in depth, breadth and sophistication. It soon became clear that their usefulness would extend far beyond China, to women and men around the globe who are committed to realizing the principles of non-discrimination and equality of opportunity and treatment in the world of work.

It is our hope that the wealth of information in this training package will provide governments, employers and workers' organizations as well as those in the wider community, with the concepts, strategies and practical measures that will both inspire and enable them to eliminate discrimination at work.

A special word of thanks goes to Ms Constance Thomas, former Director of the ILO Office for China and Mongolia, whose dedication, expertise and unstinting efforts throughout her professional career to promote equality of opportunity and treatment provided the motive force that made this work possible.

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

Ann Herbert
Director
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Aims and acknowledgements

This training package is the result of many years of teamwork of numerous men and women dedicated to promoting a better understanding of the internationally recognized human rights principles of non-discrimination and equality of opportunity and treatment within the sphere of employment.

The principles of non-discrimination and equality are embedded in most countries' constitutions, in human rights treaties, in notions of decency, dignity and respect. They are cornerstones of development and the establishment of peaceful, harmonious and inclusive societies. They are internationally recognized as standards of conduct of primary importance.

Within the sphere of employment, non-discrimination and equal opportunity and treatment are considered to be basic human rights, fundamental labour rights, as well as matters of social and economic justice. Implementation of these principles and rights enables all persons, regardless of race, sex, religion, social or ethnic origin or disability, to strive to meet their full potential, to work their way out of poverty and to care for their families.

Pursuit of these objectives makes good business sense as competitive companies value the innovation and adaptability offered by workplace diversity and productive working environments. The opening up of recruitment processes allows companies to improve their talent pool, access to local markets and company image. In today's world, successful economies make the most of all human potential available, regardless of whether the person involved is black, brown or white; a man or a woman; a Buddhist, a Muslim or non-confessing.

Despite the legal requirements against discrimination, prejudices, stereotypes and biases permeate societies, form part of people's mindsets and are entrenched in institutions, affecting officials, company managers and workers alike. These views, often unfounded and wrong, result in discrimination and in actual employment practices that are often not at par with principles and aspirations of non-discrimination and equality. Overall, women earn less than men and many young women are turned away from jobs for which they are well-qualified because they may become pregnant one day. Migrant workers often do the jobs that others do not want to do because these are too dirty or dangerous. Yet migrants often earn less and are less protected than non-migrants. Blind musicians find it difficult to gain steady employment in an orchestra even if sight is not essential for playing music. For certain categories of workers, discrimination is considered as unavoidable, a "natural part of working life." But it does not have to be that way.

Information and advocacy are therefore needed to change behaviour and attitudes and make organizations more responsive. Strong and robust labour institutions which are committed to promote equality and non-discrimination principles are an essential part of an effective and sustainable development process geared at both economic and social development.

For all these reasons the International Labour Organization (ILO) has time and again declared equality at work a constitutional value of universal importance. In 1958, ILO member States adopted international labour standards for the progressive elimination of discrimination in employment and occupation. 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.

In 2008, the international community recognized in the ILO Declaration on Social Justice for a Fair Globalization that "achieving an improved and fair outcome for all has become even more necessary in [these times of globalization] to meet the universal aspiration for social justice, to

reach full employment, to ensure the sustainability of open societies and the global economy, to achieve social cohesion and to combat poverty and rising inequalities.” Gender equality and non-discrimination were singled out as essential for realizing decent work, and sustainable economic and social development and efficiency.

The Chinese government has committed the People’s Republic of China to promoting and ensuring equality of opportunity and treatment in employment and occupation by adopting the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) within the country in 2005 and ratifying it with ILO in 2006, and by enshrining internationally recognized standards on job equality in its law and practice.

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

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

We would like to express our appreciation to the national scholars and experts who provided contributions to the provision of training and the development of training materials on equality and non-discrimination at work in China. We owe lasting gratitude to Professor Cai Dingjian of the Constitutionalism Research Institute of China University of Political Science and Law and Professor Bai Nansheng of Renmin University of China. The loss of Prof. Cai’s intellectual leadership, untiring advocacy and compassion for the disadvantaged cannot be repaired, but his commitment will be a lasting inspiration for future generations waging the fight for workplace equality. Prof. Bai’s unmatched knowledge and dedication to improving the plight of rural migrant workers will stay with us as a lasting model of engaged scholarship.

We sincerely thank the representatives of the ILO constituents associated with the project, staff members of the International Cooperation Division of the Ministry of Human Resources and Social Security, the China Enterprise Confederation/China Enterprise Directors Association, and the All-China Federation of Trade Unions, as well as the Government of Norway for their support towards promoting the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Our sincere acknowledgements go to Mr Wang Wenzhen of the Institute of Labour Studies of the Ministry of Human Resources and Social Security; to Ms Liu Bohong of the Women’s Research Institute of the All-China Women’s Federation; to Ms Shayila of the State Ethnic Affairs Commission; to Ms Luo Qiuyue of the China Disabled Persons Federation; and to Mr Yu Fangqiang of the Beijing Yirenping Centre for their valuable contributions to the training manual and their training expertise.

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Mr Ren Zhanbin of the China Disabled Persons Federation and Mr Yue Songdong of the Development Research Centre of the State Council, who generously shared their knowledge during training. Many thanks also go to ILO colleagues Katerine Landuyt, Benedetta Magri, Emanuela Pozzan and Jillian Ferguson for their contributions to the training manual.

Many international and national directors, scholars and specialists have given their time and guidance to develop the training package. Special words of thanks for technical comments and support go to Ms Lisa Stearns, Ms Phyllis Chang, Ms Carole Petersen, Ms Zhang Youyun, Vice President of the China Association of Employment Promotion, Ms Guo Jianmei, Head of Beijing Zhongze Women's Legal Consultation and Service Centre/Beijing Qianqian Law Firm (formerly the Centre for Women's Law Studies and Legal Services of Peking University), and the other members of the Project Expert Group on Promoting and Applying ILO Convention No. 111. We would also like to express our thanks for technical support to ILO colleagues Guan Jinghe, Shauna Olney, Barbara Murray, Richard Howard, Silvia Cormaci, Huang Qun, Wu Rulian and Liu Chunxiu. Many thanks for secretarial support go to Wu Ninan and Paveena Eakthanakit.

Finally we would like to thank all participants of training and validation workshops in Chifeng 2008; Xiamen 2008; Nanchang 2009; Chongqing 2009; Zhuhai 2009; Guilin 2009; Zhaoqing 2010; and in Beijing in 2009 and 2010 for sharing experiences and good practices on equality promotion in the Chinese labour market. We hope the training package will support you and many others in combating discrimination and promoting equality in workplaces. Indeed it is the intent of the authors that the training package will be used beyond China and serve to promote application of ILO Convention No. 111 and the principles of non-discrimination and equality of opportunity and treatment at work in all parts of the world.

Constance Thomas, Nelien Haspels, Tim de Meyer, Marja Paavilainen and Hongman Zhang
December 2010, Geneva, Bangkok, Singapore and Beijing

Introduction

The purpose of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is to protect **all** persons against discrimination at work. The Convention protects not only those who have already found employment or exercise an occupation, but also those who are preparing to work, seeking work, or risk losing their work. It covers all jobs and occupations in the public and private sector, and also applies to small businesses and those in informal employment. The Chinese government emphasized its commitment to upholding the human rights of workers by adopting Convention No. 111 within the country in 2005 and ratifying it with the ILO in 2006, and by progressively incorporating equality and non-discrimination principles in employment and other laws and regulations.

This **Handbook on equality and non-discrimination at work in China** introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment. It explains why the elimination of discrimination at work is fundamental for promoting social justice and economic development both within and across countries, and why certain employment practices are harmful to individuals, companies, organizations and societies. The handbook provides a range of strategies, practical measures and tools from international and Chinese experience to combat discrimination and promote equality in workplaces.

The handbook is part of a *Training package on equality and non-discrimination at work in China*, developed and issued by the ILO to support the application of Convention No. 111 in the country. It is intended as a reader and reference guide for policymakers and professionals working on economic, employment and social policies and labour law. It aims to inform a broad audience of government officials, and representatives of employers' and workers' organizations, as well as from universities, mass organizations and federations, non-governmental and community-based organizations and associations, engaged in non-discrimination work and protecting the rights and interests of women, migrant workers, ethnic and religious minorities or persons living with disabilities and health conditions.

The handbook includes four chapters:

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

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

Chapter 3. Why is equality important for people, society and business?

Chapter 4. Methods of application of Convention No. 111.

The handbook can also be used as a participants' handbook in awareness raising, training and advocacy on the fundamental concepts of discrimination and equality of opportunity and treatment in employment and occupation. The handbook is complemented by a *Training manual on equality and non-discrimination at work* in China for experts, trainers and those providing legal or other services to workers or wishing to gain in-depth knowledge on the subject.

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

1. The origins of discrimination

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

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

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

The Constitution of the International Labour Organization (ILO) declares that, “**all human beings, irrespective of race, creed or sex,**¹ have the right to pursue both their material well-being and their spiritual development in conditions of **freedom and dignity**, of **economic security** and **equal opportunity**.”² These principles are articulated as fundamental rights of every human being. What is right for the individual human being is also right for society, as well as smart for the economy and for the nation.

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

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

¹ In this handbook terms sex and gender are used interchangeably. Gender refers to the social differences and relations between men and women that are learned, vary widely within and between cultures, and change over time, while sex is about biological functions which are universal and are generally difficult to change. In recent years the term gender has started to replace the term sex in day-to-day language. Most laws and other legal texts refer to sex discrimination. However, some laws and many policy documents have also started to use the term gender discrimination.

² ILO: *Declaration of Philadelphia*, General Conference of the International Labour Organization, 26th Session, Philadelphia, 1944.

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

2. Key international policy instruments to promote equality

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

2.1 The Constitution of the International Labour Organization

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

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

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

The ILO 1998 Declaration on Fundamental Principles and Rights at Work as well as the 2008 Declaration on Social Justice for a Fair Globalization reaffirm the importance of non-discrimination as a fundamental principle and right at work.

2.2 International labour standards on non-discrimination and equality

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

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

The **Equal Remuneration Convention, 1951 (No. 100)**³ and the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**⁴ set the fundamental standards

³ Supplemented by the Equal Remuneration Recommendation No. 90.

on the elimination of discrimination at work. China ratified both Conventions in 1988 and 2006 respectively. Only a handful of ILO member States have not yet ratified either or both Conventions.



Non-discrimination is a fundamental workers' right

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

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

The Convention calls upon States to adopt and implement a national policy to promote equality of opportunity and treatment with a view to eliminating discrimination in all aspects of employment and occupation for all workers and the Recommendation provides guidance on how to develop and implement a national policy. The instruments, therefore, are not only concerned with the elimination of discrimination – or the absence of inequality – but go a step further and require a proactive, positive approach towards the promotion of equality in opportunity and treatment in employment and occupation:

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

The **Equal Remuneration Convention (No. 100)**, adopted by the International Labour Conference in 1951, promotes equal pay for work of equal value between men and women. As such, the Convention addresses one form of discrimination (on the basis of sex) in the important but limited area of employment (remuneration).  The full text of Convention No. 111, Recommendation No. 111 and Convention No. 100 is included in Annexes 1 to 3.

Box 1. International labour standards benchmarking non-discrimination

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Workers with Family Responsibilities Convention, 1981 (No. 156)
- Maternity Protection Convention, 2000 (No. 183)
- Migration for Employment (Revised) Convention, 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1973 (No. 143).

⁴ Supplemented by the Discrimination (Employment and Occupation) Recommendation No. 111.

- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)
- Employment Policy Convention, 1964 (No. 122)
- Human Resources Development Convention, 1975 (No. 142)
- Private Employment Agencies Convention, 1997 (No.181)
- Older Workers Recommendation, 1980 (No. 162)

2.3 International human rights instruments on non-discrimination and equality

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



Non-discrimination is a human right⁵

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

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

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

Box 2. International human rights treaties of the United Nations

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights
3. International Convention on the Elimination of All Forms of Racial Discrimination
4. Convention on the Elimination of All Forms of Discrimination against Women
5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

⁵ Office of the High Commissioner for Human Rights: *OHCHR Factsheet 30*, <http://www.ohchr.org> (accessed 15 Sep 2010).

6. Convention on the Rights of Persons with Disabilities
7. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
8. Convention on the Rights of the Child
9. International Convention for the Protection of All Persons from Enforced Disappearance.

Box 3. Ratification of international non-discrimination standards and treaties by China

International labour standards:

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – ratified in 2006
- Equal Remuneration Convention, 1951 (No. 100) – ratified in 1988
- Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159) – ratified in 1988
- Employment Policy Convention, 1964 (No. 122) - ratified in 1998.

International human rights treaties:

- International Covenant on Civil and Political Rights - signed in 1998
- International Covenant on Economic, Social and Cultural Rights - ratified in 2001
- International Convention on the Elimination of All Forms of Racial Discrimination - acceded in 1981
- Convention on the Elimination of All Forms of Discrimination against Women - ratified in 1980
- Convention on the Rights of Persons with Disabilities - ratified in 2008
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - ratified in 1988)
- Convention on the Rights of the Child - ratified in 1992.

3. Non-discrimination and equality in employment in Chinese laws and regulations

Employment discrimination is prohibited in various legal instruments in China, starting with the Constitution which broadly guarantees citizens' human rights, equality before the law, and their right to work, rest and social protection. The *Constitution* (C) explicitly protects the rights of women, including the right to equal pay for equal work, and the rights of minority nationalities as well as freedom of religious belief. Provisions against discrimination in employment are included in different laws covering the fields of labour and employment and the protection of specific groups.

Provisions prohibiting discrimination on various grounds have been included already in the *Labour Law* (LL) which has been in force since January 1995. The *Employment Promotion Law* (EPL) and the *Labour Contract Law* (LCL) that were adopted in 2007 and came into force in 2008 clarify the scope of legal protection and the grounds covered and provide more explicitly for the promotion of equality at work. Currently, the grounds of discrimination covered in Chinese labour legislation include:

- Sex/gender, with specific protection for women (C Art. 48, EPL Arts 3.2 & 27, LL Arts. 12 & 13, LCL Art. 43)
- Ethnicity and race (C Art. 4, EPL Arts. 3.2 & 28, LL Arts. 12)
- Religion (C Art. 36, EPL Art. 3.2 & LL Art. 12)
- Disability (C Art. 45, EPL Art. 29)
- Infectious diseases (EPL Art. 30)
- Rural migrant workers (EPL Art. 31).

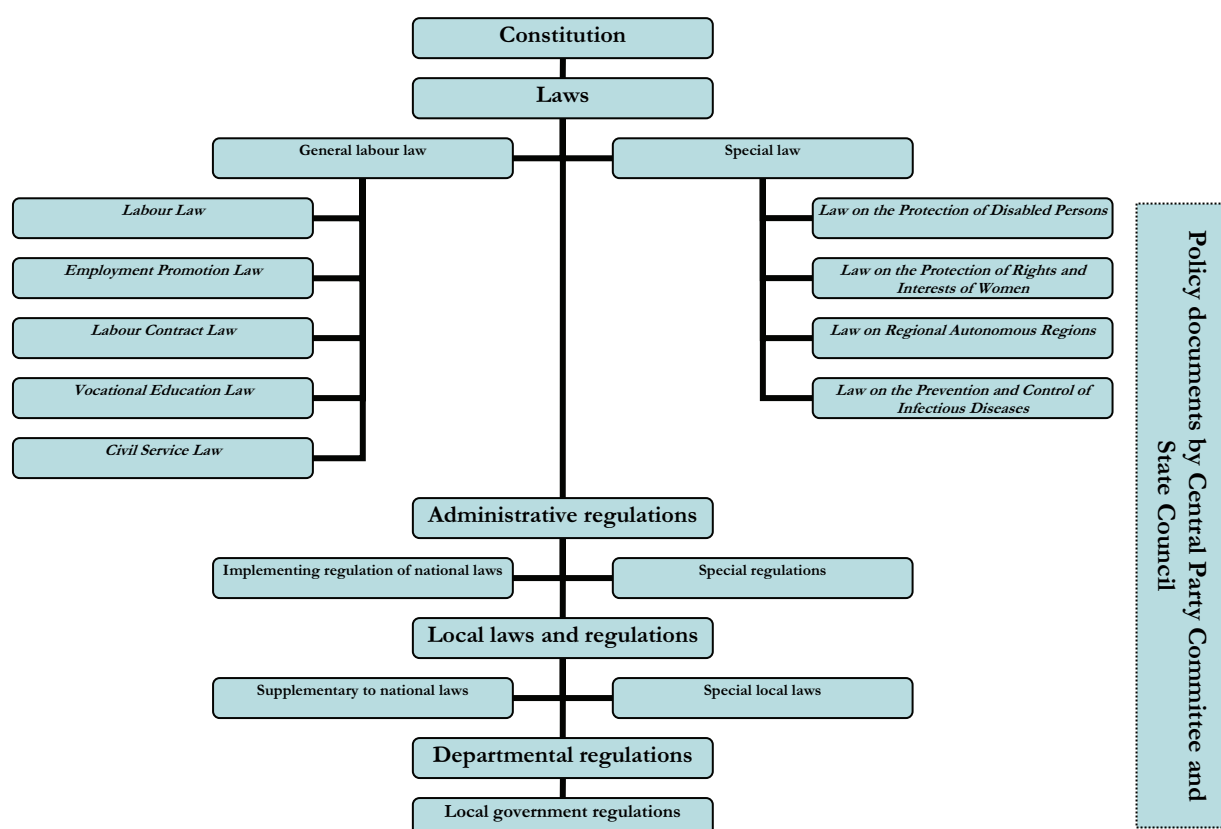
In addition, dispatched workers are guaranteed the right to equal pay for equal work under the *Labour Contract Law* (Art.63).  See Box 4 below for further information. The *Employment*

Promotion Law extends the prohibited grounds of discrimination to cover rural migrants, infectious diseases and disability, and, importantly, clarifies the legal remedies available to victims of discrimination by opening a direct access to people's courts. In addition, the *Employment Promotion Law* broadens the scope of application of discrimination prohibitions to cover not only recruitment but also the use of employment services.

The two new laws adopted in 2007 expand employment protection during maternity. The *Employment Promotion Law* includes a specific prohibition of actions geared at restricting women from getting married or bearing a child. The *Labour Contract Law* includes a specific prohibition against terminating the employment of women during and after pregnancy. The law also prohibits raising recruitment standards for women and terminating senior or sick workers.

In addition to the general labour laws, specific laws governing employment protection of specific groups such as women, disabled persons, minority populations, and persons with infectious diseases such as HIV/AIDS and Hepatitis B are in place in China. Besides, a range of regulations and public policies prohibiting discrimination in employment have been issued by the State Council. In recent years several policy documents provide for improved management of the employment of rural migrant workers. At the local level recent developments include the adoption of specific regulations to apply national laws requiring action against sexual harassment at work in many provinces and municipalities.

Figure 1. Chinese legal framework on equality and non-discrimination in employment⁶



⁶ W. Wang: *Unpublished training materials* (Beijing, 2008).

Box 4. Key non-discrimination provisions in Chinese national legislation

General discrimination prohibitions	“All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are equal before the law” (Constitution Art 33). “The workers seeking employment shall not be subject to discrimination on the basis of ethnicity, race, gender, religious belief, etc” (Employment Promotion Law, Art. 3.2). “Workers shall not be discriminated against in employment due to their ethnicity, race, sex, or religious belief” (Labour Law, Art. 12).
Women	“Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women” (Constitution Art. 48). “The State shall ensure that women enjoy equal labour rights with men. When an employing unit recruits workers, it shall not use sex as a pretext for excluding women from employment or to raise recruitment standards for the women, except for the types of work or posts that are not suitable for women as stipulated by the State. When an employing unit recruits female workers, it shall not stipulate in the labour contract any content, which restricts female workers from getting married or bearing a child” (Employment Promotion Law, Art. 27). “Women shall enjoy equal rights with men in employment. Sex shall not be used as a pretext for excluding women from employment during recruitment of workers unless the types of work or posts for which workers are being recruited are not suitable for women according to State regulations. Nor shall the standards of recruitment be raised when it comes to women” (Labour Law, Art. 13). “An employer is not allowed to unilaterally terminate a labour contract according to the provisions set out in Article 40 and Article 41 under any of the following circumstances: With respect to women employees during their pregnancy, maternity and breast-feeding period” (Labour Contract Law Art. 43).
Ethnicity	“All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited” (Constitution Art. 4). “The workers of all ethnic groups enjoy equal labour rights. When an employing unit recruits workers, it shall give appropriate consideration to the workers from ethnic minorities in accordance with law” (Employment Promotion Law, Art. 28).
Religion	“Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion” (Constitution Art. 36).
Disability	“The State shall guarantee the labour rights of disabled persons. The people's governments at all levels shall make an overall plan on the employment of disabled persons so as to create employment conditions favourable to disabled persons. When

	an employing unit recruits workers, it shall not discriminate against disabled persons” (Employment Promotion Law, Art. 29).
Infectious diseases	“When an employing unit recruits workers, it shall not use the pretext that he or she is a carrier of an infectious disease for excluding him from employment. However, before a carrier of an infectious disease is confirmed upon medical test that he or she is cured or excluded from the possibility of spreading the disease, he or she shall not take up the jobs, in which it is likely to spread the disease and which are prohibited in laws and administrative regulations and by the health administrative department of the State Council” (Employment Promotion Law, Art. 30).
Rural workers	“Rural workers who enter cities for employment shall enjoy equal labour rights with urban workers. It is not allowed to set discriminatory restrictions against rural workers entering cities for employment” (Employment Promotion Law, Art. 31).
Dispatched workers	“Dispatched workers enjoy the same rights of equal pay for equal work as the employees of the employer. If the employer has no positions similar to the positions the dispatched workers are occupying, the remuneration for these positions can be decided by referring to the same or similar positions in the locality where the employer is located (Labour Contract Law Art. 63).

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

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

1. Analysis of the definition in Convention No. 111



Definition of discrimination

“Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”
(Article 1 (1) (a) Convention No.111).

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

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

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

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

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

- Distinction in treatment: Laws with different regulations for men and women, such as differences in the age of retirement, or restrictions on the employment of women in certain jobs or work processes or at certain hours

- Exclusion from opportunity: Rejecting a job applicant who carries the HIV, or Hepatitis B virus or specifying one sex only in job advertisements
- Preference given: Preferring good looking young women and men as sales persons, or giving preference to Communist Party members when recruiting civil servants.

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

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

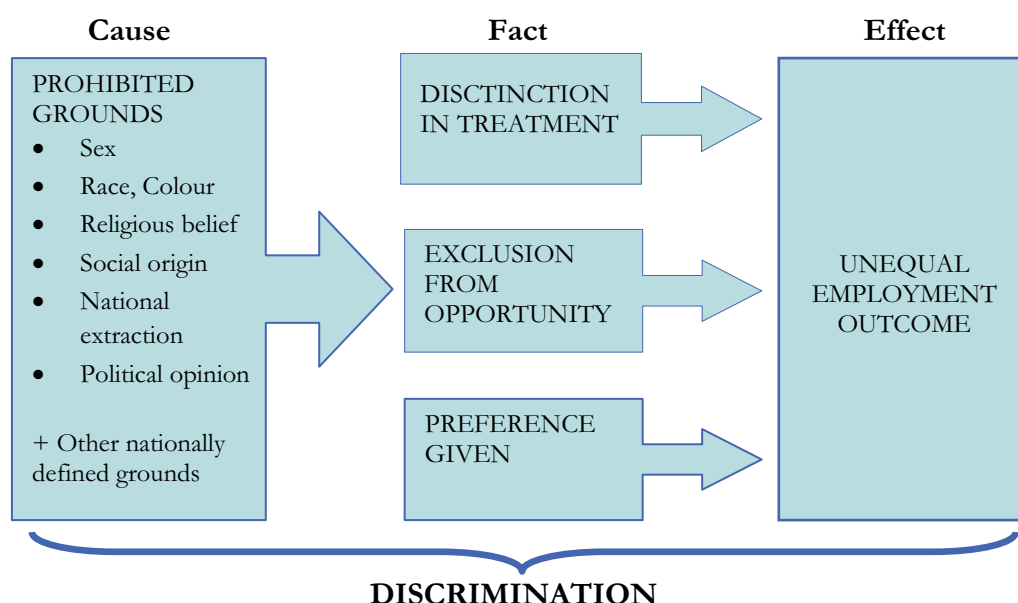
Differential treatment that is not based on any of these prohibited grounds, but is related to the content of a job, does not amount to discrimination. **Job content** is often also referred to as “**inherent requirements of the job**” or “**genuine occupational requirements.**” In exceptional cases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

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

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

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

Figure 2. The three components of the discrimination definition in Convention No. 111



Equality of opportunity and treatment

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

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

Employment and occupation

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

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

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

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

2. What is discrimination at work? – Key concepts

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

2.1 Discrimination in law and in practice

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

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

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

Box 5. Examples of direct “de jure” discrimination of rural migrant workers

Regulations denying workers from rural areas employment opportunities on the basis of their **household registration** or “**hukou**” amounts to direct “de jure” discrimination based on social origin. For example, clause 3 of the Measures of Zhuhai City on the Classified Management of Employing Migrant Labour (2000) divides positions in three categories :

- Types of positions from which migrant workers are barred
- Types of positions in which migrant workers may only be employed in numbers proportionate to “local” or “urban” workers
- Types of positions in which migrant labour may be employed without limitation.

While there has been a trend of loosening restrictions on the occupations that can be filled by rural migrant workers in cities across China, clauses, such as the above have not yet been officially repealed in many places.

Source: Hotline of Zhuhai City Bureau of Human Resources and Social Security (Zhuhai, 2010).

2.2 Direct discrimination

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

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

2.3 Indirect discrimination

Indirect discrimination refers to rules and practices which appear neutral but in practice lead to disadvantages primarily suffered by people of one sex, race, colour or other characteristics, and cannot be justified by the inherent requirements of the job. Indirect discrimination may involve certain requirements (e.g. physical height or dress code), conditions (e.g. working hours) or

practices (e.g. blaming for common incidents) that have a disproportionately negative impact on members of a certain group, such as women, ethnic or religious groups.  See Section 6.1 below for more information.

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

Statistics play a vital role in establishing or disproving indirect discrimination, because hard data can provide the evidence that an employment practice has an adverse impact on one group and not on another.⁷ For this reason, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) consistently requests governments to collect and analyze relevant data, disaggregated by sex and where possible social origin and/or religion, on the distribution of the different groups of the population in the various sectors of employment, occupations and levels of earnings.⁸



Examples of direct and indirect discrimination

- An employer of cleaning workers who has a different wage scale for men and for women cleaners engages in direct sex discrimination.
- An employer of cleaning workers who pays a higher wage to “**surface technicians**” (who are all men) than to “**cleaning maids**” (who are all women), although the work is very similar and the value of their output is exactly the same, engages in indirect sex discrimination.
- Setting a different salary scale for rural migrant workers and urban workers is direct discrimination.
- Setting a different salary scale for dispatched workers and regular workers can be indirect discrimination against rural migrant workers, if in fact a large majority of regular workers are urban workers and a large majority of dispatched workers are rural migrants.
- Job advertisements that state that people with a disability or health condition need not apply are directly discriminatory.
- Job advertisements that specify an irrelevant height requirement that a person using a wheelchair cannot meet can be indirect discrimination if the height requirement is not related to the inherent requirements of the job in question.
- The exclusion of domestic workers, agriculture workers and seasonal workers from social protection measures may result in indirect discrimination against various groups. Low-income women, workers belonging to ethnic minorities, migrants and elderly workers are

⁷ Thomas, C. and Taylor, R.: *Enforcement of equality provisions for women workers* (Geneva, ILO, 1994).

⁸ On the relevance of statistical data for assessing progress on the gender pay gap, see, for example, ILO: “General observation on Convention No. 100,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 88th Session (Geneva, 1999), p. 354.

disproportionately represented in these types of work and therefore suffer the most from this type of exclusion.

2.4 Structural discrimination

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

Box 6. Example of structural discrimination: The gender pay gap

Worldwide, women earn less than men when they carry out the same or very similar work and when they have jobs that are different but of equal value. In some cases different pay levels may be justified. For example, a lower level of relevant education for a certain job may explain why the remuneration package of a woman is lower than that of her male colleague. However, often there are no objective job-related reasons for the gender pay gap. Women increasingly have the same or even higher educational qualifications as their male counterparts but continue to be hired at lower pay levels in a narrower range of occupations and have less chances to career promotion due to perceptions about women's lower productivity and job performance as compared to men. Such perceptions often originate from prejudices concerning women's physical or psychological characteristics, such as "women are weak", or because women are traditionally responsible for household and family responsibilities.

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

Source: ILO: *Equality at work: Tackling the challenges* (Geneva, 2007), p.73.

2.5 Harassment

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

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

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

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

Harassment typically comes in two forms:

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

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

A working environment “polluted” by harassment inevitably involves loss of productivity. It can also be the source of work-related health problems such as stress, depression and, in severe cases, fatal accidents such as suicide. Due to these health impacts harassment is considered an occupational health issue, and covered under the **Occupational Safety and Health Convention, 1981 (No. 155)**, which China ratified in 2007.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a form of sex discrimination and should be addressed within the requirements of Convention No. 111. 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.¹⁰ In the past there was little awareness on sexual harassment in workplaces and society with gender stereotypes abounding, such as “women ask for it,” or “like it deep in their heart” or “it is just some workplace fun.”¹¹ However, governments in an increasing number of countries have taken legal action, including in China where the practice was outlawed in 2005. See Box 7 below.

¹⁰ ILO: “General observation on Convention No. 111”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 91st Session, (Geneva, 2003).

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

Box 7. Sexual harassment leads to a penalty of detention

Perpetrator of first sexual harassment case gets 5 months' jail:

Liu Lun, 29, personnel manager of a company in Chengdu, capital of Sichuan province, was recently sentenced to five months imprisonment for sexual harassment. This gives him the dubious distinction of being the first person to be penalized under the Chinese Women's Rights Protection Law that came into force on Dec 1, 2005.

Liu called Chen Dan on March 11, shortly after she began working at the company, saying that he wanted to talk to her about her job after work hours. When Chen arrived at Liu's office at about 5 pm, Liu lunged on her, forcibly trying to hug and kiss her. Upon hearing Chen's cries a co-worker next-door called the police, and Liu was caught red-handed and detained.

The local court considered Liu's behavior constituted sexual harassment as defined in the Law on the Protection of Women's Rights and Interests, but circumstances dictated that he be sentenced for the crime of indecent assaulting or insulting a woman according to the Criminal Law.

Source: "First sexual harassment case gets 5 months' jail", in *China Daily*, 24 July 2008 (Beijing).

3. Grounds of discrimination prohibited by Convention No. 111

The Convention requires ratifying States to ensure protection against discrimination on seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as other grounds prohibited in national legislation. ILO experience¹² learns that discrimination in many cases is not limited to discrimination on solely one ground. For example, a young woman from a hill tribe who has migrated from an isolated rural area to a capital city may have limited job options and has to cope with multiple forms of discrimination on the grounds of race, colour, sex, national extraction, social origin and possibly age. This leads to a vicious circle of cumulative disadvantage.

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

3.1 Race and colour

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

The grounds of race and colour are generally examined together, since colour is one of the most visible ethnic characteristics that differentiate human beings. Discrimination in employment and occupation based on race or colour occurs when a person's job opportunities or treatment are determined by his or her racial features, including the colour of the skin (complexion). Racial discrimination can occur against persons who share the same citizenship, but are of a different ethnic origin. In China, discrimination on the grounds of race or ethnicity is prohibited under the *Employment Promotion Law* (Arts. 3.2 & 28) and the *Labour Law* (Art. 12).

¹² See for example, ILO: "Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No.111)", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98th Session (Geneva, 2009).

Another ILO instrument promoting equality of ethnic and religious minorities in employment and occupation is the Indigenous and Tribal Peoples Convention, 1989 (No. 169). The Convention prohibits discrimination and provides for consultation and participation of indigenous and tribal peoples with regard to policies and programmes that may affect them. It provides for enjoyment of fundamental rights, and establishes general policies regarding indigenous and tribal peoples' customs and traditions, employment and livelihood, vocational training, handicrafts and rural industries, social security and health, education, land rights, the use of natural resources found on traditional lands, and cross-border contacts and communication.

3.2 Sex

Discrimination in employment and occupation based on sex occurs when men and women have unequal opportunities or are treated differently in employment or occupation due to perceptions and prejudices on their biological and/or social gender roles in society. Such ideas, expectations and norms about the roles, characteristics, abilities and behaviour of men and women exist in every society and they form the root causes of discrimination on the ground of sex.

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

In most countries the law prohibits direct discrimination based on sex. In practice, however, women continue to encounter both the direct and the more hidden forms of discrimination during their working lives in most countries. For example, distinctions in the labour market based on pregnancy and maternity indirectly discriminate against women because only women become pregnant and give birth. In addition, many women face employment discrimination because societies assign family and household responsibilities almost exclusively to them. As a result, many employers are reluctant to hire them due to perceptions that mothers are less competent at work than fathers. Delivering and raising children, benefit society at large so that the responsibilities and burdens involved should be shared in society, and not be borne exclusively by women. Distinctions on the basis of civil or marital status are also discrimination on the ground of sex when they result in a requirement or condition being imposed on an individual of a particular sex that would not be imposed on an individual of the other sex.

📖 See also Sections 4.1 and 4.2 below.

In China, sex discrimination is prohibited under the *Employment Promotion Law* and the *Labour Law*. Special provisions on women's equality can be found in the *Employment Promotion Law*, the *Labour Law*, the *Labour Contract Law* and the *Law on Protection of Woman Workers Rights and Interests*.

Box 8. Study on discrimination against women in China

According to gender research by the Center for Women's Law and Legal Services of Peking University in June 2009, sex-based discrimination is widespread in workplaces in China. The study found that one in four female job seekers is denied employment because of their sex. The research polled 3,000 women and men in more than 20 provinces, municipalities and autonomous regions in China over one year's time and came up with the result after data analysis and in-person interviews. Key findings are:

- One in 25 of the surveyed women are forced to sign labour contracts that contain clauses forbidding them to marry or become pregnant for a set period of time. One in 5 say their employers do not want to recruit women who are of reproductive age and do not have a child yet.

- More than 20 per cent say employers cut the salaries of women who become pregnant or give birth, and 11.2 percent of women lose their jobs for having a baby.
- More than one third (33.9 per cent) believe male employees have more opportunities than women in getting promoted, and more than half (52.1 per cent) attribute this to the fact that women have to spend more time taking care of children and family chores.
- One in 20 women experienced workplace sexual harassment and over 40 per cent of the working units did not have rules prohibiting sexual harassment.***

Source: Centre for Women's Law and Legal Services of Peking University: *Gender discrimination in China's workplaces* (Beijing, 2009).

3.3 Social origin¹³

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

Social origin may be viewed mainly in forms of social mobility, defined as the possibility for an individual to move from one class or social category to another.¹⁴ Prejudices and institutional practices based on social origin thus limit the social mobility of certain people.¹⁵

Examples of discrimination on the basis of **socio-economic status** include:

- Caste – the Dalits (“untouchables”) in India
- Household registration – the Hukou system in China
- Distinctions within a rural society between landlords; middle-income peasants with sufficient land to ensure subsistence; and peasant labourers without land and having to work for one of the other “classes”
- Social condition – referring to a rank, a status, a social position, class or educational background – as observed in Canada and the Republic of Korea.

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

In China, discrimination based on social origin includes the discrimination that persons may experience due to the social status associated with their rural origin and lifestyle and the administrative status that comes with their household registration. This type of discrimination is directed at persons from rural areas who hold a farmer's identification card in the household registration system or “**hukou**.” Discrimination of rural migrant workers is prohibited under the *Employment Promotion Law* (Art 31).

¹³ ILO: “Equality in employment and occupation, General survey”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 75th Session (Geneva, 1988), p. 53.

¹⁴ ILO: “Special survey on equality in employment and occupation in respect of Convention No. 111”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 83rd Session (1996, Geneva).

¹⁵ ILO: *Equality at work: Tackling the challenges* (2007, Geneva).

Box 9. Inequality in access to employment of rural migrant workers in China

According to a study conducted by the Institute of Population and Labour Economics of the Chinese Academy of Social Sciences (CASS) in 2005, migrant workers are concentrated in low paid industries (94.77 per cent in low paid industries and 5.23 per cent in high paid industries, compared to 76.84 per cent and 23.16 per cent of urban workers). Although human resource factors such as educational level contributed to part of the difference, discrimination due to the rural origin of migrant workers had an impact, although there is no data to indicate the level of impact.

Similarly in entry into occupations, the same study shows that migrant workers are predominantly found in 'blue-collar' jobs (92.33 per cent in 'blue-collar' jobs and 7.70 per cent in 'white-collar' jobs, compared to 67.83 per cent and 32.17 per cent of urban workers in these respective categories). Again, in addition to human resource factors, discrimination including discrimination in opportunity to education contributed to the difference.

Source: Institute of Population and Labour Economics, Chinese Academy of Social Sciences: *China Urban Labour Survey* (Beijing, 2005).

3.4 National Extraction¹⁶

Discrimination in employment and occupation based on national extraction covers distinctions made on the basis of a person's foreign origin, place of birth or ancestry. The ground of national extraction also includes national ethnic or linguistic minority groups and immigrant ethnic groups. Distinctions made between citizens with local origin and citizens with foreign birth or origins are one of the most evident examples.¹⁷

3.5 Religion

Discrimination based on religion covers acts and attitudes of intolerance towards persons who profess a particular religion or religious belief, or who profess no religion. It concerns the right to exercise one's own faith or creed and the right to act in accordance with it. The requirements of a job, occupation or trade may in certain circumstances hinder the free exercise of a religious practice. This happens in cases where a religion prohibits work on a day different from the day of rest established by law or in company practice, or in cases where the exercise of a religion requires a particular kind of clothing. A constraint may also arise with regard to oaths taken when taking up a specific job, position or type of employment. In China, discrimination on grounds of religion is prohibited under the *Employment Promotion Law* (Art 3.2) and the *Labour Law* (Art 12).

3.6 Political opinion

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

¹⁶ Ibid. p. 32.

¹⁷ For examples, see ILO: "Individual observations with respect to France and the Netherlands", 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; "Individual observations 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, 95th Session, Geneva, 2006.

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

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

4. Other grounds prohibited by national and international labour standards

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

4.1 Maternity

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

Convention No. 111 does not directly prohibit discrimination based on maternity. However, considering that only women workers are affected, direct discrimination based on maternity amounts to indirect discrimination based on sex. Employment protection during maternity is guaranteed under the **Maternity Protection Convention, 2000 (No. 183)**, which prohibits termination of woman's employment during pregnancy, maternity leave, or the period following her return to work, except on grounds unrelated to pregnancy, childbirth or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate.

Making any employment decisions on the basis of a woman's pregnancy, which negatively affect a pregnant woman's employment status, including decisions concerning dismissal, loss of seniority, or deduction of wages, are unlawful in China under the *Law on the Protection of Rights and Interests of Women* and the *Employment Promotion Law*. The *Employment Promotion Law* also prohibits any references in the labour contract restricting female workers' right to get married or to bear a child, while the *Labour Contract Law* prohibits the termination of women during and after pregnancy.

Box 10. Evidence of discrimination on the basis of pregnancy and marital status – Asia

- In **China**, a recent study by the ACWF shows that discrimination due to pregnancy and family status is common: according to the study, 21 per cent of rural women in cities were fired after becoming pregnant or having a child.
- In the **Republic of Korea**, a poll by the job portal Incruit reveals that one-third of pregnant female workers decided not to take maternity leave for fear of discrimination, and 7 per cent were told to

resign after using maternity benefits.

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

Sources: “China Improves Women’s Employment”, in *Xinhua* (China, 7 May 2007); T. Chang: “Employers’ support for female workers key to higher birthrate”, in *Yonhap News* (Republic of Korea, 10 May 2007); N. D. Suhaimi: “Expecting a baby? Expect to be fired”, in *The Straits Times* (Singapore, 5 August 2008).

4.2 Family responsibilities

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

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

Box 11. Discrimination on the basis of family responsibility – Japan

A worker refused a transfer order to Osaka because he had to take care of his children (aged three years and one year) who were suffering from serious atopic dermatitis (skin disease). Since his wife was working full-time for another company and their children were receiving special acupuncture treatment in Tokyo, it was difficult for them to accompany him to Osaka. The employer had been prepared to offer considerable economic support if he had accepted the transfer. However, the Court nullified the transfer order, pointing out that these economic measures were not enough to compensate for the disadvantages in this case. The transfer of the worker would have made it extremely difficult for his wife to continue her job because their childcare burden was unusually heavy due to the health problems of the children. The Court therefore found the disadvantage was far beyond normal inconvenience.

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

Source: M. Morozumi: *Special protection, equality, and beyond: Working life and parenthood under Japanese labour law* (2006). See also “Individual observation on Convention No.156 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, 89th Session 2001; 90th Session, 2002; 92nd Session, 2004; and 96th Session, 2007 (Geneva).

4.3 Anti-union discrimination

Discrimination based on a person's trade union membership, trade union leadership or trade union activities (such as organizing workers; representing workers in grievances with the employer; attempting to bargain collectively with the employer; or calling for a strike in accordance with legal procedures) is generally called anti-union discrimination. The **Right to Organize and Collective Bargaining Convention, 1949 (No. 98)** requires the law to provide workers with adequate protection against acts of anti-union discrimination and obliges the authorities to operate procedures that effectively enforce such protection. The principles laid down in the Convention belong to the fundamental principles and rights at work.

4.4 Age

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

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

Box 12. Forced early retirement of Ms Xu

Ms Xu worked as reporter and chief editor at Huzhou Television since 1985. In her 20 or so years of work she received many prizes for excellent performance. In April 2006 she was informed by the Huzhou TV management that she must retire at the age of 50. Xu was shocked by this decision, and explained to the Human Resource manager that she should enjoy retirement age of 55 since she worked as chief editor and reporter, which belong to the professional category. The manager was surprised and requested Xu to provide relevant policy documents to support her claim. Xu found No 5 Document issued by Ministry of Personnel in 1990, which stipulated that female professionals could retire at the age of 60 if health condition allows and agreed by the individual. Xu submitted proposal in writing to express her willingness to work until the age of 60. However, the TV disregarded the documents, and asked Xu to present relevant written approval from Zhejiang Provincial Bureau of Personnel or Ministry of Personnel. Feeling mistreated by her employer, Xu took to hunger strike along with her colleagues who supported her. Unable to accept the decision by Huzhou TV that she must retire at the age of 50, Xu suffered from both physical and emotional stress and was hospitalized for 53 days.

After slight recovery Ms Xu went to Beijing to seek support from the Ministry of Personnel. Xu received a reply in writing from the Ministry which stated “According to Document No. 63 of the Central Ministry of Personnel issued in 2004, if everything proved to be true, she could retire as a cadre (at the age of 55).” Xu submitted the letter to Huzhou TV and expected that all was resolved. Two days later, however, Xu and her colleagues were informed by the TV station that the retirement procedures had been completed.

Xu then sought support from local government. She contacted the Huzhou mayor, the Huzhou Bureau of Communication, and the supervision group to Huzhou Broadcasting and Television dispatched by the Huzhou Bureau of Personnel, etc. She also consulted relevant legal departments. Some of these

departments showed sympathy and attempted to consult with Huzhou Broadcasting and TV General Station for a settlement. But this did not resolve the issue. The Huzhou Bureau of Communication suggested retirement and re-employment approach, but Xu refused to compromise. The Huzhou Arbitration Commission on Personnel accepted Xu's case, but after 8 months of process due to the "complexity of the case" still endorsed the retirement decision. Xu filed a lawsuit in June 2007 with the local court. However, the court still has not yet conducted one hearing. The judge responsible for the case expressed his hopelessness that his power is too small to make any difference, and that he could not support her.

At the Arbitration Commission decision conference, Xu expressed her despair that she had helped many vulnerable groups in getting what they deserved during the past years of her work, and now she had become one of the vulnerable persons and no one could help her. Her belief that law upholds justice had supported her in her legal struggle.

Source: Women Watch China: *Case studies of early retirement of Chinese female professionals* (Beijing, April 2008).

4.5 Health and disability

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

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

Alongside Convention No. 111, the ILO **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)** and the UN **Convention on the Rights of Persons with Disabilities** which were ratified by China in 1988 and 2008 respectively, are the two key international instruments guaranteeing persons with disabilities equal opportunity and treatment in employment.

The first international legal instrument to address discrimination on the grounds of HIV and AIDS in the workplace was adopted by ILO member States in 2010 in the form of **Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200)**. Augmenting the ILO 2001 Code of practice on HIV/AIDS and the world of work, the Recommendation calls for eliminating discrimination and stigmatization of workers, in particular job seekers and job applicants, on the grounds of real or perceived HIV status or the fact that they belong to regions of the world or segments of the population perceived to be at greater risk of or more vulnerable to HIV infection.¹⁸

In China discrimination on the grounds of disability and infectious diseases is prohibited under the *Employment Promotion Law* (Arts.29 and 30 respectively). Specific provisions on employment of workers with disabilities can be found in the *Law on the Protection of Disabled Persons*. Prohibition

¹⁸ ILO Recommendation concerning HIV and AIDS and the World of Work, 2010 (No. 200), Article 14.

against discrimination of workers with infectious diseases established in the *Employment Promotion Law* is clarified in various laws and regulations, including among others the *Food Safety Law* (2009), the *Regulations on Employment Services and Employment Management* (2008), and the *Notice on Further Standardizing Admission Physical Examination and Protecting the Rights of HBV Carriers in Schooling and Employment* (2010).  See Boxes 13 and 14 below.

Box 13. Employer ordered to pay 24,000 Yuan in compensation for HBV discrimination

The Hong Kong-owned Vtech Corporation was ordered to pay 24,000 Yuan in compensation to a job applicant it had refused employment on the ground that he carried the Hepatitis B virus (HBV) in a verdict made by the Dongguan Municipal People's Court in early 2008. The company also made a commitment that it will enhance the implementation and monitoring of a non-discriminatory human resource policy, so as to avoid a similar situation in the future.

In July 2006, university graduate Li Fei applied for a job at Vtech in Dongguan and successfully passed two recruitment exams. A few weeks later, the company initiated employment formalities, taking copies of his graduation certificates and agreeing on a salary. The following day, the Human Resource Department told Li Fei that his medical test showed him to be HBV positive and therefore he could not be allowed to work at Vtech. Li Fei filed a law suit at the Dongguan Municipal People's Court six months later. After several protracted court hearings, the court finally mediated a settlement nearly one year after the suit was filed.

Experts believe that the success of this case shows the significant impact of the Employment Promotion Law and the Regulations on Employment Services and Employment Management, both of which came into effect on 1 January 2008.

Source: ILO: *Equality at Work in China Newsletter*, Issue No. 1 (Beijing, March 2009).

4.6 Nationality

Nationality refers to the citizenship of a worker. Persons working in a country other than the one of which they hold the nationality or citizenship are normally referred to as international migrant workers. Prohibiting discrimination on the basis of nationality means that persons lawfully residing and permitted to work in a foreign country must be afforded the same treatment and opportunities as other foreign nationals and nationals of the country in relation to employment and occupation. The ground of nationality is fundamental to the instruments relating to migrant workers and their families.

While nationality is not a ground explicitly covered under Convention No. 111, both nationals and non-nationals should enjoy protection against employment discrimination on the grounds covered by Convention No. 111. To promote equal treatment and equal opportunities for migrant workers employed in another country than their own, the ILO adopted the **Migration for Employment (Revised) Convention, 1949 (No. 97)** and the **Migrant Workers (Supplementary Provisions) Convention, 1973 (No. 143)**.

4.7 Sexual orientation

A person whose sexual orientation does not conform to prevailing and established patterns may suffer from discrimination in the workplace. Homosexuals, bisexuals or transgenders can become the target of harassment and violence or may face other forms of exclusion from employment or employment benefits. International and national human rights institutions and mechanisms are attaching increasing importance to fighting discrimination on the basis of sexual

orientation, and some countries have adopted legal provisions to prohibit discrimination at work based on sexual orientation.¹⁹

4.8 Multiple forms of discrimination

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

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

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

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



Action against discrimination at all stages of the employment cycle

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

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

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

5.1 Education and training

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

¹⁹ ILO: *Time for equality at work* (Geneva, 2003). For more information on European legislation on sexual orientation, see Council of the European Union: *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*.

occupation. This also includes skills development and training facilities for workers in the informal economy.

Vocational guidance plays a key role in opening a broad range of occupations to all, free of considerations based on stereotyped and archaic, but entrenched conceptions according to which persons of a particular sex or ethnic group are preferred for specific jobs or occupations. Vocational guidance refers to systems offering special assistance in choosing an occupation to young persons or to other persons who may need it. A number of methods are used for this purpose, such as the dissemination of information about occupations, the preparation of recommendations in the light of personal abilities and social needs, or the joint participation of teachers and parents in fostering children's choice of an occupation.

Box 14. Good practice – HBV testing prohibited in health examinations for school entry and job recruitment

On 10 February 2010, the Ministry of Health, the Ministry of Education and the Ministry of Human Resources and Social Security jointly issued a *Notice on Further Regulating School and Employment Entry Tests Protecting the Employment and Education Rights of People with the Hepatitis B Surface Antigen*. According to the Notice, local governments were given 30 days to abolish or amend current regulations in order to prohibit HBV testing in job recruitment and school entry examinations for employing units and educational institutions by medical and health institutions. The Notice is a positive step toward the elimination of discrimination against HBV carriers in China. There are an estimated 130 million people with HBV in China today, regular casual contact, such as at work or in school, does not lead to transmission of the virus.

Source: ILO: *Equality at Work in China Newsletter*, Issue No. 4 (Beijing, March 2010).

5.2 Access to employment and use of employment services

Discrimination on grounds not related to the genuine requirements of a job but on individual characteristics such as their sex, ethnicity or social origin tends to lead to serious inequalities in access to employment. Therefore, individuals seeking employment need to be protected against discrimination during the recruitment or hiring process from beginning to end. This involves development of non-discriminatory selection and testing criteria, as well as prohibiting discriminatory requirements in job advertisements and scrutiny of hiring decisions.

Recruitment refers to the engagement of a person by or on behalf of an employer or making a commitment to a person to provide him or her with employment. This includes any related arrangements such as seeking for and selecting an employee (e.g. job advertisements, job interviews and entrance exams or tests). **Placement** refers to any operations for the purpose of ensuring or facilitating the employment of persons and such services are commonly offered by both public and private employment agencies. In China, the *Employment Promotion Law* prohibits discrimination in both recruitment and provision of placement services (Art. 26).

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

Box 15. Discrimination in job advertisements in China

A study on anti-discrimination law conducted by the Law School of Sichuan University reviewed 300,000 job advertisements published in newspapers in Shanghai and Chengdu from 1995-2005. The results show discriminatory requirements on labourers' sex, age, physical appearance, height, etc.

Source: W. Zhou: *Study on anti-discrimination law: Legislation, theory and cases* (Beijing, 2008).

5.3 Access to occupation

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

In China, the *Law on the Protection of Rights and Interests of Women* (2005) includes a provision to ensure that rural women, who married men in other villages, maintain their independent right to be included in the land allocation system in their new residence. The actual application and enforcement of this legal provision in practice leaves much to be desired but equal, fair and just access to land is of paramount importance to many women in rural areas.

Convention No. 111 also upholds the right of indigenous and tribal peoples to earn their living with respect to the exercise of their traditional occupations. In such cases development and employment promotion programmes often need to be combined with safeguarding indigenous and tribal control over natural and environmental resources in their areas of traditional habitation.²⁰

5.4 Conditions of Work

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

- advancement in accordance with individual character, experience, ability and diligence
- security of tenure of employment
- remuneration for work of equal value
- conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment. (paragraph 2(b)).

Equal remuneration

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

²⁰ ILO: "Equality in employment and occupation, General survey", in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 75th Session (Geneva, 1988), para 35.

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

The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has noted that in order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved.²¹ For this reason, it is useful to determine the value of work and eliminate bias through **job evaluations**. These measure the extent to which different jobs are of equal value by analyzing and comparing the following job characteristics:

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

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

Promotion

Workers are fundamentally entitled to “advancement in accordance with their individual character, experience, ability and diligence.” The criteria commonly used, for example, in collective agreements to guide the promotion of workers are performance, qualifications, merit, seniority, experience, past training, and fitness to perform the tasks of the new post. Structural or systemic discrimination in regard of promotion leads to vertical **job segregation** – the situation in which the higher levels of management in a company or economy are dominated by, for example, persons of a particular sex or an ethnic majority group and lower levels are dominated by persons of the other sex or an ethnic minority group.

Job security or security of tenure

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

In the context of collective dismissals or redundancies for economic reasons, indirect discrimination may also occur as a result of the criteria selected for determining the order of redundancies. In many cases such selection criteria are specified in collective agreements. For

²¹ ILO: “General observation on Convention No. 100: Equal Remuneration Convention, 1951”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 96th Session, Geneva, 2007.

example, collective agreements that stipulate that married women or women who are not heads of household may be declared redundant first when companies have to lay off workers, are discriminatory.

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

6. What does not constitute prohibited discrimination?

6.1 Differential treatment based on the inherent requirements of the job

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

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

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

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

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

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

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

low-skilled jobs are a considerable problem for many job seekers in many countries, including China.

6.2 National security

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

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

6.3 Protective and affirmative action measures

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

- protective measures
- affirmative action or positive measures.

Protective measures

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

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

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

above, one such key circumstance is maternity and reproductive health, in particular pregnancy, child birth and a period after delivery.

Measures that protect women workers by banning their employment in work and work processes considered hazardous to them, remain to be a subject of heated debate in several countries – defended by some as necessary and criticized by others as contrary to the objective of equality. In many cases, labour law protecting women is often not based on scientifically supported assumptions, but on generalizations based on stereotypes regarding roles of men and women in society and in the labour market. In practice, such laws have often become an obstacle to women's right to work:

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

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

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

Box 16. Challenging stereotyped ideas about physical abilities of male and female workers

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

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

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

Affirmative action or positive measures

The adoption of affirmative action measures stems from the recognition that the legal banning of discrimination is necessary but not sufficient in itself to create equity in the world of work. For this reason special measures need to be designed and implemented to redress the effects of

past and continuing discrimination against specific groups. These measures are known by many names.²² Within ILO they are generally referred to as affirmative action or positive measures.

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



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

Box 17. Approaches to protection and equality for women at work in China

Looking at the evolvement of the different approaches to gender equality promotion in China over the years, equality is enshrined formally in the law. The legislation on women workers' rights is geared towards protecting women, while special measures for promoting substantive equality are lacking. **Equality in outcomes** – or substantive equality – is a **new concept** in China, and measures to support equal labour market outcomes for women have not been put in place fully in law and in practice yet.

- **Formal equality:** Equality before the law in China has implied for many years that the removal of discriminatory rules and regulations is sufficient to realize equality between women and men. Women and men are treated the same, and women are expected to fulfill the same roles in society as men. Typical examples of this kind of approach to equality are the “iron girls combat team” and “women electrician workforce” during the Cultural Revolution. This “sameness” approach to equality ignores biological, social and cultural differences between women and men.
- **Protection:** Several measures have been designed and put in place that reflects the belief that women are weak and “unsuitable” for certain work. A good example of this approach is the list of prohibited occupations in the 1988 Regulations on the Labour Protection of Female Staff and Workers. While protection of women from hazardous work originated from good intention, it has led to excluding women from certain opportunities or restricting their ability to freely choose their occupation in practice. In addition to imposing discriminatory restrictions on women, this protectionist approach also fails to recognize that not just women but also men need to be protected from occupational hazards and unhealthy working conditions.

²² Terms used in China include compensatory justice, differential treatment, employment equity, positive action, positive discrimination, positive action or measures, preferential treatment, reverse discrimination, special measures and temporary special measures. Source: W. Li and L. Stearns (eds.): *Employment discrimination: International standards and national practice* (Beijing, Law Press China, 2007). The CEDAW refers to temporary special measures.

- **Substantive equality:** Substantive equality focuses on realizing equality in law and in practice and achieving equal, fair and just labour market outcomes for women and men. The approach recognizes different biological, social and cultural roles of men and women, and protects them in adequate ways (e.g. maternity protection). This approach recognizes that achievement of substantive equality requires supportive policies and affirmative action to overcome the impact of past discrimination.

Source: B. Liu: *Unpublished training materials* (Beijing, 2008-2009).

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

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

Box 18. Examples of “reasonable accommodation” for persons with disabilities

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

There are three categories of reasonable accommodations:

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

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

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

Source:

* United States, Equal Employment Opportunity Commission: *Small employers and reasonable accommodation*, <http://www.eeoc.gov/facts/accommodation.html> (accessed 28 Sep. 2010).

** State of Montana Human Rights Bureau, <http://erd.dli.mt.gov/humanright/documents/empdiscrimisagainstlaw.pdf> (accessed on 15 September 2010).

Generally, affirmative action measures are only successful in reaching their intended aims when they have been developed through a broad consultative process, involving all concerned labour market actors, such as national and local governments, employers' and workers' organizations, concerned mass organizations, non-governmental organizations (NGOs), community-based organizations (CBOs) and representatives of the discriminated groups themselves. The implementation of these measures also needs to be systematically monitored. Otherwise, what is intended as an effective measure to correct long-standing and deep-seated discrimination against certain groups may actually backfire and perpetuate negative perceptions.



Why protective and affirmative are measures needed to realize ethnic and religious equality in the labour market in China

Convention No.111 recognizes that realization of equal employment outcomes for all workers requires affirmative action measures to support disadvantaged groups. These measures seek to remedy effects of past or continuing discrimination. Availability of statistical data on employment outcomes of different groups of workers is essential in identifying which groups need special assistance in order to gain equality in practice in the labour market. When the affirmative action measures respond to an actual support need, these measures cannot be considered discriminatory against other groups in the labour market.

In China, statistical data on ethnic minorities' employment and poverty situation shows that affirmative action measures targeting ethnic minorities are justified, and needed for realization of equality of outcomes.

- China's ethnic population is disproportionately affected by poverty. Ethnic minorities account for 8.4 per cent of the total population in China, but they account for 52.5 per cent of the population living in absolute poverty. Poverty levels among ethnic minorities living in mountainous areas in the Western provinces are most pronounced in terms of incidence and severity
- The vast majority of ethnic minority people is concentrated in agriculture and in low end jobs. Ethnic minorities are underrepresented in high paid education intensive jobs.
- The overall education level of ethnic minority populations continues to be lower than that of the majority population. Highly educated ethnic minority graduates face more difficulties in finding jobs in the labour market than graduates belonging to the majority population.

Ethnic areas in China are mostly located in mountainous and remote border areas, where natural resources are scarce, social development level is relatively low, and economic development is slower than in other areas of China. For these reasons development policies specifically targeting these areas are needed.

Current affirmative action measures for ethnic minorities within China relate to privileged access to employment opportunities for ethnic minorities in the areas which are associated with the origin of the concerned ethnic group. These measures could be reviewed for their relevance and effectiveness, because they create a feeling of discrimination among members of the country-wide majority group while they are of limited use to the members of the concerned ethnic minorities. Affirmative action measures can be more effective in promoting equality if they are geared at increasing knowledge and "marketable" skills for use within the labour market of the country as a whole.

Sources: State Ethnic Affairs Commission: *Unpublished materials* (2010); U. Sun: *21 million ethnic minorities in poverty 2008* (28 Aug. 2009), <http://www.chinaethnicgroups.com>; R. Hasmath: *The big payoff? Educational and occupational attainments of ethnic minorities in Beijing* (2008); World Bank: *From poor areas to poor people: China's evolving poverty reduction agenda - An assessment of poverty and inequality in China* (March 2009).

Chapter 3. Why is equality important for people, society and business?



The objective of fighting discrimination in the labour market

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

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

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

1. At the personal level – Discrimination violates human dignity and productivity

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

Discrimination at work also denies a person an essential means of self-fulfillment by impeding the pursuit of material, social and spiritual needs. Exposure to being the subject of discrimination is usually not a one-off, stand-alone, isolated event but happens to people repeatedly on one or multiple grounds often from the day they are born and throughout their life. Over time this has a strong, cumulative feedback effect. This negative feedback effect of discrimination is not always recognized. For example, it is often thought that women select low-quality and low-pay jobs out of their “own free will.” This is interpreted by some as a sign of non-discrimination as if women make free, individual choices in accepting second class work. Others consider that free choice has little to do with such decisions but that women are “forced” to adapt to gender biases in the labour market. Repeated negative experiences in job search and treatment at work lead to the “discouraged worker” phenomenon, because repeated negative experiences are internalized, and shape the training and job choices, inspirations and efforts by workers.²³

Box 19. A beautiful wish of a girl

Dear Professor,

21:22 Apr. 23, 2005

My name is Cai Jian. What a coincidence, but I’m a girl.²⁴ My father doesn’t like boys, but he hopes I can be as brave and strong.

²³ D. Grimshaw and J. Rubery: *The adjusted gender pay gap: A critical appraisal of standard decomposition techniques* (Manchester, 2002); N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

²⁴ The girl’s name means ‘sword’ in Chinese, and is usually given to men.

I read about your comments on the case of Zhang Xianzhu²⁵ 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 of "In the Hepatitis B camp". Please pay some attention to us.

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

Box 20. Complaint from a helpless university graduate at the crossroads

Dear Professor,

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

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

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

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

²⁵ 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.

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

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

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

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

A helpless university student at the crossroads.

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

2. At the level of the society – Discrimination denies social justice and cohesion

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

Discrimination frequently enhances - and is enhanced by - other violations of fundamental rights at work. People who are denied legitimate opportunities to earn a livelihood through work or fail to reap a fair reward are more vulnerable to coercion to make their services available at disproportionately low wages. Thus, they may be at greater risk to become subject to forced labour. Their opportunity cost to send children to school instead of full-time work is higher, and this may fuel child labour.

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

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

3. At the level of the macro-economy – Discrimination cripples social and economic development

In economic terms, discrimination is sometimes referred to as a “market failure” or the inability of market processes to reach the most efficient allocation of resources. A person coming from a particular ethnic group may be the most qualified professional or personality for a particular job, but will not be able to realize his or her full potential – and the employer will not tap the most

productive potential available – if recruitment is impeded by behaviour that discriminates against the ethnic group concerned. Wealth creation will not be optimized unless an intervention is made by the government or market to change the discriminatory behaviour.

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

Box 21. Concerns about rising inequality in China

China is often cited as an example of a trade-off between overall economic growth and equity. Probably no other country has had the steep rise in both mean income and income inequality that China has seen since the early 1980s. The evidence shows, however, that periods of more rapid growth did not bring more rapid increases in inequality. Indeed, the periods of falling inequality (1981–85 and 1995–98) had the highest growth in average household income. And the provinces that started the reform period with relatively high inequality had both lower subsequent growth and less sharing by the poor in the gains from that growth.

Although some of the policy reforms and institutional changes in China's economic transition simultaneously increased inequality and reduced poverty (such as allowing greater returns to schooling by opening labour markets, and restoring incentives to work by introducing the Household Responsibility System), other economic and political forces have been at work to generate less benign inequalities. These forces include geographic poverty traps (whereby prospects of escaping poverty depend causally on where one lives) and emerging inequalities in opportunities for enhancing human capital, obtaining credit and insurance, protecting one's rights under the law, and influencing public affairs. These "bad inequalities"—rooted in market failures, coordination failures, and governance failures—limit peoples' opportunities to take action that will help them escape poverty.

It will be harder for China to maintain its past rate of progress against poverty without addressing the problem of rising inequality. If recent history is any guide to the future, the historically high levels of inequality found in many provinces today are likely to inhibit future prospects of poverty reduction. Other factors point to the same conclusion. It appears that aggregate economic growth in China is increasingly coming from sources that bring more limited gains to the poorest. The "low-lying fruit" of efficiency-enhancing pro-poor reforms may be becoming scarce. Inequality is continuing to rise, and poverty measures are becoming more responsive to rising inequality.

At the outset of China's current transition period to a market economy, levels of poverty were so high that inequality was not an important concern. That situation has changed. Leaders have recognized this and are committed to address these rising inequalities.

Source: M. Ravillion: "Economic growth and poverty reduction: Do poor countries need to worry about inequality?", in *2020 focus brief on the world's poor and hungry people* (Washington DC, IFPRI, 2007).

4. At company level – Equality of opportunity and treatment makes good business sense

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

1. It enables the employer to attract talent and skilled workforce and to **improve the quality of recruitments** by better matching the requirements of the job with the skills, knowledge and experience needed without the distractions of sex, status or ethnicity.

2. It allows the employer to **better utilize the human resources** available and retain qualified staff.
3. Better utilization of human resources **supports employee growth, morale, satisfaction and commitment, and reduces labour turnover.**
4. The same benefits may be derived from family-friendly working practices enabling employees to **balance work and family** life.
5. Greater workplace diversity often yields dividends such as finding **creative solutions** to long-standing problems; finding **innovative ways** of doing things more efficiently; or **gaining or retaining new customers** and accessing new market segments.
6. Sustained efforts to achieve equality of opportunity and treatment may **increase brand value and company reputation**, both with customers and future employees.
7. This may strengthen the employer's position in international, national and local **supply chains** that attribute value to equality of opportunity and treatment.
8. Equality efforts also enhance **legal compliance** and reduce the risk of workplace conflicts and labour disputes, and of costly and damaging litigation.
9. All of the above **adds shareholder value.**

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

Box 22. The business case for workplace partnership, diversity and equality - Ireland

A study of Ireland's top companies has confirmed a strong link between bottom-line business performance and the use of High Performance Work Systems (HPWS) in the workplace. High Performance Work Systems include strategic human resource management (staffing, training and development, performance management and remuneration, and communication and participation practices), partnership, **diversity and equality strategies**, and flexible working arrangements. The findings offer fresh insights on how the effective management of people in companies can drive competitiveness in tangible ways such as improved productivity, innovation and employee retention.

The report is based on a detailed survey of more than 130 of Ireland's leading companies. The research team conducting the survey was charged with measuring the per-capita labour productivity of the companies in question, as well as their workforce innovation and employee retention rates, and of quantifying the proportion of these that could be attributed to the use of HPWS.

Their main findings were as follows:

- **Labour productivity:** The use of HPWS accounted, on average, for 14.8 per cent of labour productivity among the survey sample. In terms of total economic value, annual productivity-per-employee was found to be EUR 299,992, of which EUR 44,399 per employee per year was directly attributable to the use of HPWS. For the median-sized company in the survey (270 employees), this equates to an additional EUR 12 million in annual sales revenue.
- **Workforce innovation:** The use of HPWS accounted, on average, for 12.2 per cent of workforce innovation, equivalent to sales revenue of EUR 2,061 per employee per year, or EUR 556,200 in the median-sized company.
- **Employee turnover:** The use of HPWS accounted, on average, for 7.7 per cent of variance in annual employee turnover.

The report includes a specific examination of the diversity and equality theme. It found that in the sample of companies studied, **diversity and equality strategies** are associated with:

- 6.5 per cent of the variance in **labour productivity**

- 7.9 per cent of the variance in **workplace innovation**
- 4.4 per cent of the variance in **employee turnover**.

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

The Minister for Labour Affairs, Mr Billy Kelleher, TD, added that the report's findings will inform the debate around the issues covered by the National Workplace Strategy: "The National Workplace Strategy focuses on stimulating workplace change and innovation, and recognises the critical role that social partnership can play in this process. The new Report on High Performance Work Systems highlights the benefits of developing general and Human Resource management capabilities for Irish business and employers, and demonstrates the practical rewards that companies can gain by becoming more open to partnership, innovation and change as we move forward. I believe that this Report, in reinforcing and building on the existing evidence, is essential reading for all Irish companies and all of us who are committed to maintaining and improving productivity and competitiveness."

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

Chapter 4. Methods of application of Convention No. 111

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

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

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

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

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

2.1 National policy

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

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

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

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

Other examples of practical action include:

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

2.2 Legislation

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



Types of instruments that may contain specific provisions against discrimination

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



Essential elements in legislation

- Definition of prohibited discrimination: Direct, indirect and harassment
- Explanation of exemptions to what is prohibited discrimination
- List of grounds of prohibited discrimination – normally expanding with time
- Scope of protection: employment and occupation at all stages of the employment cycle
- Designation of supervisory responsibilities to competent national authorities such as

labour inspection services

- Affirmative action, protective measures and reasonable accommodation
- Employer liability and responsibility
- Sanctions and remedies
- Protection against reprisal and victimization
- Shifting or reversing the burden of proof
- Adoption and implementation of equality policies or plans at the workplace
- Collection of relevant information and statistical data at different levels.

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

3. Access to justice and legal protection

Access to legal protection refers to being able to use the law through formal and informal complaint mechanisms. These may range from grievance procedures at company level to filing formal complaints with labour and/or civil courts. In many countries and jurisdictions mediation and arbitration procedures and mechanisms are available to protect against discriminatory employment practices.  See Section 6 below for institutional mechanisms available in China.

3.1 Judicial enforcement and other forms of dispute settlement

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

Advantages:

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

Disadvantages:

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

- The facts of some discrimination cases, such as sexual harassment, call for discretion, which is often ill-served by formal and transparent court procedures.

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

3.2 Burden of proof

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

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

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

Box 23. Examples of the reversal of the burden of proof

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

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

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

3.3 Labour inspection services

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

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

A functioning labour inspection system is essential for good governance in the world of work. Labour inspectors can play a key role in enforcement of anti-discrimination provisions because of their regular contacts with employers and workers, their access to relevant files, and because they can investigate cases without the need to wait for an individual victim to bring a case. However, the capacity of labour inspection to promote equality and enforce anti-discrimination is underutilized in many countries. To be able to take effective action, the capacity of inspectors to identify discrimination needs to be strengthened and clear mandates to enforce non-discrimination need to be set in law.

Box 24. Capacity building of labour inspectors - Czech Republic

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

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

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

3.4 Independent equality commissions

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

Specialized institutions to address discrimination and equality matters have been emerging in regions across the globe reflecting a trend of supporting the application of laws against discrimination by promoting equality through practical, institutional measures. An equality commission or equal opportunities commission is an effective mechanism for eliminating

discrimination and safeguarding equality, provided it is given the mandate and resources to function as an independent, authoritative body, financed by public funds. An equality or equal opportunities commission usually has the following mandates:

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

Box 25. Equal Opportunities Commission (EOC) - Hong Kong, China

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

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

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

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

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

3.5 Employment services

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

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

Box 26. Examples from private employment agencies

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

Manpower, another international Private Employment Agency, has a proactive diversity policy in the USA and has also pioneered in promoting diversity in the workplace. As one of its corporate social responsibility (CSR) policies, Manpower considers diversity in the workplace essential. It defines diversity as differences of race, national origin, religion, cultural background, gender, age, disability, sexual orientation and gender identity. This means promoting mutual respect and understanding between people with different personal situations and backgrounds. For example, in 1948, Manpower pioneered creating opportunities for women to engage and thrive in the workforce at a time when it was not socially acceptable for women to work outside the home and develop careers. In the 1960s, which was the most pivotal era for racial diversity in the USA, it also played an important role in providing jobs for racial minorities.

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

4. Promotional measures**4.1 Research on equality and discrimination**

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

ILO member States have the obligation to report regularly on the measures taken to promote equality and non-discrimination in employment and to indicate the results secured by such action. The ILO Committee of Experts on the Application of Conventions and Recommendations, therefore, regularly calls on states to provide facts on the impact of measures on actual labour market outcomes.

Box 27. Study on discrimination in China’s workplaces

The Constitutionalism Research Institute of China University of Politics and Law undertook an “Anti-employment discrimination research project” in 2006 and interviewed 3,500 persons in 10 big cities in China, including Beijing, Guangzhou, Nanjing, Wuhan, Shenyang and Chengdu. The survey was one of the first to provide a unique insight into the situation of discrimination on the grounds of gender, household registration/identity, health, disability and age, and other grounds which widely exist in China’s labour market. The project also analyzed the wider scope of discrimination in the fields of education,

political and social life and in the public sphere. In addition, the research reviewed and identified discriminatory regional laws and regulations in China, and studied anti-discrimination legislation and its implementation in other countries and regions such as the Netherlands, France, the USA and Hong Kong SAR, China.

Sources: D. Cai (ed.): *Employment discrimination in China: Current conditions and anti-discrimination strategies* (Beijing, China Social Sciences Press, 2007), pp. 21-28; D. Cai and Q. Zhang (eds.): *Employment discrimination overseas: Law and practice*, (Beijing, China Social Sciences Press, June, 2007); W. Liu: “Discrimination in job market common: Survey”, in *China Daily* (Beijing), 14 June 2007.

4.2 Information, education and communication

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

A good example is documented from Hong Kong, China. In its first report to the International Committee on Economic, Social and Cultural Rights, the government mentioned that it had brought the Practical Guidelines for Employers on Eliminating Age Discrimination in Employment under the attention of the general public by launching “a sustained programme of public education, publicity and self-regulation [...], of which practical guidelines were issued and TV advertisements were broadcast to give advice on and encourage eliminating age discrimination in employment.”

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

Box 28. The equality at work in China resource platform and website

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

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

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

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

4.3 Codes of practice

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

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

Box 29. Codes of practice on non-discrimination and equality promotion at work – Hong Kong, China

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

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

Other noteworthy codes of practice against employment discrimination include:

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

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

5. Role of social partners and strategic alliances

5.1 Employers and their organizations

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

Individual employers have a legal obligation to respect diversity of the employee, prevent discrimination and realize equality in the workplace. All recruitment and employment policies and practices (including job advertisements, job descriptions, and performance and job evaluation policies and practices etc.) shall be free from discrimination. It is a good practice to

adopt and implement an equal opportunities policy at company level. Companies should also adopt non-discrimination as a key value of their company culture, and apply it in all their business practices, including provision of goods and services to clients and dealing with suppliers and business partners. Leading companies include non-discrimination in codes of practice, and require their suppliers and subcontractors to adhere to the equality principle.



Practical guidance for employers

In order to avoid discrimination, employers should:

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

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

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

When developing a company EOP some important measures are:

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

Box 30. Good practice - A Joint Statement on Equal Opportunity in Ford Motor Company

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

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

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

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

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

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

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

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

5.2 Corporate social responsibility

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

Growing numbers of European and American MNCs are conducting Corporate Social Responsibility (CSR) evaluations and reviews of their global suppliers. CSR requirements are increasingly also added into the terms and conditions of MNC orders with the result that they have implications for corporate behaviour in developing countries that are used by MNCs as production bases. Suppliers in developing countries are required to meet such conditions in order to enter into MNC supply chains.

CSR norms can also be tools in the hand of governments, trade unions and other organizations in developing countries where they potentially could be used as leverage in negotiating agreements with international investors to better protect local workers' rights. The global CSR standards and codes of conduct usually contain clauses on non-discrimination and diversity in the workplace. Complying with these standards means a company must integrate these considerations into its daily business operation. Since discrimination is often rooted in unconscious and culturally accepted practices, managers and workers alike must often learn to look for and understand how their behaviour and business systems may result in disproportionate negative consequences for certain groups. Training is therefore a necessary step in implementing CSR norms on non-discrimination and other fundamental principles and rights at work.²⁶

5.3 Workers' organizations

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

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

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

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

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

- Negotiating wages and benefits that follow the principle of equal remuneration for work of equal value
- Negotiating flexible working time arrangements in terms of hours of work and leave that permit a balance between work and family responsibilities
- Negotiating occupational safety and health arrangements that take account of the needs of workers with disabilities; protect reproductive health and rights; disseminate information on HIV and AIDS, etc.
- Negotiating improved maternity protection, such as maternity leave and benefits
- Defending the rights of non-permanent (fixed-term, flexible, casual, temporary, seasonal etc.) workers who are vulnerable because they are not covered by labour legislation, such as workers in domestic service, migrant workers in many occupations, by organizing and

²⁶ See the bibliography for useful websites on Corporate social responsibility.

including them in workers' organizations as members and leaders, and representing them in collective bargaining and judicial procedures

- Defending respect and dignity at the workplace, for example by promoting in-house policies, procedures and practices to address sexual harassment or violence at the workplace.

Box 31. Model Equal Opportunities Clause of the UK Trade Union Congress

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

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

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

5.4 Collective bargaining

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

The democratic structures of trade unions and their mandate to promote and protect workers' rights make unions important vanguards in the fight against discrimination at the workplace, community, national, regional and international levels. Through collective bargaining trade unions have a critical role to play in negotiating with employers and secure better protection for workers who are discriminated against on the grounds of their sex or on the basis of their race, colour, religion, political opinion, national extraction or social origin, disability, family responsibilities, sexual orientation or age.

In China, the ACFTU was instructed to engage in more effective collective bargaining and it is responding effectively, extending coverage of workers under collective contracts to 150 million in 2008. Wage bargaining is also becoming more prominent and wage agreements covered 40 million workers in 2007. The ACFTU is also increasingly organizing migrant workers and bargaining on their behalf.²⁷

Box 32. Agreement on Equal Treatment – Denmark

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

²⁷ Lee, C.H: *Industrial relations and collective bargaining in China*, Working Paper No. 7, ILO Industrial and Employment Relations Department (Geneva, 2009).

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

- Ensuring equal opportunities for women and men in working life with regard to employment, training, promotion and conditions of employment in general.
- Working to achieve a fairer distribution of women and men in those job types and employment functions in which vocational choices and recruitment decisions have been found to be determined by sex.
- Devising principles for the firm's personnel policy which take proper account of the need for employment to be compatible with the parental role.
- Using personnel policy to secure a working climate free from unwanted behaviour of a sexual nature or any other sex-related conduct which is offensive to women and detracts from the dignity of men at the workplace.

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

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

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

5.5 Tripartite action

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

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

Box 33. Good practice – Tripartite cooperation mechanism – Singapore

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

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

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

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

In November 2007, the Tripartite Centre for Fair Employment, a one-stop centre where workers and employers can provide feedback and seek advice on fair employment practices, was launched to support TAFEP's promotional and outreach work.

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

6. Institutional mechanisms and measures in China

One important institutional change brought along by the adoption of the *Employment Promotion Law* in 2007 was opening a direct access to People's Courts in cases of discrimination. The *Employment Promotion Law* stipulates that job applicants or employees who feel they have been discriminated against may lodge a lawsuit in the People's Courts against those who have possibly committed a discriminatory act (Art. 62). In addition, an employee who is discriminated against by an employment agency can bring a case to the court. Employers or employment agencies found liable for discrimination can be ordered to bear civil sanctions or, if the offense constitutes a crime, criminal sanctions can be applied (Art. 68). Since the adoption of the *Employment Promotion Law* in 2007 several of the first complaints to People's Courts have been successful.



See Box 34 below.

While lodging a lawsuit to People's Courts is the main avenue for legal redress in cases of discrimination, the victims have also other options at their disposal – depending on the details of the case and under which law they wish to bring their case. Firstly, laws protecting specific groups of workers such as the *Law on Protection of Rights and Interests of Women*, have specific provisions on legal redress. If the case deals with rights guaranteed in a special law, the provisions of that law on legal redress should be followed. Secondly, if the case concerns rights guaranteed under the *Labour Law* or the *Labour Contract Law* – such as the right to equal pay or the protection against unfair dismissal – the employee may apply for labour dispute arbitration, as stipulated in the *Law on Mediation and Arbitration of Labour Disputes*. For example in cases concerning discriminatory dismissal, the victim may choose to take the case to a labour dispute arbitration body under the *Labour Contract Law*, instead of bringing it to the court under the *Employment Promotion Law*. In practice, labour dispute arbitration bodies have dealt with a large number of employment discrimination cases during their arbitration on labour disputes. The sanctions available under the *Labour Contract Law* and the *Labour Law* include administrative sanctions (warning, order to rectify etc.), economic compensation, or criminal responsibility.



See Boxes 35 and 36 below.

Victims of discrimination may also contact the local labour department for advice and support. The responsibility for administrative supervision of non-discrimination in employment law in China is on labour administrative departments of governments above county level, as stipulated in the *Employment Promotion Law* (Art. 60) and the *Labour Law*. The labour protection supervising

authorities have the responsibility to guarantee the implementation of legislation against discrimination in employment. While employment discrimination is not explicitly listed as a subject for inspection by the labour inspectorate according to the *Regulations on Labour Security Inspection* or the *Regulations on Labour Security Inspection*, the *Labour Law* clearly provides enforcement powers in this regard to labour administrative departments of governments at or above county level. And in practice, labour protection supervising authorities, including the labour inspectorate, have in many places started to play an important role in combating employment discrimination.  See Box 37 below.

While national laws and regulations explicitly prohibit discrimination in employment, lower level laws, administrative acts, rules and regulations in specific provinces, regions or cities may still contain discriminatory employment provisions. Where these are still in operation, the relevant agencies can review and revoke them according to Article 87 of the *Legislation Law* and Article 7 of the *Administrative Reconsideration Law*.



Methods of relief for discrimination in employment in Chinese laws

1. File a lawsuit with the People's Court

Employment Promotion Law, 2007 – Article 62 provides that “The workers may lodge a lawsuit in the People's Court against those who commit employment discrimination in violation of the provisions of this Law.”

2. Seek employment dispute arbitration and mediation

Law on Mediation and Arbitration of Labour Disputes, 2007 – Article 2: The Law shall apply to the following labour disputes between employing units and labourers within the territory of the People's Republic of China: A. Disputes arising from the confirmation of labour relations; B. Disputes arising from the conclusion, performance, alteration and termination of labour contracts; C. Disputes arising from name removal, dismissal, resignation or vacation of office; D. Disputes arising from working hours, rest days and leave days, social insurance, fringe benefits, training and labour protection; E. Disputes arising from labour remunerations, work injury medical expenses, economic compensation or damages; or F. Other labour disputes prescribed by laws and regulations.

3. File a complaint with the labour inspectorate

Labour Law – Chapter XI establishes various powers to remedy violations of the *Labour Law*, including violations of provisions protecting people against discrimination (see Articles 3, 13 and 46). Chapter XI designates powers to labour administrative departments of people's governments at or above county level; to inspectors from the labour administrative departments of people's governments at or above the county; to the trade unions; and to other organizations and individuals. For example, Article 85 provides that “the labour administrative departments of people's governments at or above the county level shall, in accordance with the law, supervise and inspect the implementation of laws, rules and regulations on labour by the employing unit, and have the power to stop any acts that run counter to laws, rules and regulations on labour and order the rectification thereof.” Chapter XII establishes duties associated with those powers, such as warnings; remedial orders; compensation orders; and criminal prosecution.

Employment Promotion Law, 2007 – Article 60 provides that “the labour administrative department shall supervise and inspect the implementation of this Law, establish a report system and accept the reports of violations against this Law, and timely check and handle the violations.”

4. Review, change or revoke laws with discriminatory employment provisions

Legislation Law – Article 87: If a law, administrative regulation, local regulations, regulation on regional autonomy, separate regulation or rules leads to any of the following circumstances, the relevant organ shall change or revoke it in accordance with the limits of power specified in Article 88 of this law: A. “Ultra vires” (an organ or body acting beyond its given powers); B. A lower level law violates a superior regulation; C. The content of provisions in different rules is inconsistent and should be changed or revoked according to judgment; D. The provisions of the rules are considered inappropriate and should be modified or revoked; E. Violation of legal procedures.

Administrative Reconsideration Law – Article 7: If a citizen, legal person or any other organization considers that a specific administrative act is not in line with legal regulations, then the person or organization may file an application to the administration reconsideration organ for reviewing the said act.

Box 34. Examples of lawsuits against employment discrimination

October 2008: In Guangdong province, the Dongguan Intermediate People’s Court ruled against a man surnamed Li who sought 500,000 Yuan (US\$73,162) for “mental suffering” after Nokia cancelled plans to hire him when he tested positive for HBV. The court ruled against the plaintiff on evidentiary grounds.

February 2009: The Laoshan District People’s Court in Qingdao city, Shandong province, accepted the lawsuit of university graduate Yang Hua (alias) whose employment contract with Haier Group was cancelled due to his HBV-positive test results. He requested a formal apology from Haier Group and compensation of 30,000 Yuan (US\$4,390).

February 2009: In Zhengzhou city, Henan province, a 24-year-old college graduate filed a lawsuit against a provincial rural credit union for employment discrimination based on his color blindness. This was the first employment discrimination lawsuit based on color blindness in China. The plaintiff requested the court to order the credit union to compensate him in the form of 3,000 Yuan (US\$439) for economic losses and 50,000 Yuan (US\$7,316) for emotional damages.

Source: US Congressional Executive Commission on China: *Annual report 2009*, One Hundred Eleventh Congress, First Session (Washington, 10 October 2009).

Box 35. Legal remedies against gender discrimination

The 2005 revision of the *Law on the Protection of Women’s Rights and Interests* made a substantial step forward. It grants an arbitration option to the victim, which means the victim can seek settlement from a labour arbitration committee composed of representatives from government agencies, the unions and the employers. Furthermore, to make the litigation option more realistic for the victims, it also requires local legal aid agencies and courts to provide legal and judicial aid to eligible women (Article 52). It requires women’s organizations (mainly the Women’s Federations at various levels) to provide support when a woman needs help in litigation (Article 54). It further strengthens women’s organizations’ role in maintaining women’s rights and interests, by granting these organizations the right to request and assist investigations by relevant government departments. The latter are required to conduct an investigation and provide a reply.

The 2005 revision also further identifies the agencies to enforce this Law. The revised law states: ‘[G]overnment committees in charge of women and children at the county and higher levels shall organize, coordinate, guide and urge the relevant government departments to “do a good job” in protecting women’s rights and interests’ (Article 6). These revisions are expected to significantly improve the extent to which the law can be applied. However, the effectiveness of these revisions still largely depends on the gender awareness and sensitivity of government officials and judicial staff.

Source: S. Yang and A. Li: “Legal protection against gender discrimination in the workplace in China”, in *Gender & Development*, Vol. 17, No. 2 (July 2009), pp. 304 – 305.

Box 36. Successful mediation against discrimination on the ground of physical appearance

After graduation as a junior teacher, Qiu Zi, a 23 year old woman from Henan, signed an employment contract to teach English with an International Education and Investment Consultation Group with its main office in Shanghai (hereafter referred to as the Company) in early December 2006. Qiu Zi’s head is much bigger than others due to hydrocephalus at birth, a condition which stabilizes after treatment.

She reported to work at the assigned school but was sent back due to her appearance or “big head”. She spoke with Company staff in charge of personnel several times and recorded the discussions which confirmed that she was refused because of her physical appearance. In February 2007, Qiu Zi went to the Shanghai Labour Arbitration Department to claim her legal rights with the records as proof.

After two mediations facilitated by the Shanghai Arbitration Department in early February 2007, Qiu Zi and her employer reached an agreement and she obtained a labour contract from the Company for three years.

Sources: “Labour arbitration institution succeeded in mediating case of employment discrimination on the ground of appearance”, in *Xinhuanet*, 7 February 2007, http://news.xinhuanet.com/legal/2007-02/07/content_5709164.htm; “A long road towards equal employment for women”, in *Women Watch China*, 15 March 2007, <http://womenwatch-china.org/pageinfo/shownewsEN.aspx?id=20091110000088> (both accessed 16 Sep 2010).

Box 37. Administrative penalties for employment discrimination against a Hepatitis B carrier

In August 7, 2008, the window of the Sichuan Labour Protection Network for Complaining and Reporting received a complaint: Xia said that he had passed the written test and the interview of the Rural Credit and Cooperatives of a certain city, but was not admitted because he was found to carry the Hepatitis B virus. He insisted that the unit’s illegal behavior be corrected. This was the first complaint against discrimination in employment after the implementation of the *Employment Promotion Law* came into effect.

On the morning that the complaint was accepted, personnel from the provincial labour supervision headquarters first consulted related experts from Huaxi Hospital, to determine the impact of the disease on Xia and to clear any medical requirements as stipulated in the law. In the afternoon, the provincial supervision headquarters carried out investigations on the Rural Credit and Cooperatives and found that the complaint was authentic. It determined that using Xia’s disease as the reason for not hiring him had violated the *Employment Promotion Law* and the *Regulations on Employment Service and Administration*.

The personnel in charge of the case issued a Modification Letter, asking the Rural Credit and Cooperatives to correct its illegal behavior. Due to a lack of understanding of the regulations, the Rural Credit and Cooperatives was not active in complying with the letter after receiving it. So the provincial supervision headquarters issued an Administrative Penalty Letter. On 20 August, the personnel in charge of this case went to the location of the Rural Credit and Cooperatives, and communicated the regulations to the major leaders of the Rural Credit and Cooperatives with the local Bureau for Labour and Social Security. On 22 August, the Rural Credit and Cooperatives issued its decision on hiring Xia and on 26 August 26, he became a member of the Rural Credit and Cooperatives.

Source: *Sichuan Daily* (Chengdu), 29 August 2008.

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Useful websites on discrimination and equality

- ILO APPLIS: Database on the application of international standards
<http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN>
- ILOLEX: Database of International Labour standards and recommendations (including ratification information)
<http://www.ilo.org/ilolex/index.htm>
- ILO Programme for Gender Equality
<http://www.ilo.org/gender/lang--en/index.htm>
- ILO Programme for International Labour Migration
<http://www.ilo.org/public/english/protection/migrant/>
- ILO Programme for International Labour Standards
http://www.ilo.org/global/What_we_do/InternationalLabourStandards/lang--en/index.htm
- ILO Programme for the Promotion of the Declaration on Fundamental Principles and Rights at Work
http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=ISSUESDISCRIMINATION

ILO Regional Office for Asia and the Pacific: Equality and discrimination

<http://www.ilo.org/asia/whatwedo/publications/>

Office of the High Commissioner for Human Rights

<http://www2.ohchr.org/english>

Office of the High Commissioner for Human Rights: Treaty Bodies database

<http://tb.ohchr.org/default.aspx>

Website and resource platform of the ILO/MOHRSS project “Promote and apply ILO Convention No. 111 in China”

<http://www.equalityatworkinchina.org>

Useful websites on Corporate social responsibility

Business and Human Right Resource Center

<http://www.business-humanrights.org>

Business for Social Responsibility

<http://www.bsr.org>

Ethical Trading Initiative

<http://www.ethicaltrade.org>

Global Reporting Initiative

<http://www.globalreporting.org>

International Organization for Standardization on ISO 26000, the voluntary guidelines for social responsibility

<http://www.iso.org/sr>

Annexes

1. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

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

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term “discrimination” includes--

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

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

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

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

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality

of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

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

- (a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
- (b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (d) to pursue the policy in respect of employment under the direct control of a national authority;
- (e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- (f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

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

Article 5

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

Article 6

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

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and

shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force, this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

2. Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight, the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958:

The Conference recommends that each Member should apply the following provisions:

I. Definitions

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

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

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

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination. (3) For the purpose of this Recommendation the terms *employment* and *occupation* include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II. Formulation and Application of Policy

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

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

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

- (i) access to vocational guidance and placement services;
 - (ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;
 - (iii) advancement in accordance with their individual character, experience, ability and diligence;
 - (iv) security of tenure of employment;
 - (v) remuneration for work of equal value;
 - (vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- (c) government agencies should apply non-discriminatory employment policies in all their activities;
- (d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;
- (e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;
- (f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.
3. Each Member should—
- (a) ensure application of the principles of non-discrimination—
- (i) in respect of employment under the direct control of a national authority;
 - (ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
- (b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—
- (i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;
 - (ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;
 - (iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.
4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other

interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular--

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

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

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

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

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

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

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

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

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

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

3. Equal Remuneration Convention, 1951 (No. 100)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951:

Article 1

For the purpose of this Convention--

(a) the term “remuneration” includes 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;

(b) the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of--

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate --

a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraph (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 12

At such times as may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides--

a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

Equality and non-discrimination at work in China: Handbook

The principles of equality and non-discrimination are embedded in universal notions of decency, dignity and respect, and are fundamental for promoting social justice and economic development both within and across countries. This Handbook on equality and non-discrimination at work in China introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment in workplaces. The handbook is part of a Training package on equality and non-discrimination at work in China, developed and issued by the ILO to support the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in the country. The training package contains:

- A handbook for use as a quick reference guide for policymakers, professionals and practitioners including participants of training workshops
- A training manual for use by experts, trainers, researchers and those seeking in-depth knowledge on equality and non-discrimination in the law and in economic, employment and social policies.

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