



International  
Labour  
Organization

# Equality and non-discrimination at work in China: Training manual

## Module 1

### Overview: Discrimination and equality at work



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



## Equality and non-discrimination at work in China: Training manual

### Module 1

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Thomas, Constance; Haspels, Nelien; Meyer, Tim de; Paavilainen, Marja; Zhang, Hongman

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# Contents

|                                                                                                |           |
|------------------------------------------------------------------------------------------------|-----------|
| <b>Introduction</b>                                                                            | <b>1</b>  |
| <b>Section A. Learning content</b>                                                             | <b>3</b>  |
| Unit 1.1 The equality principle and standards on equality at work                              | 5         |
| 1. The origins of discrimination                                                               | 5         |
| 2. Key international policy instruments to promote equality                                    | 6         |
| 3. Non-discrimination and equality in employment in Chinese laws and regulations               | 12        |
| Unit 1.2 Discrimination and equality: Concepts, principles and standards                       | 15        |
| 1. Analysis of the definition in Convention No. 111                                            | 15        |
| 2. What is discrimination at work? – Key concepts                                              | 18        |
| 3. Grounds of discrimination prohibited by Convention No. 111                                  | 23        |
| 4. Other grounds prohibited by national and international labour standards                     | 26        |
| 5. Equality and discrimination at different stages of the employment cycle                     | 29        |
| 6. What does not constitute prohibited discrimination?                                         | 32        |
| Unit 1.3 Why is equality important for people, society and business?                           | 39        |
| 1. At the personal level – Discrimination violates human dignity and productivity              | 39        |
| 2. At the level of the society – Discrimination denies social justice and cohesion             | 41        |
| 3. At the level of the macro-economy – Discrimination cripples social and economic development | 41        |
| 4. At company level – Equality of opportunity and treatment makes good business sense          | 42        |
| Unit 1.4 Methods of application of Convention No. 111                                          | 45        |
| 1. What are the State's obligations under the Convention?                                      | 45        |
| 2. Promoting and enforcing Convention No. 111 through policies and legislation                 | 45        |
| 3. Access to justice and legal protection                                                      | 47        |
| 4. Promotional measures                                                                        | 52        |
| 5. Role of social partners and strategic alliances                                             | 56        |
| 6. Institutional mechanisms and measures in China                                              | 62        |
| <b>Section B. Session guide</b>                                                                | <b>67</b> |
| Training map for Module 1                                                                      | 69        |
| Session plan for Unit 1.1 The equality principle and standards on equality at work             | 70        |
| Session plan for Unit 1.2 Discrimination and equality: Concepts, principles and standards      | 72        |
| Session plan for Unit 1.3 Why is equality important for people, society and business?          | 75        |
| Session plan for Unit 1.4 Methods of application of Convention No. 111                         | 76        |
| <b>Section C. Exercises</b>                                                                    | <b>79</b> |
| Unit 1.1 The equality principle and standards on equality at work                              | 81        |
| Exercise 1. Be aware of your own bias                                                          | 81        |
| Unit 1.2 Discrimination and equality: Concepts, principles and standards                       | 84        |
| Exercise 2. Identifying discrimination                                                         | 84        |
| Exercise 3. Writing non-discriminatory job advertisements                                      | 86        |
| Exercise 4. Is it height discrimination?                                                       | 91        |

|                                                                                                                                  |                |
|----------------------------------------------------------------------------------------------------------------------------------|----------------|
| Unit 1.3 Why is equality important for people, society and business?                                                             | 95             |
| Exercise 5. “Do I have a chance of getting the job?” Role-play                                                                   | 95             |
| Exercise 6. Why is equality good for business and society?                                                                       | 101            |
| Unit 1.4 Methods of application of Convention No. 111                                                                            | 105            |
| Exercise 7. Small enterprise development and employment conditions                                                               | 105            |
| Exercise 8. Action against sexual harassment                                                                                     | 109            |
| Exercise 9. Action planning to promote equality at work                                                                          | 114            |
| <br><b>Section D. Practical tools</b>                                                                                            | <br><b>115</b> |
| Checklist 1. Identifying discrimination in laws, policies and practices                                                          | 117            |
| Checklist 2. Strengthening the national policy to eliminate discrimination                                                       | 118            |
| Checklist 3. Desk review by labour inspectors                                                                                    | 118            |
| Checklist 4. Questions to ask during on-site labour inspection                                                                   | 119            |
| Checklist 5. Questions for union negotiators in preparing to negotiate or review an equal opportunities agreement with employers | 121            |
| Checklist 6. Guidelines for employers on equality measures in recruitment procedures                                             | 121            |
| Checklist 7. Guidelines for employment agencies                                                                                  | 123            |
| <br><b>Section E. Good practices and cases for further reading</b>                                                               | <br><b>125</b> |
| Good practice 1. Tripartite guidelines on non-discriminatory job advertisements – Singapore                                      | 127            |
| Good practice 2. Combating sexual harassment – Beijing, China                                                                    | 128            |
| Good practice 3. Regulations on religious affairs – China                                                                        | 129            |
| Good practice 4. Affirmative action on religion and political opinion – Northern Ireland                                         | 129            |
| Case 1. Discrimination in career progression – France                                                                            | 130            |
| Case 2. Discrimination in regard of promotion – France                                                                           | 131            |
| Case 3. Retrenchment at Allianz Life Insurance – Republic of Korea                                                               | 131            |
| Case 4. Discrimination in employment due to political opinion – Slovenia                                                         | 133            |
| Case 5. Age requirements for police officers and fire-fighters – Republic of Korea                                               | 133            |
| Case 6. Education as ground of discrimination – Republic of Korea                                                                | 134            |
| Case 7. “Over qualification” as permitted ground for job refusal – Sweden                                                        | 135            |
| Case 8. Legal effects of a Code of practice – United Kingdom                                                                     | 136            |
| <br><b>Bibliography</b>                                                                                                          | <br><b>141</b> |
| <br><b>Annexes</b>                                                                                                               | <br><b>149</b> |
| Annex 1. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)                                                   | 149            |
| Annex 2. Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)                                               | 153            |
| Annex 3. Equal Remuneration Convention, 1951 (No. 100)                                                                           | 156            |
| Annex 4. The ILO and international labour standards                                                                              | 160            |
| Annex 5. Overview of legal framework to combat discrimination and promote equality in employment in China                        | 165            |
| Annex 6. Glossary of terms                                                                                                       | 181            |

---

**List of boxes**
**Section A. Learning content**

|                                                                                               |    |
|-----------------------------------------------------------------------------------------------|----|
| Box 1.1 Non-discrimination in ILO constitutional documents                                    | 6  |
| Box 1.2 International labour standards benchmarking non-discrimination                        | 8  |
| Box 1.3 International human rights treaties of the United Nations                             | 11 |
| Box 1.4 Ratification of international non-discrimination standards and treaties by China      | 11 |
| Box 1.5 Key non-discrimination provisions in Chinese national legislation                     | 13 |
| Box 1.6 Example of direct, “de jure” discrimination of rural migrant workers                  | 19 |
| Box 1.7 Examples of indirect discrimination                                                   | 20 |
| Box 1.8 Example of structural discrimination: The gender pay gap                              | 21 |
| Box 1.9 Examples of discrimination on the basis of social origin                              | 24 |
| Box 1.10 Protection of access to education                                                    | 29 |
| Box 1.11 Examples of prohibited grounds constituting a genuine occupational requirement       | 33 |
| Box 1.12 Examples of national legislation offering temporary support to disadvantaged groups  | 36 |
| Box 1.13 Examples of “reasonable accommodation” for persons with disabilities                 | 37 |
| Box 1.14 A beautiful wish of a girl                                                           | 39 |
| Box 1.15 Complaint from a helpless university graduate at the crossroads                      | 40 |
| Box 1.16 Concerns about rising inequality in China                                            | 42 |
| Box 1.17 The business case for workplace partnership, diversity and equality – Ireland        | 43 |
| Box 1.18 Types of laws that may contain specific provisions against discrimination            | 46 |
| Box 1.19 Public interest litigation cases on equal rights and discrimination                  | 48 |
| Box 1.20 Examples of the reversal of the burden of proof                                      | 49 |
| Box 1.21 Capacity building of labour inspectors – Czech Republic                              | 50 |
| Box 1.22 Equal Opportunities Commissions – Hong Kong, China and France                        | 50 |
| Box 1.23 Examples from private employment agencies                                            | 52 |
| Box 1.24 Studies on discrimination in China’s workplaces                                      | 53 |
| Box 1.25 The equality at work in China resource platform and website                          | 54 |
| Box 1.26 Information sharing on non-discrimination legislation and the employment situation   | 54 |
| Box 1.27 Codes of practice on non-discrimination and equality promotion at work               | 55 |
| Box 1.28 Good practice – A Joint Statement on Equal Opportunity in Ford Moto Company          | 57 |
| Box 1.29 The Fair Labor Association’s Workplace code of conduct and compliance benchmarks     | 58 |
| Box 1.30 Model Equal Opportunities Clause of the UK Trade Union Congress                      | 60 |
| Box 1.31 Agreement on Equal Treatment – Denmark                                               | 61 |
| Box 1.32 Good practice – Tripartite cooperation mechanism – Singapore                         | 61 |
| Box 1.33 Examples of lawsuits against employment discrimination                               | 64 |
| Box 1.34 Legal remedies against gender discrimination                                         | 64 |
| Box 1.35 Successful mediation against discrimination on the ground of physical appearance     | 65 |
| Box 1.36 Administrative penalties for employment discrimination against a Hepatitis B carrier | 65 |
| Box 1.37 Labour dispute arbitration judgment on discrimination due to depression              | 66 |

**Annex 4. The ILO and international labour standards**

|                             |     |
|-----------------------------|-----|
| Box 1. ILO structure        | 161 |
| Box 2. Ratification process | 163 |

---

## **Annex 5. Overview of legal framework to combat discrimination and promote equality in employment in China**

|                                                                                                                                                    |     |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| Box 1. The Constitution of the People's Republic of China (Revised in 2004)                                                                        | 165 |
| Box 2. The Labour Law (1994)                                                                                                                       | 167 |
| Box 3. The Employment Promotion Law (2007)                                                                                                         | 168 |
| Box 4. The Labour Contract Law (2007)                                                                                                              | 169 |
| Box 5. The Law on the Protection of Rights and Interests of Women (passed in 1992, revised in 2005)                                                | 170 |
| Box 6. The Law on the Protection of Disabled Persons (passed in 1990, revised in 2008)                                                             | 170 |
| Box 7. The Law on Regional Ethnic Autonomy (1984)                                                                                                  | 172 |
| Box 8. Regulations on Labour Protection of Women Workers (1998) – Under revision                                                                   | 172 |
| Box 9. Regulations on the Employment of Disabled Persons (2006)                                                                                    | 173 |
| Box 10. Notice of the General Office of the State Council on Strengthening Employment Management and Service Work for Rural Migrant Workers (2003) | 175 |
| Box 11. Several Opinions of the State Council on Solving Problems Related to Rural Migrant Workers (2006)                                          | 176 |
| Box 12. Action against sexual harassment: Methods of provinces on the implementation of the Law on the Protection of Rights and Interests of Women | 177 |
| Box 13. Regulations on Employment Service and Employment Management (2007)                                                                         | 179 |

---

### **List of figures**

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| 1. Chinese legal framework on equality and non-discrimination in employment    | 13 |
| 2. The three components of the discrimination definition in Convention No. 111 | 17 |

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## **Electronic training tools on CD-ROM for Module 1**

### **Slide presentations for Section A. Learning content**

- Unit 1.1 The equality principle and standards on equality at work
- Unit 1.2 Discrimination and equality: Concepts, principles and standards
- Unit 1.3 Why is equality important for people, society and business?
- Unit 1.4 Methods of application of Convention No. 111

### **Section C. Exercises**

- Exercise 1. Be aware of your own bias
- Exercise 2. Identifying discrimination
- Exercise 3. Writing non-discriminatory job advertisements
- Exercise 4. Is it height discrimination?
- Exercise 5. “Do I have a chance of getting the job?” Role-play
- Exercise 6. Why is equality good for business and society?
- Exercise 7. Small enterprise development and employment conditions
- Exercise 8. Action against sexual harassment
- Exercise 9. Action planning to promote equality at work

### **Videos:**

- ILO's 90<sup>th</sup> anniversary video – *The ILO and the quest for social justice, Introduction to ILO work over nine decades*, ILO, Geneva.
-

## 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, working or risk losing their work. It covers all occupations and employment in both public and private sectors, and applies also to small businesses and the informal economy. 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 module introduces the internationally recognized concepts and approaches to eliminate discrimination and promote equality of opportunity and treatment, taking into account the special characteristics of the Chinese context. 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 and societies. The module provides a range of strategies, practical measures and tools to combat discrimination and promote equality in workplaces. It applies participatory training methods and hopes to inspire participants to take practical action.

The module includes four units:

- Unit 1.1 The equality principle and standards on equality at work
- Unit 1.2 Discrimination and equality: Concepts, principles and standards
- Unit 1.3 Why is equality important for people, society and business?
- Unit 1.4 Methods of application of Convention No. 111.

### Objectives

The overall objectives of this module are to raise participants' understanding on the fundamental concepts of discrimination and equality of opportunity and treatment in employment and occupation and to familiarize them with the principles, strategies and practical measures laid down in international labour standards for eliminating discrimination and promoting equality in workplaces.



## Section A. Learning content





## Section A. Learning content

### Unit 1.1 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 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**, have the right to pursue both their material well-being and their spiritual development in conditions of **freedom and dignity**, of **economic security** and **equal opportunity**”.<sup>1</sup> These principles are articulated as fundamental rights of every human being. What is right for the individual human being is also right for society, as well as smart for the economy and for the nation.

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

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

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

<sup>1</sup> ILO: *Declaration of Philadelphia*, General Conference of the International Labour Organization, 26<sup>th</sup> Session, Philadelphia, 1944.

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

### 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 International Labour Organization (ILO) since it was established in 1919.

#### Box 1.1 Non-discrimination in ILO constitutional documents

1. The **Treaty of Versailles** of 1919 (Part XIII, Article 427) initially spelled out nine objectives for the International Labour Organization and three of these specifically refer to the promotion of equality between all workers:
  - The principle that men and women should receive equal remuneration for work of equal value.
  - The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.
  - Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.
2. The **Declaration of Philadelphia** (1944) reformulated these objectives in a formal Annex to the ILO Constitution.

Believing that experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organization that lasting peace can be established only if it is based on social justice, the Conference affirms that:

- a) 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;
- b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy;
- c) all national and international policies and measures, in particular those of an economic and financial character, should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective; .....

The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:

- a) full employment and the raising of standards of living;
- b) the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; ...
- h) provision for child welfare and maternity protection; ...
- j) the assurance of equality of educational and vocational opportunity.

3. Recognizing that economic and social policies are mutually reinforcing in creating broad-based sustainable development, the international community adopted the **ILO Declaration on Fundamental Principles and Rights at Work** in 1998, declaring that all Members have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the fundamental principles and rights related to:
  - the elimination of discrimination in respect of employment and occupation
  - the elimination of all forms of forced or compulsory labour

- the effective abolition of child labour
- freedom of association and the effective recognition of the right to collective bargaining.

4. 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.”

In order to achieve an improved and fair outcome for all, member States pledged to pursue four equally important strategic objectives:

- promoting employment by creating a sustainable institutional and economic environment;
- developing and enhancing measures of social protection, i.e. social security and labour protection to ensure a just share of the fruits of progress to all;
- promoting social dialogue and tripartism;
- respecting, promoting and realizing the fundamental principles and rights at work, i.e. freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

Gender equality and non-discrimination were singled out as “cross-cutting issues” for the realization of decent work for all, as well as “essential for sustainable economic and social development and efficiency.”

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

International labour standards are the key instruments through which the Organization 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.



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

The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation, 1958 (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 the chance to secure access to training, placement or employment that is not less favourable than the chances of persons in the same or a comparable situation.
- Equal treatment in employment means that an employer must not treat an employee less favourably than other employees who are in the same or a comparable situation.

The **Equal Remuneration Convention, 1951 (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 at the end of Module 1.

A list of the main, up-to-date Conventions and Recommendations that articulate standards for benchmarking progress in the elimination of discrimination in employment and occupation is given below.

#### Box 1.2 International labour standards benchmarking non-discrimination

- The **Equal Remuneration Convention, 1951 (No. 100)**<sup>2</sup> and the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)**<sup>3</sup> set the fundamental standards for 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.
- Two other standards are central to achieving **equality between men and women** at work. The **Workers with Family Responsibilities Convention, 1981 (No. 156)**<sup>4</sup> requires ratifying states to make it a goal of national policy to enable 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. The **Maternity Protection Convention, 2000 (No. 183)**<sup>5</sup> applies to all employed women including those in atypical forms of dependent work. It provides for 14 weeks of maternity benefits and entitles women on maternity leave to a cash benefit. The Convention requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which is harmful to her health or that of her child and provides for protection from discrimination based on maternity. The standard prohibits employers from terminating the employment of a woman during pregnancy or absence on maternity leave, or during a 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. The Convention also provides a woman the

<sup>2</sup> Supplemented by the Equal Remuneration Recommendation, 1951 (No. 90).

<sup>3</sup> Supplemented by the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111).

<sup>4</sup> Supplemented by the Workers with Family Responsibilities Recommendation, 1981 (No. 165).

<sup>5</sup> Supplemented by the Maternity Protection Recommendation, 2000 (No. 191).

right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

- Convention No. 111 does not strictly prohibit distinctions on the basis of **nationality**, that is, nationality itself is not a prohibited ground under the Convention. However, both nationals and non-nationals enjoy protection against discrimination on the grounds covered by the Convention. For example, Convention No. 111 applies when women immigrants are given lower pay and longer working hours as compared to female nationals in the same or similar jobs. Migrants who reside illegally but work in another country are also entitled to equal treatment, for example, with regard to receiving equal pay for services carried out. However, the protection of non-discrimination does not extend to the right to work or job security as a result of their employment. 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)**<sup>6</sup> and the **Migrant Workers (Supplementary Provisions) Convention, 1973 (No. 143)**.<sup>7</sup>
- Convention No. 111 prohibits discrimination in workplaces based on race and national extraction, both of which include ethnic origin. This prohibition reflects the appreciation of the cultural and biological diversity of certain traditional communities. Since then, the international community has accepted the principle that the cultures, ways of life, traditions and customary laws of indigenous and tribal peoples are valuable and need to be respected and protected, and that indigenous and tribal peoples should participate in decision making processes in the country in which they live. The **Indigenous and Tribal Peoples Convention, 1989 (No. 169)** is to date the only international treaty dealing exclusively with the rights of indigenous and tribal peoples. Convention No. 169 provides for consultation and participation of indigenous and tribal peoples with regard to policies and programmes that may affect them. It reaffirms their fundamental rights and establishes general policies regarding indigenous and tribal peoples' customs and traditions, land rights, the use of natural resources found on traditional lands, employment, vocational training, handicrafts and rural industries, social security and health, education, and cross-border contacts and communication.
- Convention No. 111 does not explicitly prohibit discrimination on the basis of disability. The Convention does recognize, however, that persons with disabilities need "special protection and assistance". Measures to that end should not be considered as discrimination against persons without disabilities. The **Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)**<sup>8</sup> sets forth the principles of national policy for the vocational rehabilitation and employment of persons with disabilities in the labour market, and provides for the setting up and evaluation of vocational guidance, vocational training, placement and unemployment services for persons with disabilities. China has ratified Convention No.159.
- The **Employment Policy Convention, 1964 (No. 122)** articulates the human right to work in a dynamic economic environment governed by market forces. China ratified this key governance Convention in 1998. The Convention requires ratifying states to declare and pursue an active policy designed to promote full, productive and freely chosen employment. Such a policy must aim to ensure that there is work for all who are available for and are seeking work; that such work is as productive as possible; and that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. This policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices. The Convention also requires member States to take measures to apply an employment policy in consultation with workers' and employers' representatives.

<sup>6</sup> Supplemented by the Migration for Employment Recommendation (Revised), 1949 (No. 86). The Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100) provides further guidance.

<sup>7</sup> Supplemented by the Migrant Workers (Supplementary Provisions) Recommendation, 1975 (No. 151).

<sup>8</sup> Supplemented by the Vocational Rehabilitation and Employment (Disabled Persons) Recommendation, 1983 (No. 168), and to be read together with the Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99).

- The **Human Resources Development Convention, 1975 (No. 142)** requires ILO member States to develop policies and programmes for vocational training and guidance. These policies and programmes should “encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations, account being taken of the needs of society.” It should be ensured that “comprehensive information and the broadest possible guidance are available to all children, young persons and adults, including appropriate programmes for all handicapped and disabled persons.” The **Human Development Recommendation, 2004 (No. 195)** encourages member States, in the context of developing competencies, to: “(h) develop equal opportunity strategies, measures and programmes to promote and implement training for women, as well as for specific groups and economic sectors, and for people with special needs, with the objective of reducing inequalities; (i) promote equal opportunities for, and access to, career guidance and skill upgrading for all workers, as well as support for retraining employees whose jobs are at risk.”
- The **Private Employment Agencies Convention, 1997 (No.181)** requires ratifying states to ensure that private employment agencies respect non-discrimination principles. Article 5 requires, more specifically, that member States 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. At the same time, private employment agencies must not be prevented from providing special services or targeted programmes designed to assist the most disadvantaged workers in their job seeking activities. The Convention provides for cooperation between private and public employment services, general principles to protect jobseekers against unethical or inappropriate practices, and protection of workers under subcontracting arrangements and workers recruited from abroad. The Convention also applies to temporary work, outsourcing and dispatch agencies.
- Convention No. 111 does not strictly prohibit discrimination based on age. However, the **Older Workers Recommendation, 1980 (No. 162)** recommends that older workers should, without discrimination on the grounds of their age, enjoy equality of opportunity and treatment in employment.

### 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 right<sup>9</sup>

The nine core human rights treaties reflect the general principle, adopted by the Universal Declaration of Human Rights (UDHR) 1948, that the rights set out in the treaties 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

<sup>9</sup> Office of the High Commissioner for Human Rights: *OHCHR Factsheet 30*, <http://www2.ohchr.org/english/bodies/docs/OHCHR-FactSheet30.pdf> (accessed 30 Nov. 2010).

- National or social origin
- Property, birth or other status.

The same list is 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. Two treaties, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 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 1.3 International human rights treaties of the United Nations

Nine international human rights treaties are considered core human rights treaties:

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

### Box 1.4 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.



More information about the ILO and international standard setting as well as ILO mechanisms and procedures to assist countries in implementing the provisions is provided in Annex 4 at the end of this Module.

### 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 citizen's human rights, equality before the law, and their right to work, to rest and to have access to 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).

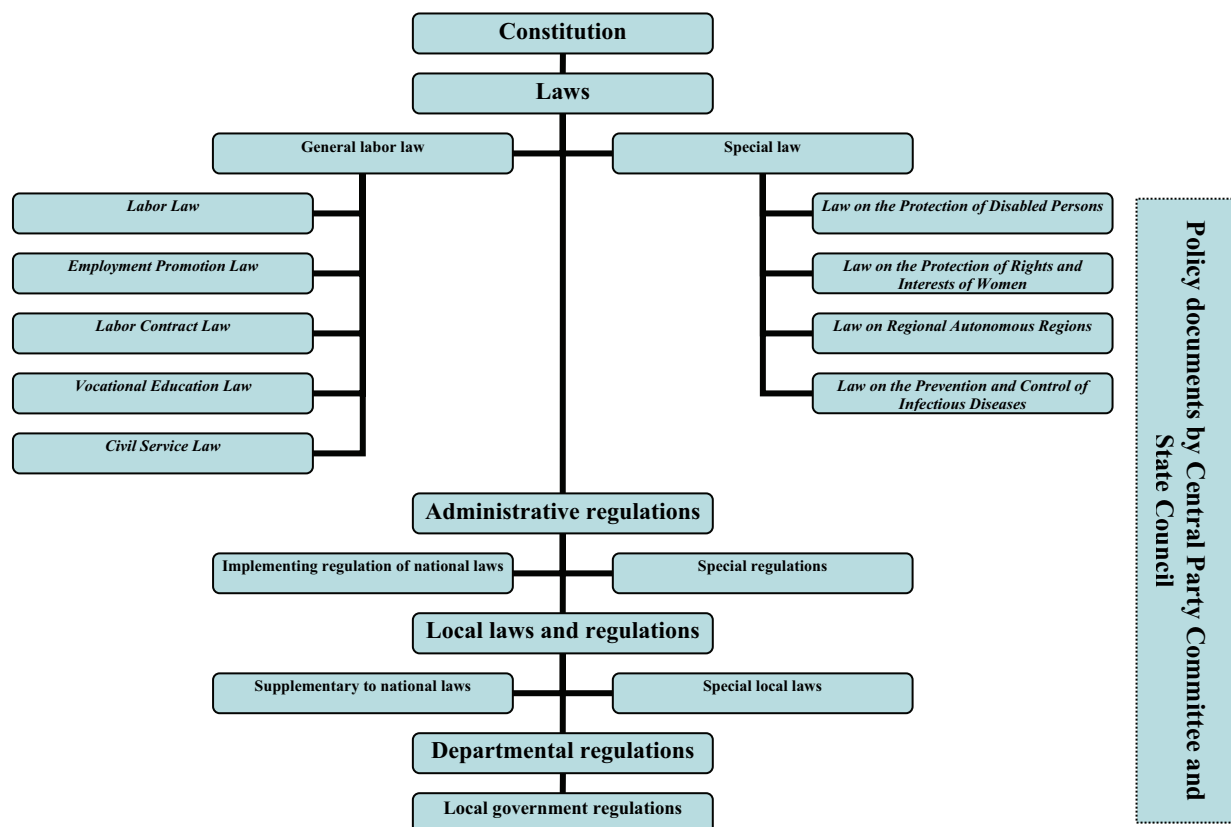
In addition, dispatched workers are guaranteed the right to equal pay for equal work under the *Labour Contract Law* (Art.63).  See Box 1.5 below for further information.

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 direct access to the 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 the raising of 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. Furthermore, 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 employment<sup>10</sup>



#### Box 1.5 Key non-discrimination provisions in Chinese national legislation

|                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>General discrimination prohibitions</b> | <p>“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 <b>equal before the law</b>” (Constitution Art 33).</p> <p>“Workers seeking employment shall not be subject to discrimination on the basis of <b>ethnicity, race, gender, religious belief, etc</b>” (Employment Promotion Law, Art. 3.2).</p> <p>“Workers shall not be discriminated against in employment due to their <b>ethnicity, race, sex, or religious belief</b>” (Labour Law, Art. 12).</p>                                                                                                                                                                                                                                                 |
| <b>Women</b>                               | <p>“Women in the People's Republic of China enjoy <b>equal rights</b> 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).</p> <p>“The State shall ensure that women enjoy <b>equal labour rights</b> 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</p> |

<sup>10</sup> W. Wang: *Unpublished training materials* (Beijing, 2008).

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                            | <p>any content, which restricts female workers from getting married or bearing a child” (Employment Promotion Law, Art. 27).</p> <p>“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).</p> <p>“An employer is <b>not allowed</b> to unilaterally <b>terminate a labour contract</b> 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. 42).</p> |
| <b>Ethnicity</b>           | <p>“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. <b>Discrimination against and oppression</b> of any nationality are <b>prohibited</b>” (Constitution Art. 4).</p> <p>“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).</p>                                                                                                                                                                                                                        |
| <b>Religion</b>            | <p>“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; <b>nor may they discriminate</b> against citizens who believe in, or do not believe in, any religion” (Constitution Art. 36).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Disability</b>          | <p>“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).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Infectious diseases</b> | <p>“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 or her from employment. However, before he or she is cured or excluded from the possibility of spreading the disease (to be confirmed by medical test), he or she shall not take up jobs, in which he or she 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).</p>                                                                                                                                                                                                                                                                                                    |
| <b>Rural workers</b>       | <p>“Rural workers who enter cities for employment shall enjoy equal labour rights with urban workers. Discriminatory restrictions against rural workers entering cities for employment are not allowed” (Employment Promotion Law, Art. 31).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Dispatched workers</b>  | <p>“Dispatched workers enjoy the same rights of <b>equal pay for equal work</b> 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).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |



For an overview of these legal provisions at the national, regional and local levels in China, see Annex 5 at the end of this Module.

## Unit 1.2 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



**“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, productivity or prior qualifications may be a legitimate reason to pay one person more than another for a job of the same value. However, 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.

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 while another one is not; when a person is preferred over another one; or when a person is treated in one way, while another person is treated in another way. 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 grounds but can be related to the content of a job, does not amount to discrimination.<sup>11</sup> **Job content** is often also referred to as “**inherent or objective requirements of the job**” or “**genuine occupational requirements.**” For example, an employer has a vacancy for a position of electro-technician that requires a certified set of skills. An employer who selects a man who is not qualified as an electro-technician for the job rather than a woman who is fully qualified as an electro-technician discriminates against the woman. The employer does not discriminate against a man who does not possess the skills certification by selecting a woman who is certified to have the required skills.

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, etc.”**

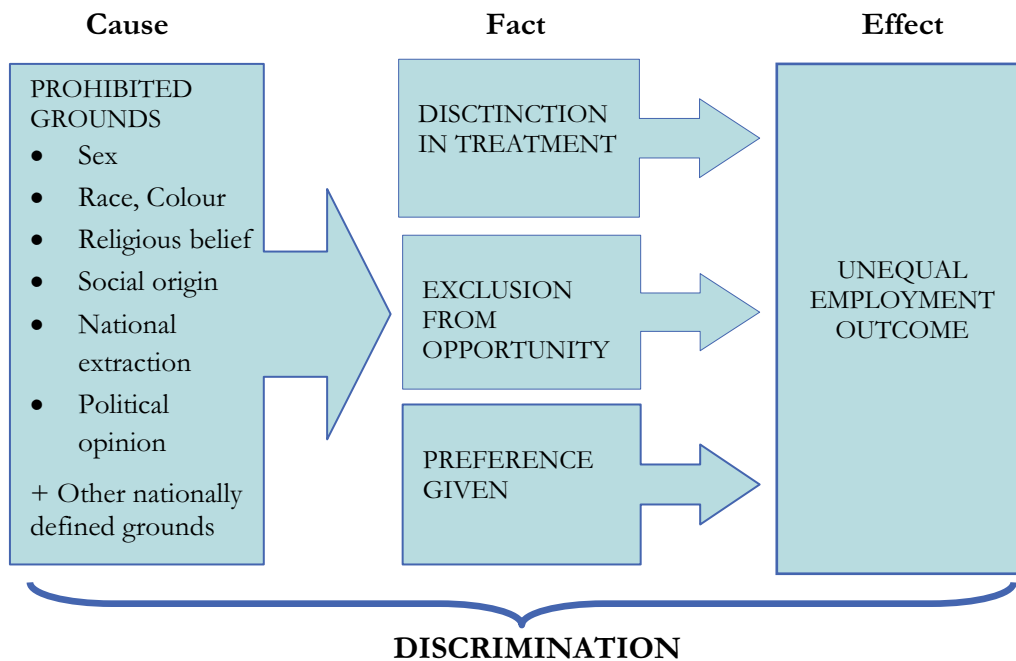
If differential treatment based on any of the prohibited grounds leads to unequal outcomes or less favourable results, this amounts to discrimination. When analyzing whether discrimination has taken place the focus should be on assessing the **actual outcomes**, that is, actual labour market situations or pay levels. Differential treatment based on any of the prohibited grounds amounts to discrimination, even if discrimination is not intended. 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.

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<sup>11</sup> Article 3 (3) of Convention No. 100 provides specifically: “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.”

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



### Equality of opportunity and treatment

Equality of opportunity and treatment at work means that decisions at all stages of the employment cycle are made with reference to merit, skills, experience, ability and suitability for a position without interference of discriminatory bias and assumptions based on the applicant's or worker's race, sex, ethnicity, religion, political opinion, or social origin.

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 from 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 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. It can happen directly or indirectly, and 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 those from one ethnic group more than those from 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 also often entitled to more fringe benefits than women engaged in the same work or in jobs of equal value.

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

### 2.2 Direct discrimination

Another useful distinction to make is the difference between direct and indirect discrimination. Direct discrimination occurs when a prohibited ground is 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 only men or only women; for persons with a different complexion; or for persons confessing to a different religion. An employer who establishes a different wage scale for male and female cleaners directly discriminates against the sex that earns the lower wage.

### Box 1.6 Example of direct, “de jure” discrimination of rural migrant workers

Denying workers from rural areas employment opportunities on the basis of their household registration (Hukou) amounts to direct and “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.  See also Module 4. Promoting equality at work for rural migrant workers in China.

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

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. 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. Indirect discrimination in employment occurs when differential treatment between persons is formally based on an objective factor, but leads to a labour market outcome that disproportionately disadvantages persons of a particular sex, ethnicity, social origin etc. and cannot be justified by the inherent requirements of the job.  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 results 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, therefore, play a vital role in establishing or disproving indirect discrimination because hard data can provide the evidence that an employment practice has an adverse impact on one group and not on another.<sup>12</sup> 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

<sup>12</sup> C. Thomas and R. Taylor: *Enforcement of equality provisions for women workers* (Geneva, ILO, 1994).

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

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.<sup>13</sup>

### Box 1.7 Examples of indirect discrimination

As explained above, an employer of cleaning workers who has a different wage scale for men and for women cleaners engages in direct 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 (a clean working or living environment) is exactly the same, engages in indirect discrimination. An employer who pays certain benefits to messengers (who are all men) but not to cleaners (who are all women) although the value of their work is by and large comparable, engages in indirect discrimination.

"Indirect" discrimination means imposing the same requirement or condition on everyone which has an unfair effect on a particular group of persons. As men on average are taller and weigh more than women, uniform minimum height and/or weight requirements for a job will inevitably exclude a higher proportion of women than of men.

- In Hong Kong, China it was common in the past to see a minimum height mentioned as a job factor in job advertisements for managerial or clerical jobs. For example, if a bank only recruits bank tellers who are at least 6 feet tall, it is likely that many more women than men are unable to satisfy this height requirement. This kind of unfair requirement was outlawed as it constitutes "indirect" sex discrimination if there is no reasonable justification for the requirement.\*
- In Australia, height and weight requirements were traditionally used as proxies for more specific physical abilities, particularly in “security-type” positions. Now, where they remain, they serve merely to perpetuate the image of maleness surrounding those positions. Organizations such as the Victoria Police have abolished height requirements altogether and this has provided a basis for questioning the reasonableness of their maintenance elsewhere.\*\*

\* Source: Constitutional and Mainland Affairs Bureau of the Government of Hong Kong, China, <http://www.cmab.gov.hk/en/issues/sdo.htm> (accessed 2009).

\*\* Source: R. Hunter: *Indirect discrimination in the workplace* (Annandale NSW Australia, Federation Press, 1992), p. 122.

## 2.4 Structural discrimination

Differential treatment is most readily thought of as emerging from the behaviour of an individual employer in a given situation at a given point in time. However, often discrimination is not an exceptional or aberrant occurrence, resulting from isolated acts of an individual employer or worker, but a systematic phenomenon, deeply embedded in the way organizations function, laws and rules are applied and workplaces operate. Its effects are far more significant, obviously, if it emerges from laws, administrative regulations, policies, practices, the functioning of institutions

<sup>13</sup> 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*, Geneva, 1999, p. 354.

or social patterns – this is known as **structural** (systemic, systematic or institutional) **discrimination** and must be addressed over time as a matter of public policy.<sup>14</sup>

#### Box 1.8 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 appraisals of jobs on the basis of 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 consist of 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 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."

Harassment is a form of discrimination if it is based on one of the prohibited grounds in the Convention or in national legislation. 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. **The Occupational Safety and Health Convention, 1981 (No. 155)** – ratified by China – defines "health" as indicating "not merely the absence of disease or infirmity ... [but also] the physical and mental elements affecting health which are directly related to safety and hygiene at work".

Harassment typically comes in two forms:

- "Quid-pro-quo" (meaning "this for that") harassment. This type of harassment can be compared to blackmail. 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

<sup>14</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); ILO: *Time for equality at work* (Geneva, 2003).

wage increase, a promotion or training opportunity, a transfer or job security. It forces the victim to give in to the demand or losing a job benefit.

- The creation of a hostile working environment. This refers to verbal, non-verbal or physical conduct such as a request for (sexual) favours that is unwelcome to the recipient, and interferes with people's performance at work due to an intimidating, offensive, abusive or poisoned working environment.

The law of the European Union illustrates how harassment may be defined as a form of discrimination on the basis of sex, ethnic origin or any other prohibited ground:

- Harassment shall be deemed to be discrimination ... when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>15</sup>
- Harassment shall be deemed to be a form of discrimination ... when unwanted conduct related to any of the grounds referred to in [the Directive] takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>16</sup>
- Harassment is defined as an unwanted conduct related to the sex of a person which occurs with the purpose or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Sexual harassment is defined as any form of unwanted verbal, non-verbal or physical conduct of a sexual nature which occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.<sup>17</sup>

In a work-related context, harassment can emanate from an employer, a supervisor, a colleague, a visitor, a customer, and anybody with whom the worker is expected to interact. It takes place at the physical workplace, but may extend well beyond that and all work-related interactions where a perpetrator has "access" to the person being harassed by virtue of a job situation or relation. 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.

In the past there was little awareness of sexual harassment in workplaces and society, with gender stereotypes abounding, such as "women ask for it," or "deep in their heart they like it" or "it is just some workplace fun."<sup>18</sup> However, governments in an increasing number of countries have taken legal action, including in China where the practice was outlawed in 2005.



See Exercise 8 on preventing and addressing workplace harassment in this Module and Box 2.17 in Module 2 for a Code of practice on action against sexual harassment at work in Malaysia.

<sup>15</sup> Council of the European Union: *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin.*

<sup>16</sup> Council of the European Union: *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation.*

<sup>17</sup> European Parliament and Council of the European Union: *Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.*

<sup>18</sup> N. Haspels, Z.M. Kasim, C. Thomas and D. McCann: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok and Geneva, ILO, 2001).

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

The Convention requires ratifying States to ensure protection against discrimination on seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as other grounds prohibited in national legislation. ILO experience<sup>19</sup> learns that discrimination in many cases is not limited to discrimination on solely one ground. For example, a young woman from a hill tribe who has migrated from an isolated rural area to a capital city may have limited job options and has to cope with multiple forms of discrimination on the grounds of race, colour, sex, national extraction, social origin and possibly age. This leads to a vicious circle of cumulative disadvantage.

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

#### 3.1 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.



See Module 3. Promoting ethnic and religious equality at work for more information.

#### 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 – or 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 health, may justify and sometimes even require differences in treatment between women or men to the extent that they are affected differently by certain characteristics of the work. 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 can not, and should and should not do.

<sup>19</sup> See for example, ILO: “Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)”, in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98<sup>th</sup> Session, Geneva, 2009.

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 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 Module 2. Promoting gender equality at work for more information.

### 3.3 Social origin<sup>20</sup>

Discrimination in employment and occupation based on social origin occurs when a person's job opportunities or treatment are determined by his or her belonging to a widely recognized "class" in society. This type of social stratification may take the form of socio-economic status (including the privileges attached to it), a socio-occupational category or a caste, but also household registration if privileges are attached to this registration.

#### Box 1.9 Examples of discrimination on the basis of social origin

**Socio-economic status** – Distinctions are made on the grounds of:

- Caste – the Dalits ("untouchables") in India
- Household registration – the Hukou system in China
- Differences in status – in rural societies 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.

**Socio-occupational category** – the Burakumin in Japan

- The Buraku people are a Japanese social minority group. They are ethnically and linguistically indistinguishable from other Japanese people. They 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.  See also Box 4.3 in Module 4.



See Module 4. Equality at work for rural migrant workers in China for more information.

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<sup>20</sup> ILO: "Equality in employment and occupation, General survey," in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 75<sup>th</sup> Session, Geneva, 1988, p. 53.

### 3.4 National Extraction<sup>21</sup>

Discrimination in employment and occupation based on national extraction covers distinctions made on the basis of a person's place of birth, ancestry or foreign origin. The ground of national extraction also includes national ethnic or linguistic minority groups. Distinctions made between citizens of the same country on the basis of the foreign birth or origins of some of them are one of the most evident examples.<sup>22</sup>

An example of direct “de jure” discrimination on the grounds of national extraction is found in the Constitution of one country which provides that all citizens are equal before the law, subject to benefits conferred upon citizens who never renounced their nationality. This resulted in employment discrimination as some of these benefits relate to employment opportunities in the public service.



See Module 3. Promoting ethnic and religious equality at work for more information.

### 3.5 Religion

Discrimination based on religion covers acts and attitudes of intolerance towards persons who profess a particular religion or religious beliefs, 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 from the day on which the enterprise is closed, 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.

An example of direct, “de jure” discrimination on the grounds of religion is found in one country where retired public officials had their pensions withdrawn because of their adhesion to their faith. Some public officials had to reimburse the State the amount of salaries that they had received during their careers as officials. In this country such discriminatory acts cease to apply if the members of these groups renounce their faith and publically give allegiance to the faith professed by the majority.



See Module 3. Promoting ethnic and religious equality at work for more information.

### 3.6 Political opinion

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

The protection is not limited to differences of opinion within the framework of established principles, but also covers doctrines that are aimed at fundamental changes in the institutions of

<sup>21</sup> Ibid. p. 32.

<sup>22</sup> For further examples, see ILO: “Observations on France,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95<sup>th</sup> and 97<sup>th</sup> Sessions, Geneva, 2006 and 2008; and “Observations on the Netherlands,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 97<sup>th</sup> Session, Geneva, 2008.

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.

An example of combating direct, “de jure” discrimination on the grounds of political opinion occurred in the ‘80s in a European country when it repealed the provisions of earlier legislation which required public agencies to keep individual files on each staff member with information on their political opinions and activities and their loyalty to the established régime. The Act provided for the destruction of such files and of any material making it possible to evaluate the political opinions of the persons concerned. 📖 See Good Practice 4 and Case 4 in Section E of this Module for examples of addressing discrimination based on political opinion.

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. More information on several of these grounds follows.

##### **4.1 Maternity**

This ground normally includes pregnancy, confinement and related health conditions, breastfeeding, nursing or the fact of having to take care of a baby. 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. 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. 📖 See Box 2.3 with evidence of discrimination on the basis of pregnancy and marital status in Asia in Module 2.

##### **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”.

 For a case study on discrimination on the basis of family responsibility, see Unit 2.1 Sex discrimination at work: Concepts, standards and strategies in Module 2.

### 4.3 Anti-union discrimination

Discrimination based on a person’s trade union membership, trade union leadership (including standing for trade union office) 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 this 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.

An employer may discriminate based on age in cases where the employer can prove that age is an occupational requirement justified by the nature of the job, although exclusively economic reasons do not constitute a justification. The exception of genuine occupational requirements has been raised in a series of occupations for reasons involving the safety or health of the worker or of third parties. Examples are airline pilots, fire-fighters, police officers, bus drivers and school bus drivers, etc. To constitute a genuine occupational requirement, the impact of age on safety or health should be based on scientific evidence.

 See Case 5 in Section E of this Module for an illustration of the linkages between age and occupational requirements and Box 1.26 further on in this Module for a discussion on age discrimination and retirement age. Unit 2.2 Sex discrimination at work in China in Module 2 explains discrimination related to differences in obligatory retirement ages of women and men.

### 4.5 Health and disability

Impairments 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.

A person's current state of health may be examined for the exercise of a particular job, in relation to the occupational requirements for that job. However, assessments of aptitude for a job should take into account the current state of health or an established prognosis, and should not be based on previous or possible future problems. Specific health conditions, such as maternity or an infectious disease may by themselves not form a valid reason to refuse recruitment or dismiss a

person, if this condition does not affect job performance. With regard to an individual's medical history, provisions which make it compulsory for persons who have suffered from a specific disease (mental illness, cancer, tuberculosis, etc.) to provide guarantees regarding their health should be abolished.

Equal rights to employment for persons living with a disability or an infectious disease are an important workplace issue. Particular impairments may be relevant to the normal exercise of particular jobs, and should first and foremost be met with efforts to accommodate the working environment in such a way that the impaired person can be regularly employed.

An example of combating discrimination on the basis of health status occurred in Hong Kong SAR China when three men were awarded damages by the Hong Kong District Court because the Government had denied them employment purely on the grounds that their parents were affected by schizophrenia. The three men had either been refused a job or dismissed from their post without a clear reason. An investigation by the Equal Opportunities Commission revealed the link to their family history and thus genetic discrimination.<sup>23</sup>



For more information, see Module 5. Discrimination, health and disability.

#### 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.<sup>24</sup>

As mentioned earlier, 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.  See Box 1.2 in Unit 1.1 for examples.

#### 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.<sup>25</sup>

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<sup>23</sup> Quoted from ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

<sup>24</sup> The Migration for Employment (Revised) Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) include specific provisions to ensure their equal treatment and opportunities and protect them against discrimination.

<sup>25</sup> ILO, *Time for equality at work*, Geneva, 2003. For more information on European legislation on sexual orientation, see Council of the European Union: *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*.

## 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 as follows:

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

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

### 5.1 Education and training

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

Vocational guidance plays a key role in opening a broad range of occupations to all, 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 1.10 Protection of access to education

- A student applying to the Henan Financial Studies Institute in 2005 was denied admission on the basis of her Hepatitis B status, despite the fact that her score on the admission test was well above the cut-off for admission to that school. The student, who was referred to by a pseudonym, sued, but reached an agreement with the school for admission before the case went to court. The case was dropped and the student was admitted.

- In 2006, a group of seven Uighur Muslim students at an elementary school in Urumqi, the capital of Xinjiang Uighur Autonomous Region, sued their school after they and twelve others were dismissed because they had tested positive for Hepatitis B. Although Ministry of Health regulations forbid discrimination against persons with Hepatitis B, officials in Xinjiang claimed that its actions were legal and that the incident had been misrepresented in the national media. The seven students later dropped their case ...

Sources: “Quanguo shouli gaokao zhaosheng yigan qishi an tingwai hejie” [First Case of ‘Gao Kao’ Student recruitment discrimination on the basis of Hepatitis B is settled out of court], in China Youth Daily, 6 December 2005, <http://legal.people.com.cn/GB/42732/3917808.html> (“gao kao” refers to the national college entrance exam in China); T.E. KELLOGG: “Courageous Explorers? Education Litigation and Judicial Innovation in China” in *Harvard Human Rights Journal* (Cambridge MA, 2007), Vol. 20.

## 5.2 Access to employment and use of employment services

Biases against persons on grounds not related to the genuine requirements of a job but on individual characteristics such as their sex, ethnicity or social origin tend 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 the 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.

Worldwide, the use of such intermediaries has become increasingly common, and, especially if it concerns placement services for temporary dispatch workers, discrimination abounds. 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.  For more information, see Section 3.5 in Unit 1.4 Methods of application of Convention No. 111.

## 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.<sup>26</sup>



See Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous people in Module 3. Promoting ethnic and religious equality.

### 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 their 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

Equal pay<sup>27</sup> for work of equal value features prominently in the Equal Remuneration Convention, 1950 (No.100). Convention No. 111 broadens the scope of Convention No. 100, expanding the prohibition of pay discrimination on all grounds covered by Convention No. 111. 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 in terms of the required knowledge, skills and experience, efforts, responsibilities and working conditions.

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

<sup>26</sup> ILO, *Equality in employment and occupation*, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75<sup>th</sup> Session, Geneva, 1988, para 35.

<sup>27</sup> In this publication equal remuneration for work of equal value, equal pay and pay equity mean the same and are used interchangeably. For those interested in the fine distinctions the term remuneration, used in Convention No. 100, refers to pay and all other rewards and benefits in exchange for work. Equal pay has a connotation with the fundamental and inalienable right of human beings to earn the same as others for work of equal value. Pay equity underlines that something extra needs to be done to redress a pay gap.

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.



See Module 2. Promoting gender equality for a more detailed discussion on equal remuneration.

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

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. As mentioned earlier, indirect discrimination occurs when apparently neutral terms and conditions in practice lead to disadvantages primarily suffered by a category of persons distinguishable by one of the prohibited grounds in Convention No. 111 and/or in national legislation.

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. Such treatment may also occur by reason of family circumstances and of the weight given to the idea that a woman's earnings are merely a "supplementary income" in a household while the man is assumed to be the head of the household and the main “breadwinner” or “rice bowl provider.”

## 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 be able to recruit people who match the requirements of the job they will carry out. Certain jobs do require that a man is preferred over a woman – or a woman over a man; or that persons confessing to a certain religion are preferred over persons confessing to other religions.

Other jobs impose requirements that are easier to meet by people of a certain sex, ethnic origin or ability. Usually, it is not prohibited to prefer or exclude people based on such requirements if these requirements are:

- 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 often necessary to determine whether a certain personal characteristic is a real, genuine occupational requirement for a certain job or not.

#### **Box 1.11 Examples of prohibited grounds constituting a genuine occupational requirement**

- Sex – Occupational requirement for male or female roles played in theatrical performances
- Political opinion – For senior positions in government institutions
- Religion – Muslim faith for employment by a butcher producing halal meat

An organization whose work is based on a specific religion or belief may be able to use this rule. A Catholic care home might be able to show that its care providers should be Catholic because their work will involve them meeting a client's spiritual needs. But they might not be able to make the same claim for their reception staff, who do not need to provide spiritual leadership or support to the clients.

A job advertisement stating that only men or only women need apply will normally be considered to discriminate against persons of the excluded sex. However, a top grade women fashion boutique looking for a sales person, and requiring women with experience in fashion retail may not be considered discriminatory if the job involves modeling items on offer.

Source: <http://www.equalityhumanrights.com/your-rights/religion-and-belief/when-does-the-law-allow-religious-discrimination/a-genuine-occupational-requirement/> (accessed Nov. 2009).

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.



See Section 4.1 in Unit 4.2 and Case B in Exercise 3 in Module 4. Promoting equality at work for rural migrant workers in China for more information.

## **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 activities that:

- a person has actually undertaken, and not merely to his or her membership of a particular group
- have the power of harming the security of the State and are not merely expressions of opinions or religious, political or philosophical beliefs
- are sufficiently well-defined and delimited, that is, more specific than merely safeguarding broad notions such as “public interest”, “public order” or “loyalty.”

For example, as mentioned earlier, it can be justified to reserve selected senior government posts for members of an elected political party with a view to ensure good governance and supervision of government policies. However, discrimination on the basis of political opinion would occur if a person would be denied a low-ranking manual job in the public service because of the person's membership to a political party which advocates fundamental changes to the established governance system, but does not apply violent methods of advocacy.

### 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

In the past it was common practice to protect groups such as children, young or older workers and women from work and work processes considered hazardous to them in international labour standards. However, developments in scientific research, work-related technology and demographics have gradually raised questions whether blanket protection measures traditionally afforded to some of these groups defined by a prohibited ground (e.g. women workers, young or older workers) perpetuate societal prejudice against these groups, and 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. One such key circumstance is maternity and reproductive health, in particular pregnancy, child birth and a period after delivery.

In many countries, 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.



See Box 2.6 Challenging stereotyped ideas about physical abilities of male and female workers in Module 2. Promoting gender equality at work for more information.

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. It is, however, especially unhealthy for pregnant women because of the vulnerability of the child and the health strain. 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 rather than prohibiting only women to engage in certain types of work, such as underground mining. The latter may actually make the situation worse, because it may drive women into carrying out such work illegally for survival purposes.

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.

More sex-disaggregated data on occupational accidents and diseases must be collected to provide the scientific evidence for sound policies. Currently, the data often do not cover many occupations in which women are concentrated (domestic workers, part-time workers, and homeworkers).

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

The adoption of affirmative action 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 and special measures are to be designed and implemented to redress the effects of past and continuing discrimination against specific groups.

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 stereotype and stigma.



Affirmative action measures need to be carefully designed taking into account the diversity of situations of certain categories of persons, so as to halt the discrimination practised in their regard. These measures are known by many names.<sup>28</sup> Within ILO they are generally referred to as affirmative action or positive measures. They are designed to re-establish a balance, and to put everybody on an equal footing and are usually part of a broader effort to eliminate inequality in society.

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 persons with disabilities 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 1.12 Examples of national legislation offering temporary support to disadvantaged groups

China – The Regulation on the Employment of Disabled Persons provides:

The proportion for an employer to hire disabled people shall not be lower than 1.5 per cent of the total number of its staff members in office. Clause 16 of Regulation of Beijing on the Protection of the Disabled provides that if the job is suitable for the disabled, the disabled shall be employed preferentially.

Spain – Preferential treatment for older workers (1980s)

A number of incentives were offered to enterprises that recruit workers over the age of 45. For each such worker that an enterprise hired, it received a subsidy, a two-year 50 per cent reduction of social security contributions in respect of that worker, and free vocational training for that worker.

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, not imposing a “disproportionate or undue burden” to accommodate the needs of a particular group of persons such as people with disabilities, older workers or workers following a particular religion. 📖 See Unit 5.1 of Module 5. Discrimination, Health and Disability for more information on this measure to facilitate the employment of persons with disabilities.

<sup>28</sup> 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. The term equity also implies the need for extra means to reach the goal of equality. For more information, see Annex 5. Glossary of terms.

### Box 1.13 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://www.montanadiscrimination.com> (accessed 15 Sep. 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. Important issues to consider are:

- **Who pays the bill?** If companies are individually liable to foot the entire bill for affirmative action or reasonable accommodation without any practical support or guidance, the result may not lead to more and better jobs for the underrepresented group, but, on the contrary, to even more employment discrimination against them.
- Striking a **fine balance between considerations of merit and affirmative action.** Merit considerations are the basic principle in deciding on job recruitment and promotion and merit is the primary criterion for recruitment and promotion in societies where all persons have had equal chances to education and training, and employment discrimination does not exist. However, employers should also understand that the long-term economic and social gains of eliminating pronounced inequalities within society

cannot be achieved without businesses investing in short-term positive measures affecting their human resources policies.

- If merit is entirely excluded from decisions related to employment or occupation, even deserving members of the preferred group will continue to suffer from perceptions that their status is purely earned on the basis of their membership of the group.
- Preference for one sex or race, for example, is often disguised by referring to merit even if these grounds are obviously irrelevant for effective job performance. Merit should be defined in relation to the genuine job requirement. It can then feature as (one of) the most important legitimate criteria for selection, under the condition that discriminatory practices have been eliminated in the selection process.
- When establishing a quota policy for the employment of people with disabilities or from ethnic minorities, merit should still be considered in the employment decision. This is not automatically the case. For example, an employer who has filled his or her legal quota of disabled workers may often lawfully reject the most qualified applicant with a disability, if no law prevents him or her from discriminating on this ground.
- There is a wide belief among dominant ethnic groups in many countries that preferential treatment of ethnic minorities discriminates against the majority group. However, such views are usually not based on statistical evidence, for example, on poverty levels. The purpose of preferential treatment for the employment of ethnic groups is not to give members of a certain group permanent privileges, but to promote social inclusion and cohesion by temporarily giving them opportunities to reach a level where they can compete on merit with members of the non-preferred groups. However, in the case of China, "affirmative action" predominantly seeks to expand opportunities for employment or for holding office within in a certain geographical area associated with the origin of the concerned ethnic group. Understandably, such "static" privileges on which "merit" has little or no bearing, create a feeling of discrimination among members of the country-wide majority group in the country. Besides contributing little to inter-ethnic harmony, these privileges are of limited use to members of the ethnic minority, since (a) they can only be enjoyed within a narrow geographical area, and (b) they do little in the way of building "merit", so that the privileges need to be perpetuated to produce their "equality effect." Affirmative action measures might be more effective in promoting equality if privileges targeted the consistent acquisition of knowledge and skills that are both recognized and "marketable" outside the narrowly defined geographical area in which ethnic minorities live, that is, within the labour market for the country as a whole.

The key terms and definitions in the training materials are provided in Annex 6 Glossary of terms at the end of Module 1.

## Unit 1.3 Why is equality important for people, society and business?



“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-fulfilment by impeding the pursuit of material, social and spiritual needs. Exposure to being the subject of discrimination is usually not a one-off, stand-alone, isolated event but happens to people repeatedly on one or multiple grounds often from the day they are born and throughout their life. Over time this has a strong, cumulative feedback effect. This negative feedback effect of discrimination is not always recognized. For example, it is often thought that women select low-quality and low-pay jobs out of their “own free will”. This is interpreted by some as a sign of non-discrimination as if women make free, individual choices in accepting second class work. Others consider that free choice has little to do with such decisions but that women are “forced” to adapt to gender biases in the labour market. Repeated negative experiences in job search and treatment at work lead to the “discouraged worker” phenomenon, because repeated negative experiences are internalized, and shape the training and job choices, inspirations and efforts by workers.<sup>29</sup>

#### Box 1.14 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.<sup>30</sup> My father doesn’t like boys, but he hopes I can be as brave and strong.

<sup>29</sup> D. Grimshaw and J. Rubery: *The adjusted gender pay gap: A critical appraisal of standard decomposition techniques* (Manchester, UK, 2002); N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

<sup>30</sup> The girl’s name means ‘sword’ in Chinese, and is usually given to men.

I read about your comments on the case of Zhang Xianzhu<sup>31</sup> 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 1.15 Complaint from a helpless university graduate at the crossroads

Dear Professor,

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

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

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

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

<sup>31</sup> 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 National People's Political Consultative Commission (NPPCC) sessions, as this is about the equal employment rights of 130 million people. I really hope you can speak on behalf of the people who have been abandoned by society.

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

A helpless university student at the crossroads.

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

## 2. 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 1.16 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 labor 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.**

For good measure, it is emphasized here 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.

Separating relevant from irrelevant factors in employment decisions that affect people's opportunities and treatment at work is sometimes easy but sometimes difficult. This is because a factor that is irrelevant in the great majority of cases may be relevant in particular circumstances. However the effort to prevent discrimination or redress its negative effects is worth it and should become commonplace as an integral part of successful business strategies.

For example, the height of a worker is irrelevant for many jobs but there are some jobs for which a certain height is important to be able to do a good job. Height is unlikely to be a justifiable criteria for hiring a bank teller, just because a bank manager thinks tall people create a favourable impression on clients because a bank teller's main duty is to secure financial transactions. However, a basketball player may need to be tall in order to play well.

Similarly, the sex of a worker is a factor that in most cases should not influence decisions of recruitment, payment or what type of work to undertake. Yet there are limited circumstances in which it is precisely this factor that should determine the decision, for example, to employ male and female attendants in bathrooms for the respective sexes.

#### **Box 1.17 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 Partnerships & 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). <http://www.ncpp.ie/inside.asp?catid=291&zoneId=6&artid=1029> (Accessed 15 Sep. 2010).

## Unit 1.4 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 inclusive and equitable 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:

- Including equality and non-discrimination principles in its main **economic, employment and social development** policies, programmes, procedures and mechanisms
- Applying equality and non-discrimination principles in public sector **personnel and human resource policies**.

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.

Forms of discrimination in the labour market change over time. For this reason, it is important that the national policy is subject to a periodical review mechanism. Periodical review allows for the identification of emerging major problems; the evolution of effective methods for dealing with them; the recalibration of priorities of action; and for the regular evaluation of results.

## 2.2 Legislation

Legislation is most often found indispensable to create and consolidate a common understanding of how discrimination manifests itself in a national context and what remedies are most appropriate at a given point in time. 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 which provide definitions of discrimination and identify the specific grounds of discrimination, and the specific groups and situations to which the law applies.

### Box 1.18 Types of laws 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 (these are "laws" to the extent that national law considers them legally binding)

Constitutional provisions, and non-discrimination and equality laws are important, but insufficient. Generally, they lack specific enforcement and promotion mechanisms to redress

discriminatory employment practices. Therefore, real commitment to combat employment discrimination requires:

- Enshrining comprehensive non-discrimination and equality provisions in labour, employment, social protection and insurance laws with clear definitions of discrimination
- Including non-discrimination and equality principles and legal provisions in active labour market policies and programmes, ranging from employment promotion, labour contract and social insurance measures to training, enterprise and social finance development programmes geared at poverty reduction.



### 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.

## 3. Access to justice and legal protection

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

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

Adjudicating discrimination claims through regular court hearings, decisions and judgement 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.

**Box 1.19 Public interest litigation cases on equal rights and discrimination**

*Jiang Tao v. Chengdu Branch of the People's Bank of China*

In December, 2001, Jiang Tao from the Sichuan University Law School, brought a suit against the Chengdu Branch of the People's Bank of China, which had refused to employ Jiang on the grounds that his height was below 165cm. The court decided that the case was inadmissible and refused to accept the case.

*Li Fengling and others v. Nanping County of Guangxi Province*

In October 2005, Li Fengling, Huang Kunhong, Nong Hualing, Li Xueling and Nong Wenxiu, five female acting teachers in Nanping County of Guangxi Province filed a lawsuit against the local government of Nanping County, claiming that the defendant, who refused to employ them because their height was below 150cm, infringed their constitutional right to equal treatment.

*Zhou Xianghua v. Pingdingshan Branch of the Construction Bank in Henan province*

In 2005, Zhou Xianghua, an employee of the Pingdingshan Branch of the Construction Bank in Henan province, filed an application with the Labour Arbitration Committee, claiming that the bank discriminated against her by forcing her to retire at the age of 55, whereas her male colleagues could work until the age of 60. She also claimed that the Temporary Rules to Arrange the Old, Weak, Sick and Disabled Cadres were unconstitutional. The arbitrators rejected her request, and held that it did not have jurisdiction over deciding the constitutionality of the Temporary Rules to Arrange the Old, Weak, Sick and Disabled Cadres made by the State Council.

*Yang Shijian v. Ministry of Human Resources*

In October 2005, Yang Shijian from the Sichuan University Law School brought a suit in the Beijing Second Intermediate People's Court against the Ministry of Human Resources. The Ministry of Human Resources refused his application for the civil servants examination on the ground that he was over 35 years old. In Yang's opinion, the Ministry's actions violated the Chinese Constitution. The case is still pending.

Source: Dongfang Public Interest and Legal Aid Law Firm,  
[http://www.dfpilaw.org/en/show\\_news.asp?id=737&classid=12&boardid=12](http://www.dfpilaw.org/en/show_news.asp?id=737&classid=12&boardid=12) (accessed 16 September 2010).

### 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 1.20 Examples of the reversal of the burden of proof

- “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.”\*
- “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*, Art. 36 (6) signed into law by the President of Albania, 24 February 2010.

\*\* 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

A functioning labour inspection system is essential for good governance in the world of work. Labour inspection should play a key role in international and national strategies to ensure that decent work programmes are effectively implemented. The ILO Committee of Experts on the Application of Conventions and Recommendations noted in its 2006 General Survey on Labour Inspection<sup>32</sup>, that labour inspectorates are the principal, strategic government institutions that

<sup>32</sup> ILO: “Labour inspection, General survey,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1B) International Labour Conference, 95<sup>th</sup> Session (Geneva, 2006).

sustain ILO instruments once they have been incorporated into legislation. They ensure that ratified standards are implemented in practice. Labour inspectors are key players in implementing core labour standards, because they:

- Can enter workplaces and know workplace environments
- Can combine the functions of law enforcement and advisory services
- Form the connection between law and reality.

#### Box 1.21 Capacity building of labour inspectors – Czech Republic

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

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

 See Checklist 3. Desk review by labour inspectors and Checklist 4. Questions to ask during on-site labour inspections in Section D. of this Module.

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

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 1.22 Equal Opportunities Commissions – Hong Kong, China and France

The **Equal Opportunities Commission (EOC) in Hong Kong, China** 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. 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.

The HALDE of France, the **French Equal Opportunities and Anti-Discrimination Commission**, is an independent statutory authority, established by law on 30 December 2004 to fight all forms of discrimination. It has the following functions:

- **Private function (assisting private persons).** It assists any and all individuals who turn to it in identifying discriminatory practices and countering them. It provides advice on legal options and helps establish proof of discrimination. It has the power to refer cases to the court system on any discriminatory practice brought to its knowledge. It holds investigative powers to enquire into cases. It may demand documents and proof which the victim was unable to obtain, ascertain facts on site and take evidence from witnesses. The HALDE helps identify the procedure best-suited to the situation: A mediation session can be arranged in order to reach an agreement, or when discrimination has been ascertained, the national prosecutor may be called upon for a decision. It may secure compensation, suggest payment of damages to the party discriminated against and trigger proceedings if damages are refused (settlement with compensation). It may speak before the judge if the victim decides to go to court, and publicly disclose a discriminatory practice.
- **Public function (assisting public authorities).** The HALDE issues opinions and recommendations to the Government, the Parliament and the public authorities to counter discrimination, improve legal texts, and advance French law in this field.
- **Promotional function.** The HALDE conducts action to promote true equal opportunity. It holds awareness-raising and training initiatives so that practices and mindsets can move forward. It identifies and shares best practices and experiences in fighting discrimination. It reports on its action through an annual report addressed to the President of the French Republic, the Prime Minister and the Parliament. The HALDE also provides information to the public.

 For more information on the EOC of Hong Kong, China, see also Box 1.31 further in this Module, Box 2.9 in Module 2. Promoting gender equality at work and Box 3.9 in Module 3. Promoting ethnic and religious equality at work.

Sources: Hong Kong Equal Opportunities Commission 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 *Resource papers, Conference on equal pay for work of equal value: International Best Practices (18 March 2000)*, Equal Opportunities Commission, Hong Kong, China.; Haute Autorité de Lutte contre les Discriminations et pour l’Egalité (HALDE) (France), [http://www.halde.fr/About-the-HALDE.html?page=article\\_en](http://www.halde.fr/About-the-HALDE.html?page=article_en) (accessed 16 Sep. 2010).

### 3.5 Employment services

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

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

#### Box 1.23 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> (accessed 30 Nov. 2010);

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 1.24 Studies on discrimination in China's workplaces

**Discrimination in law and in practice in China and comparison with other countries.** 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.\*

**Discrimination in job advertisements.** 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. \*\*

**Discrimination against women.** 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 as 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.\*\*\*

Sources:

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

[http://www.chinadaily.com.cn/china/2007-06/14/content\\_893811.htm](http://www.chinadaily.com.cn/china/2007-06/14/content_893811.htm), accessed on 24 March 2010.

\*\* Zhou, W. *Study on anti-discrimination law: Legislation, theory and cases* (Beijing, Law Press China September, 2008).

\*\*\* "Survey shows women face serious gender discrimination in employment" in *China News Net*, 15 June 2009, <http://www.chinanews.com.cn/gn/news/2009/06-15/1733656.shtml>.

## 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 SAR 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 1.25 The equality at work in China resource platform and web site

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: <http://www.equalityatworkinchina.org> (accessed 30 Nov 2010).

#### Box 1.26 Information sharing on non-discrimination legislation and the employment situation

A **Newsbrief** by a UK law firm reports on new developments on age discrimination and retirement age.

*The Incorporated Trustees of the National Council for Ageing (Age Concern England) v Secretary of State for Business, Enterprise and Regulatory Reform, Case C-388/07 (Heyday) of the European Court of Justice* states: “Member states may provide that differences of treatment on the grounds of age shall not constitute age discrimination if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives and if the means of achieving that legitimate aim are appropriate and necessary.” (Article 6)

The rationale behind mandatory retirement ages is:

- They make succession and financial planning easier and, by reassuring younger employees of future promotion prospects, help employers retain valued younger employees
- They reduce the risk of having to retrench older employees on capability grounds

- In a downturn, forcibly retiring people at a particular age is a relatively simple way of reducing employment costs (for employers) and managing unemployment statistics (for the government).

The EC Equal Treatment Framework Directive 2000/78/EC prohibits age discrimination, but it does not affect a member State's ability to set retirement ages.

The government [of the UK] has pledged to review the mandatory retirement age by 2011. By that stage, pressure to raise the age or to scrap it, may be even greater. Several factors add weight to this:

- an ageing workforce. In 2005, 20 million people in the UK were aged 50 or over. By 2026, as a consequence of improved longevity and declining birth rates, it is forecast that half the adult population will be aged 50 or over
- financial pressures such as the closure of many final salary pension schemes meaning that retirement at age 65 is an unviable proposition for many people, particularly when taken in conjunction with the financial demands inherent in a longer life
- medical and social improvements meaning that increasing numbers of people will enjoy good physical and mental health for longer. Many of these people want to take advantage of their continuing good health and work past the age of 65
- the current economic situation may make downsizing workforces by means of early retirement a less attractive option for employers
- precedents set by other EU member states, such as France, where it is now almost impossible to impose retirement on employees younger than 70. Employers are permitted to make a formal request that an employee aged between 65 and 69 retires but the employee is not obliged to do so.

Source: <http://www.freshfields.com/publications/pdfs/2009/mar09/25424.pdf> (accessed 16 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 to meet the need for authoritative expert guidance that does not come in the form of legally binding obligations.

#### **Box 1.27 Codes of practice on non-discrimination and equality promotion at work**

Hong Kong SAR 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, <http://www.eoc.org.uk>.

\*\* Australian Human Rights Commission, [http://www.hreoc.gov.au/sexual harassment/](http://www.hreoc.gov.au/sexual%20harassment/)

\*\*\* United Kingdom, Commission for Racial Equality, <http://www.equalityhumanrights.com/> (all accessed 16 Sept. 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, the **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 adopt:

- ✓ Review the procedures related to human resources 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 1.28 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.

Since 2000, many European and American MNCs have conducted Corporate Social Responsibility (CSR) evaluations and reviews of their global suppliers. CSR requirements are increasingly also added into the terms and conditions of MNC orders with the result that they have implications for corporate behaviour in developing countries that are used by MNCs as production bases. Suppliers in developing countries are required to meet such conditions in order to enter into MNC supply chains.

CSR norms can also be tools in the hand of governments, trade unions and other organizations in developing countries where they potentially could be used as leverage in negotiating agreements with international investors to better protect local workers' rights. The global CSR standards and codes of conduct usually contain clauses on non-discrimination and diversity in the workplace. Complying with these standards means a company must integrate these considerations into its daily business operation. Since discrimination is often rooted in unconscious and culturally accepted practices, managers and workers alike must often learn to look for and understand how their behaviour and business systems may result in disproportionate negative consequences for certain groups. Training is therefore a necessary step in implementing CSR norms on non-discrimination and other fundamental principles and rights at work.<sup>33</sup>

### Box 1.29 The Fair Labor Association's Workplace code of conduct and compliance benchmarks

The Fair Labor Association (FLA), established in 1999 is a collaborative effort of socially responsible companies, colleges and universities, and civil society organizations to improve working conditions in factories around the world. The FLA has developed a Workplace code of conduct, based on ILO standards, and created a practical monitoring, remediation and verification process to achieve those standards.

The FLA Workplace code specifies what FLA-affiliated companies are required to enforce in factories that supply their products. The code is supplemented by FLA compliance benchmarks, which identify the indicators for each of the 10 elements of the code, including forced labour, child labour, harassment or abuse, **non-discrimination**, health and safety, freedom of association and collective bargaining, wages

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<sup>33</sup> See the bibliography for useful websites on Corporate social responsibility.

and benefits, hours of work and overtime compensation.

The FLA code's provision on non-discrimination states:

No person will be subject to any discrimination in employment, including hiring, salary, benefits, advancement, discipline, termination or retirement, on the basis of gender, race, religion, age, disability, sexual orientation, nationality, political opinion, or social or ethnic origin.

The FLA benchmarks on non-discrimination include:

- General compliance with non-discrimination: Employers shall comply with all local laws, regulations and procedures concerning non-discrimination
- Employment decisions: All employment decisions shall be made solely on the basis of a person's qualifications, in terms of education, training, experience, demonstrated skills and/or abilities, as they relate to the inherent requirements of a particular job
- Recruitment and employment practices (job advertisements, job descriptions and evaluation policies): Job advertisements, job descriptions and performance/job evaluation policies and practices shall be free from any type of discriminatory bias
- Sex-based wage discrimination
- Marital discrimination
- Pregnancy testing
- Possible marriage or pregnancy
- Pregnancy and employment status
- Protection and accommodation of pregnant workers and new mothers
- Health status
- Medical examination
- Confidentiality of health status
- Reasonable accommodation for health reasons
- Discriminatory violence, harassment and abuse.

Source: Fair Labor Association, *Workplace code of conduct and compliance benchmarks*, <http://www.fairlabor.org> (accessed 16 Sep. 2010).

### 5.3 Workers' organizations

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 – often groups of workers covered by one or more prohibited grounds in Convention No. 111 or in national legislation (e.g. women, workers from ethnic minorities, international or internal migrant workers, persons with disabilities)
- Collective bargaining with employers to determine terms and conditions of employment.

Trade unions can give workers a voice in the union and at the workplace. At the workplace, the workers' voice should be heard:

- At the negotiating table
- In occupational safety and health committees

- In grievance handling - procedures to settle labour disputes often about the interpretation of collective agreements
- 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 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 1.30 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

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.<sup>34</sup>

#### **Box 1.31 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 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**

In several countries, the labour ministry and employers' and workers' organizations have jointly adopted tripartite declarations and codes of practice against discrimination in employment.

#### **Box 1.32 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.

<sup>34</sup> C.H. Lee.: *Industrial relations and collective bargaining in China*, Working paper no. 7, ILO Industrial and Employment Relations Department (Geneva, 2009).

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.

 See the TAFEP Tripartite guidelines on non-discriminatory job advertisements in Section E of this Module.

Source: Singapore, Ministry of Manpower Singapore website. Available at <http://www.mom.gov.sg>; Tripartite Alliance for Fair Employment Practices (TAFEP) website. Available at: <http://www.fairemployment.sg/> (both 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 may have 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 1.33 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 under which law they wish to bring their case, and on the details of the 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 1.34 , 1.35 and 1.37 below.

Victims of discrimination may also contact the local labour department for advice and support. The responsibility for administrative supervision of non-discrimination law in China is on labour administrative departments of governments above county, 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 1.36 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 1.33 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 colour blindness. This was the first employment discrimination lawsuit based on colour 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), <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>. (accessed 22 Mar. 2010).

#### **Box 1.34 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.

 See Box 5 in Annex 4 for the relevant provisions in the law.

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 1.35 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.

 See also Exercise 6. The story of teacher Qiu Zi in Module 5. Discrimination, health and disability.

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](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 Nov. 2010).

### **Box 1.36 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 Employment 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*, 29 August 2008 (Chengdu).

### Box 1.37 Labour dispute arbitration judgment on discrimination due to depression

In 2006, Yuan, a graduate from a well-known college in China, signed a labour contract of 5 years with a trans-national Chinese company (hereafter referred to as the "Company"), becoming the Research and Development engineer of its Shanghai office. In June 2007, he was diagnosed with depression. He reported the medical diagnosis at work and wrote a resignation letter after a disagreement with his manager. His department, however, rejected his resignation, and placed him on sick leave to get medical treatment. In August 2007, Yuan's condition had improved. His mental health care doctor certified that he was fit to resume work, and recommended that he continue treatment while working. Yuan wanted to return to work but the Company refused. In February 2008, the Shanghai office of the Company formally dismissed him reasoning that he had violated the rules of the company many times which had disrupted the normal working order of the company. Yuan believed that the policy of "no employment of people with depression" of the company was discriminatory, so he applied for arbitration at the Shanghai Pudong Labour Conflict Arbitration Committee.

The Company believed that since Yuan had proposed a resignation in June 2007, the labour relationship between the two parties had been terminated already. However, in June 2008, the Shanghai Pudong Labour Conflict Arbitration Committee rejected this argument deciding that the Company had entered into a contract with Yuan and, therefore was a party to the employment contract, not the Company's Shanghai Branch. Thus, the Shanghai Branch had no right to terminate the contract.

The Arbitration Committee ordered the Company to continue its working relationship with Yuan, to fulfil the original labour contract, and to pay him a compensation totaling more than 57,000 Yuan. In early July 2008, the company expressed its wish to give up the appeal and follow the Committee's instruction.

Sources: *China Daily*, 24 June 2008, [http://www.china.org.cn/china/local/2008-6/24/content\\_15876659.htm](http://www.china.org.cn/china/local/2008-6/24/content_15876659.htm); *Primary Financial Daily*, 4 July 2008; and *Beijing Today*, 4 July 2008, <http://bjtoday.yynet.com/article.jsp?oid=41377702>.

## Section B. Session guide





## Section B. Session guide

### Training map for Module 1

|                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                               |                      |
|---------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| <b>Unit 1.1 The equality principle and standards on equality at work</b>        |                                                                                                                                                                                                                                                                                                                                                                                               | <b>1 hour</b>        |
| Learning objectives                                                             | <ul style="list-style-type: none"> <li>Recognize the linkages between bias and discrimination in employment and occupation</li> <li>Refer briefly to the main international legal instruments for promoting equality of opportunity and treatment at work</li> <li>Refer briefly to the main Chinese legal instruments for promoting equality of opportunity and treatment at work</li> </ul> |                      |
| Training aids                                                                   | Section A. Unit 1.1 The equality principle and standards on equality at work<br>Section C. Exercise 1. Be aware of your own bias                                                                                                                                                                                                                                                              |                      |
| <b>Unit 1.2 Discrimination and equality: Concepts, principles and standards</b> |                                                                                                                                                                                                                                                                                                                                                                                               | <b>2.5 – 3 hours</b> |
| Learning objectives                                                             | <ul style="list-style-type: none"> <li>Analyse the definition of discrimination at work and the scope of application of Convention No. 111</li> <li>Explain what is and what is not discrimination at work</li> </ul>                                                                                                                                                                         |                      |
| Training aids                                                                   | Section A. Unit 1.2 Discrimination and equality: Concepts, principles and standards<br>Section C. Exercise 2. Identifying discrimination<br>Section C. Exercise 3. Writing non-discriminatory job advertisements<br>Section C. Exercise 4. Is it height discrimination?                                                                                                                       |                      |
| <b>Unit 1.3 Why is equality important for people, society and business?</b>     |                                                                                                                                                                                                                                                                                                                                                                                               | <b>1 hour</b>        |
| Learning objectives                                                             | <ul style="list-style-type: none"> <li>Explain how discrimination can undermine the dignity of individual people</li> <li>Discuss the main reasons for eliminating discrimination and promoting equality</li> </ul>                                                                                                                                                                           |                      |
| Training aids                                                                   | Section A. Unit 1.3 Why is equality important for people, society and business?<br>Section C. Exercise 5. “Do I have a chance of getting the job?” Role play<br>Section C. Exercise 6. Why is equality good for business and society?                                                                                                                                                         |                      |
| <b>Unit 1.4 Methods of application of Convention No. 111</b>                    |                                                                                                                                                                                                                                                                                                                                                                                               | <b>2.5 hours</b>     |
| Learning objectives                                                             | <ul style="list-style-type: none"> <li>Identify policy and practical measures to promote and enforce equality at national, local and workplace levels</li> <li>Plan follow-up action to promote equality in own organization</li> </ul>                                                                                                                                                       |                      |
| Training aids                                                                   | Section A. Unit 1.4 Methods of application of Convention No. 111<br>Section C. Exercise 7. Small enterprise development and employment conditions<br>Section C. Exercise 8. Action against sexual harassment<br>Section C. Exercise 9. Action planning to promote equality at work                                                                                                            |                      |
| <b>Total Module 1</b>                                                           |                                                                                                                                                                                                                                                                                                                                                                                               | <b>7- 7.5 hours</b>  |

## Session plan for Unit 1.1 The equality principle and standards on equality at work

### Overview

This unit explores the origins of discrimination in employment and occupation and introduces equality of opportunity and treatment at work as a fundamental principle. It gives an overview of the key policy instruments for equality promotion at the international and national level.



### Learning objectives

By the end of Unit 1.1 participants should be able to:

- Recognize the linkages between bias and discrimination in employment and occupation
- Refer briefly to the main international legal instruments for promoting equality of opportunity and treatment at work
- Refer briefly to the main international legal instruments for promoting equality of opportunity and treatment at work.



### Step-by-step session plan

|                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <b>Step 1. Introduction of learning objectives</b>                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>1 min.</b>  |
| Aim                                                                                                  | To clarify the objectives of the Unit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                |
| <b>Step 2. Exercise 1. Be aware of your own bias</b>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>20 min.</b> |
| Aim                                                                                                  | To recognize that personal biases may lead to discrimination of certain groups                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                |
| Training aids                                                                                        | Section C. Exercise 1. Be aware of your own bias<br>Section A. Unit 1.1 – 1 The origins of discrimination                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                |
| <b>Step 3. Presentation and discussion: The equality principle and standards on equality at work</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>30 min.</b> |
| Aim                                                                                                  | To review the main international legal instruments promoting equality of opportunity and treatment at work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                |
| Training aids                                                                                        | Section A. Unit 1.1 - 2.1-2.2 Key international policy instruments to promote equality<br>Section A. Unit 1.1 - 2.3 International human rights instruments on non-discrimination and equality (optional)<br>Section A. Unit 1.1 - 3 Non-discrimination and equality in employment in Chinese laws and regulations (optional)                                                                                                                                                                                                                                                                    |                |
| Tips                                                                                                 | Make the presentation as interactive as possible. Ask participants to provide examples from their direct experience and discuss contents in a question and answer setting.<br><br>In this first introductory session it is recommended for most audiences to give only very brief information about the international policy instruments in the labour and human rights fields as well as the Chinese legal framework on equality and non-discrimination in employment. The depth and length of the presentation will depend on participants' profile and interest in specific legal questions. |                |

| Step 4. Round-up: Key learning points | 10 min.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       | <p>Give round-up points for the session. Select three to five of the points provided below, depending on the direction of the discussion during the session. Emphasize the points that were new, controversial or difficult to understand for participants:</p> <ul style="list-style-type: none"> <li>• Everybody has bias about other groups of people and this is not necessarily a problem. However, it becomes problematic when it negatively affects the chances people from these groups have to earn a decent income; in other words, when people are discriminated when looking for work or doing their job.</li> <li>• Discrimination is endemic in all societies and needs to be progressively eliminated.</li> <li>• Labour and human rights standards exist at the international level to assist governments and other organizations with combating employment discrimination and promoting equality in law and in practice.</li> <li>• This right is laid down in two fundamental international labour standards: Convention No. 100 on equal remuneration between male and female workers and Convention No. 111 on the elimination of discrimination at work. Both of these have been ratified by China.</li> <li>• These two main international labour conventions set universally recognized, minimum standards for promoting equality of opportunity and treatment in the world of work. They are part of the fundamental principles and rights at work, which were adopted by ILO member States for worldwide application in all countries.</li> </ul> |
|                                       | <p style="text-align: right;"><b>Total Unit 1.1    1 hour</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## Session plan for Unit 1.2 Discrimination and equality: Concepts, principles and standards

### Overview

This unit introduces the basic concepts related to discrimination and equality of opportunity and treatment at work. Direct, indirect and structural discrimination and harassment are discussed. An overview is given of the grounds of discrimination covered under Convention No. 111 as well as other grounds of discrimination prohibited under national and international labour standards. The unit concludes by pointing out situations in which differential treatment does not constitute discrimination, including the reasons related to inherent requirements of the job in question and the main practical measures to promote equal labour market outcomes for all.



### Learning objectives

By the end of Unit 1.2 participants will be able to:

- Analyse the definition of discrimination at work and the scope of application of Convention No. 111
- Explain what is and what is not discrimination at work.



### Step-by-step session plan

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|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <b>Step 1. Introduction of learning objectives</b>                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>1 min.</b><br>  |
| Aim                                                                                                                 | To clarify the objectives of the Unit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                         |
| <b>Step 2. Exercise 2. Identifying discrimination</b>                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>20-40 min.</b>                                                                                       |
| Aim                                                                                                                 | To recognize workplace discrimination on various grounds and discuss the definition of discrimination given by Convention No. 111.                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                         |
| Training aids                                                                                                       | Section C. Exercise 2. Identifying discrimination                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                         |
| <b>Step 3. Presentation and discussion: Discrimination &amp; equality: Concepts, principles &amp; standards – 1</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>20 min.</b><br> |
| Aim                                                                                                                 | To discuss the definition of discrimination and equality of opportunity and treatment in employment and occupation, key concepts, grounds and scope of application.                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                         |
| Training aids                                                                                                       | Section A. Unit 1.2 - 1 Analysis of the definition in Convention No. 111.<br>Section A. Unit 1.2 - 2 What is discrimination at work? – Key concepts<br>Section A. Unit 1.2 - 3-4 Prohibited grounds of discrimination<br>Section A. Unit 1.2 - 5 Discrimination at different stages of the employment cycle                                                                                                                                                                                                                                |                                                                                                         |
| Tips                                                                                                                | Make the presentation as interactive and lively as possible by referring to practical examples, including those raised by participants during Exercise 2. Involve participants by asking them to list grounds of discrimination covered by the Convention and the national law. Introduce also the scope of application of the Convention (different stages of employment cycle) and the exemptions (situations in which differential treatment does not constitute discrimination) with examples that relate to participants' experience. |                                                                                                         |

|                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |
|---------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Step 4. Exercise 3. Writing non-discriminatory job advertisements</b>                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>40-60 min.</b> |
| Aim                                                                                                                 | To identify discrimination in job advertisements and rewrite them in a non-discriminatory manner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                   |
| Training aids                                                                                                       | Section C. Exercise 3. Writing non-discriminatory job advertisements<br>Section E. Good practice 1. Tripartite guidelines on non-discriminatory job advertisements (optional)<br>Section D. Checklist 6. Guidelines for employers on equality measures in recruitment procedures (optional)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                   |
| <b>Step 5. Presentation and discussion: Discrimination &amp; equality: Concepts, principles &amp; standards – 2</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>20 min.</b>    |
| Aim                                                                                                                 | To discuss the situations in which differential treatment does not constitute prohibited discrimination and highlight specific situations where workers should be protected and the effects of (past) discrimination should be redressed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                   |
| Training aids                                                                                                       | Section A. Unit 1.2 - 6 What does not constitute prohibited discrimination?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                   |
| Tips                                                                                                                | Make the presentation as interactive as possible. Involve participants by asking them for examples of situations in which differential treatment does not constitute prohibited discrimination, and give a short presentation to explain the main exemptions.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                   |
| <b>Step 6. Exercise 4. Is it height discrimination?</b>                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>40 min.</b>    |
| Aim                                                                                                                 | To differentiate between “inherent requirements of the job,” “direct” and “indirect discrimination”                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                   |
| Training aids                                                                                                       | Section C. Exercise 4. Is it height discrimination?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                   |
| <b>Step 7. Round-up: Key learning points</b>                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>10 min.</b>    |
|                                                                                                                     | <p>Give round-up points for the session. Select three to five of the points provided below, depending on the direction of the discussion during the session. Emphasize the points that were new, controversial or difficult to understand for participants:</p> <ul style="list-style-type: none"> <li>• The objective of Convention No. 111 is to promote equality in employment and occupation with a view to eliminating all forms of discrimination and ensuring that workplaces are free from harassment.</li> <li>• Convention No. 111 has a broad scope: It covers discrimination in law (de jure) and in practice (de facto). It covers both direct and indirect discrimination at all stages of the employment cycle, as well as structural discrimination and harassment.</li> <li>• Direct discrimination is reasonably easy to identify. Indirect discrimination, however, is more difficult to recognize. Indirect discrimination refers to rules and practices that appear neutral but in practice lead to disadvantages primarily suffered by certain groups of workers, such as women, ethnic minorities, or persons with disabilities. Detecting indirect discrimination requires identifying the actual labour market outcomes for different groups of workers.</li> <li>• Convention No. 111 covers seven grounds: race, colour, sex, religion, political opinion, national extraction and social origin, as well as any other grounds added in national legislation. China’s national legislation also prohibits discrimination against rural migrant workers, workers with disabilities and workers with infectious diseases such as HIV and HBV.</li> </ul> |                   |

|  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
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|  | <ul style="list-style-type: none"> <li>• Convention No. 111 is promotional in nature. Full equality in employment is both a goal and a work in process. Equality can best be achieved through proactive measures and cooperation from the national to the enterprise and the individual level.</li> <li>• The main situations in which differential treatment of workers does not constitute discrimination are as follows: <ul style="list-style-type: none"> <li>○ If the inherent characteristics of the job require special characteristics of job applicants or employees, this is not considered discrimination.</li> <li>○ Protective measures such as maternity protection and affirmative action measures seeking to redress the effects of past or continuing discrimination promote legitimate goals (such as the health of mother and child, or a more harmonious and inclusive labour market), and are not considered to be discrimination. On the contrary, they are necessary to progress towards greater equality.</li> <li>○ Modifications and adjustments in workplaces may be necessary for creating inclusive workplaces for persons with a disability or health condition, and it is often possible to find practical, low-cost solutions to accommodate workers with specific cultural or religious requirements.</li> </ul> </li> </ul> |
|  | <b>Total Unit 1.2</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|  | <b>2.5 - 3 hours</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

## Session plan for Unit 1.3 Why is equality important for people, society and business?

### Overview

This unit demonstrates why equality is good for people, society and businesses. It lists the main reasons why government, employers and workers should all work towards eliminating discrimination in employment and occupation.



### Learning objectives

By the end of Unit 1.3, participants will be able to:

- Explain how discrimination can undermine the dignity of individual people
- Discuss the main reasons for eliminating discrimination and promoting equality.



### Step-by-step session plan

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| <b>Step 1. Introduction of learning objectives</b>                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>1 min.</b>     |
| Aim                                                                                                  | Clarify the objectives of the unit                                                                                                                                                                                                                                                                                                                                                                                       |                   |
| <b>Step 2. Exercise 5. “Do I have a chance of getting this job?” Role play</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>20-40 min.</b> |
| Aim                                                                                                  | To experience discrimination in access to employment, and to discuss how discrimination can cause human and financial losses for both workers and employers.                                                                                                                                                                                                                                                             |                   |
| Training aids                                                                                        | Section C. Exercise 5. “Do I have a chance of getting the job?” Role play<br>Section A. Unit 1.3 - 1 At the personal level - Discrimination violates human dignity and productivity                                                                                                                                                                                                                                      |                   |
| Tips                                                                                                 | It is recommended to move from Exercise 5 to Exercise 6 without interruption.                                                                                                                                                                                                                                                                                                                                            |                   |
| <b>Step 3. Exercise 6. and presentation: Why is equality good for society, economy and business?</b> |                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>30-40 min.</b> |
| Aim                                                                                                  | To analyse the benefits of equality and the costs of discrimination.                                                                                                                                                                                                                                                                                                                                                     |                   |
| Training aids                                                                                        | Section C. Exercise 6. Why is equality good for society, economy and business?<br>Section A. Unit 1.3 - 2 At the level of the society – Discrimination denies social justice and cohesion<br>Section A. Unit 1.3 - 3 At the level of the macro-economy – Discrimination cripples social and economic development<br>Section A. Unit 1.3 - 4 At company level – Equality of opportunity and treatment makes good business |                   |
| Tips                                                                                                 | Use the presentation slides provided for Unit 1.3 for giving the round-up points for Exercise 6. The slides include two photographs to conclude the session.                                                                                                                                                                                                                                                             |                   |
| <b>Step 4. Round-up: Key learning points</b>                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>5 min.</b>     |
|                                                                                                      | Discrimination should be eliminated because: <ul style="list-style-type: none"> <li>• It violates human dignity</li> <li>• It denies social justice and undermines cohesion within society</li> <li>• It cripples social and economic development</li> <li>• It is bad for business as it leads to a waste of human talent.</li> </ul>                                                                                   |                   |
| <b>Total Unit 1.3</b>                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>1 hour</b>     |

## Session plan for Unit 1.4 Methods of application of Convention No. 111

### Overview

This unit introduces the main content of a national policy to promote equality in employment and occupation and discusses the measures that can be taken at national, local and company level to promote and enforce non-discrimination in workplaces. It illustrates the roles of different stakeholders and the importance of social dialogue and institutional measures in promoting equality.



### Learning objectives

By the end of Unit 1.4 participants will be able to:

- Identify policy and practical measures to promote equality at national, local and workplace levels
- Plan follow-up action to promote equality in own organization.



### Preparation and note for trainers

This session needs to be tailor-made to the type, level and needs of the participants. In most cases it is recommended to give a short overview of the methods of application of Convention No.111, and then focus only on those themes and measures that are most relevant for the audience. Discussion on institutional mechanisms in China (Unit 1.4 - 6) should be included in every training, as there is a need to raise awareness on practical avenues for legal redress.



### Step-by-step session plan

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| <b>Step 1. Introduction of learning objectives</b>                                           |                                                                                                                                                                                                                                                                                                                                                                                    | <b>1 min.</b><br>  |
| Aim                                                                                          | To clarify the objectives of the unit                                                                                                                                                                                                                                                                                                                                              |                                                                                                         |
| <b>Step 2. Presentation and discussion: Methods of application of Convention No. 111 – 1</b> |                                                                                                                                                                                                                                                                                                                                                                                    | <b>20 min.</b><br> |
| Aim                                                                                          | To review the key elements of a national policy to promote equality in employment and assess the various types of practical measures that can be taken at national, local and company level to promote and enforce equality at work.                                                                                                                                               |                                                                                                         |
| Training aids                                                                                | Section A. Unit 1.4 - 1 What are the State's obligations under the Convention?<br>Section A. Unit 1.4 - 2 Promoting and enforcing Convention No. 111 through policies and legislation<br>Section A. Unit 1.4 - 3 Access to justice and legal protection<br>Section A. Unit 1.4 - 4 Promotional measures<br>Section A. Unit 1.4 - 5 Role of social partners and strategic alliances |                                                                                                         |
| Tips                                                                                         | <ul style="list-style-type: none"> <li>• Make the presentation as interactive and lively as possible. Ask participants to give examples from their own work experience on what kind of practical action different stakeholders (government, employers' and workers' organizations, etc.) can take to stop discriminatory practices and promote equality at work.</li> </ul>        |                                                                                                         |

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|                                                                                              | <ul style="list-style-type: none"> <li>Briefly present the role of government, employers' organizations and trade unions in promoting equality. Try to elicit at least one example each from government, employers, trade unions and women's federations. Highlight the importance of practical action measures for making progress with achieving equality principles.</li> <li>Emphasize that Convention No. 111 is a promotional convention. It calls on countries to adopt a national policy for advocating and enforcing equality in employment and occupation.</li> <li>Recall that extensive awareness-raising is needed among labour officials, managers and workers to promote the acceptance and observance of an equality policy and to build their capacity to understand concepts such as indirect and structural discrimination.</li> </ul> |
| <b>Step 3. Exercise 7. Small enterprise development and employment conditions</b>            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                              | <b>40 min.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Aim                                                                                          | To assess the possible discriminatory effects of laws and regulations and to discuss the importance of balancing the interests of both employers and workers to ensure well-functioning labour markets.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Training aids                                                                                | Section C. Exercise 7. Small enterprise development and employment conditions<br>Section D. Checklist 1. Identifying discrimination in laws, policies and practices                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Step 4. Exercise 8. Action against sexual harassment</b>                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                              | <b>40 min.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Aim                                                                                          | To analyse what type of regulatory and practical action is needed to implement the requirements of Convention No.111, based on a case analysis of the implementation of legal provisions on sexual harassment in China.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Training aids                                                                                | Section C. Exercise 8. Action against sexual harassment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Step 5. Presentation and discussion: Methods of application of Convention No. 111 – 2</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                              | <b>20 min.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Aim                                                                                          | To assess the measures currently available within the Chinese legal framework to take action against employment discrimination                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Training aids                                                                                | Section A. Unit 1.4 - 6 Institutional mechanisms and measures in China.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Tips                                                                                         | Make the presentation as practical as possible by referring to real-life examples of discrimination cases from Chinese courts and arbitration bodies. Give a brief overview of institutional mechanisms currently available in China for taking legal action against employment discrimination. Highlight emerging good practices in China, and ask participants to share further case examples of practical examples from their work.                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Step 6. Exercise 9. Action planning to promote equality at work</b>                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                              | <b>20-40 min.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| Aim                                                                                          | To help participants to put into practice what they have learned during the training and plan concrete steps for action                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Training aids                                                                                | Section C. Exercise 9. Action planning to promote equality at work                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Step 7. Round-up: Key learning points</b>                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|                                                                                              | <b>10 min.</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                              | <p>Give round-up points for the session. Select three to five of the points provided below, depending on the direction of the discussion during the session. Emphasize the points that were new, controversial or difficult to understand for participants:</p> <ul style="list-style-type: none"> <li>Repealing discriminatory provisions in law and strengthening the legal safeguards against discrimination are necessary steps in promoting and securing equality in the labour market. The basis for adoption of affirmative</li> </ul>                                                                                                                                                                                                                                                                                                             |

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|                                   | <p>action measures is often also established in the law.</p> <ul style="list-style-type: none"> <li>• Legislation alone is not enough to realize equality of outcomes for all workers in the labour market. Convention No. 111 therefore calls on countries to develop a national policy to promote and enforce equality principles in workplaces.</li> <li>• Involvement of social partners and other strategic alliances in promoting the acceptance and observance of the policy is key to realizing equality of labour market outcomes for all workers. Employers' and workers' organizations play an important role in raising awareness and promoting good practices at the workplace level.</li> <li>• China has ratified the key international standards to promote equality for all in the labour market and to eradicate discrimination. It has also put a national legal framework in place to prohibit discrimination on several grounds. Further practical measures are however needed to ensure achievement of tangible results and to realize equal opportunity and treatment for all workers in the Chinese labour market.</li> </ul> |
| <b>Total Unit 1.4   2.5 hours</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## Section C. Exercises





## Section C. Exercises

### Unit 1.1 The equality principle and standards on equality at work

#### Exercise 1. Be aware of your own bias

##### Instructions for trainers<sup>35</sup>



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



**Time** - 20 minutes



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



##### Steps

- Tell participants that they will receive a sheet of paper with characterizations of 12 persons, and they will be asked to describe each of these persons. Explain the rules of writing the descriptions on the worksheet:
  - Write down the first characteristics that come to your mind regarding each person.
  - Take only five seconds to come up with your response. If you cannot think of anything by then, move on to the next category.
  - Your first thought can be about a positive or a negative characteristic.
  - Resist the urge to edit or second-guess your response.
- Explain to participants that they should not hesitate when writing the descriptions. They will not be asked to hand in their worksheets or to show their list to anybody. They should also not jump to conclusions about what their responses mean and try to control them.
- Hand out the folded worksheets to participants. Make sure nobody is opening the folded paper before you allow them to start. When everybody has received a worksheet, repeat the instructions shortly. Then ask people to open their sheet and START. Give participants maximum 5 minutes to fill in the whole worksheet.
- After the participants have finished writing down their answers start a discussion on the exercise:
  - Point out certain characters in the worksheet, e.g. “a person in a wheelchair” or “a 50-years old Han Chinese man in an expensive business suit”, and ask some

<sup>35</sup> Adapted from S. Thiederman: *Making diversity work: 7 steps for defeating bias in the workplace* (Kaplan Publishing, 2008) Revised updated edition.

volunteers to share how they described these persons, and what job did they thought was suitable to them.

- Ask participants also to comment on each other's answers. When you get conflicting descriptions on abilities of certain characters, encourage further discussion on whether we actually can make any assumptions based on the information given on the worksheet.
  - Point to the "single mother with children" and the "single father with children" and ask participants whether they assigned these characters the same or different kinds of abilities, and the same or different occupations. Ask participants to reflect on why their responses were the same or different.
- When no new points are emerging, end the discussion by pointing out that in this exercise the best answer is no answer. In other words, leaving the worksheet blank can be considered the best answer. Not being able to quickly describe a person based on just one personal characteristic due to membership of a group could indicate that the person filling in the sheet is less likely to hold a bias against certain groups of people, or is more conscious about his or her bias.
- Round-up the exercise with the following conclusions
- All human beings have biases or prejudices. Having bias is natural, as it enables human beings to quickly jump to conclusions when faced with new information.
  - Biases become problematic when we allow them to influence our thinking so that we negatively judge persons not on their actual abilities but on preconceived ideas about the group they belong to. If allowed to go unchecked, bias leads very easily to discrimination in the society and labour market.
  - It is important to recognize our natural bias and learn to control it. The point of this exercise is not only to become aware of our specific responses, but also to introduce the habit of "watching" our first thoughts, and "checking" whether we disadvantage an individual or group without objective reason. The goal is to make this "watch-and-check" eventually become automatic.

## Exercise 1. Be aware of your own bias



### Handout

#### Exercise worksheet

| Person                                                                           | What is this person like?<br>What are his/her personal characteristics and abilities? | What would be suitable jobs for this person? |
|----------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|----------------------------------------------|
| 1. A person in a wheelchair                                                      |                                                                                       |                                              |
| 2. A Uighur Muslim wearing a cap                                                 |                                                                                       |                                              |
| 3. A person who smokes cigarettes                                                |                                                                                       |                                              |
| 4. A single mother with three children                                           |                                                                                       |                                              |
| 5. A 50-years old Han Chinese man in an expensive business suit                  |                                                                                       |                                              |
| 6. A 23-years old Han Chinese woman with a pale complexion                       |                                                                                       |                                              |
| 7. A blind person                                                                |                                                                                       |                                              |
| 8. A construction worker wearing a helmet                                        |                                                                                       |                                              |
| 9. A Korean immigrant                                                            |                                                                                       |                                              |
| 10. A single father with three children                                          |                                                                                       |                                              |
| 11. A young man wearing a T-shirt with the slogan: "Stop the spread of HIV/AIDS" |                                                                                       |                                              |
| 12. A woman who is 1.90 m tall and weighs at least a 100 kg                      |                                                                                       |                                              |

## Unit 1.2 Discrimination and equality: Concepts, principles and standards

### Exercise 2. Identifying discrimination

#### Instructions for trainers



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



**Time** – 20-40 minutes



**Seating arrangements** – Small group seating.



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



#### Steps

#### Step 1 – Group work

- Share the aims of the exercise with the participants, and split participants into small working groups by ‘ground of discrimination’: **sex, ethnicity/religion, social origin/migrant workers and disability/health condition.**
- Give the groups 5-10 minutes to discuss as follows:
  - In your group, give 2-3 examples of discrimination that your target group may encounter at the workplace. Describe situations that are most commonly faced by these workers, and the effects. If possible, distinguish between visible and hidden forms of discrimination.
  - List one or more measures taken by your organizations to combat such discrimination. If your organizations have never addressed workplace discrimination, brainstorm on which measures could be taken.
  - Write the results of discussion on the flipchart provided to each group.
- After the groups have finished discussion, ask one person from each group to present their views.
- **Optional:** If you do not have much time, you can pose the questions in plenary and elicit ideas from participants by asking them to write examples on coloured cards, which you will post on a flip chart for discussion.

#### Step 2 – Presentation of key concepts and discussion

- Explain the key concepts related to discrimination and equality:

- Referring to examples raised by participants clarify the definition of discrimination under Convention No.111, emphasizing the three types of action that constitute discrimination. (Use the slides from the Unit 1.2 presentation to illustrate the points, if applicable.)

**Discrimination is:**

- Distinction** in treatment ...
  - E.g. different retirement age for women and men.
- Exclusion** from an opportunity...
  - E.g. rejecting a job applicant who carries an asymptomatic Hepatitis B virus.
- Preference** given...
  - E.g. giving preference to Party members in recruitment of civil servants.

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

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

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

**Equality of opportunity and treatment at work means:**

Decisions at all levels of the work cycle (from access to training and employment to retirement) are made with reference to:

- merit
- skills
- experience
- abilities
- suitability for such position

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

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

### Exercise 3. Writing non-discriminatory job advertisements

#### Instructions for trainers



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



**Time** – 40-60 minutes



#### Training materials and preparation

The handout provided here includes nine different job advertisements selected from Chinese newspapers. Choose one or few of the advertisements for discussion, depending on which ones are most relevant for your audience. Below the step-by-step instructions focus on analysis of the advertisement No.6 “Driver”, as it is particularly revealing of discriminatory practices.

Prepare two flipchart sheets before starting the exercise. Write the selected job advertisement on a flipchart in its original discriminatory form (with the discriminatory criteria highlighted), and an example on how to write the same advertisement in a non-discriminatory manner on another flipchart to be shown at the end of the exercise.



#### Steps

##### Step 1 – Detecting discriminatory requirements in job advertisements (30 minutes)

- Introduce the aim of the exercise. Give participants the handout with nine job advertisements and point them to analyse the advertisement you have selected for analysis (No. 6 or any other). Ask participants to examine the job advertisement and identify which of the listed criteria are required for the job and which could be considered to be discriminatory.
- Discuss with the group which criteria are actually required for the job and which ones are clearly discriminatory. List them on a flipchart under the heading “non-discriminatory” and “discriminatory”.
- After soliciting answers from the groups, check, correct and complete the two lists on the flipchart. Show participants the flipchart sheet prepared in advance highlighting the discriminatory criteria.

#### Job advertisement No. 6:

Driver in a Beijing company

Requirements:

1. Age 18-23, above 175 cm
2. Army man transferred to civilian work, Party member
3. No family responsibility, can live in dormitory
4. Healthy, can work overtime (male)
5. Over 3 years of safe driving experience, B type licence, familiar with roads in

Beijing, strong sense of safe driving  
6. Guarantor with Beijing Hukou required for non-Beijing Hukou holders

- Continue discussion with the participants on why the criteria listed as discriminatory are discriminatory. Issues to be discussed may include:
  - Health: It is discriminatory to include general statements about health. If the job in question requires specific physical abilities, such as lifting heavy loads, these should be listed as such and reasons for this requirement should be explained.
  - Height: There does not seem to be any justifiable reason for height requirements for this job. As mentioned above, if the job requires specific physical abilities, these should be listed as such.
  - Party member: Political opinion can be an inherent requirement for a high-level civil service job, but not for job as a driver.
- Continue the discussion by asking the participants what they think the employer had in mind when writing this job advertisement. For example why would an employer prefer applicants who are party members? Or over 1.75cm tall? What was the employers' motivation? What could be underlying reasons? Lead the participants towards realizing that in this job advertisement most of the discriminatory criteria seem to be "proxies" for certain desirable characteristics (such as, party member = reliable person with good character; tall = strong; army man = able to endure stress and physical hardship, etc.). It seems that instead of describing the job requirements objectively in terms of abilities and skills needed in the job the employer made assumptions on what kind of persons might have these abilities.
- Point out that from the non-discrimination point of view it is very important not to make assumptions, but to assess all applicants' suitability for the job based on his or her individual abilities and skills. For example, while it may be very true that army men are able to endure stress, it is not fair to assume that persons who have not been in the army cannot. Also, while it is true that height may tell something about a persons' physical strength, setting specific height requirements is unreasonable as there are many shorter persons who have the required physical abilities.
- Conclude that certain requirements listed in the job advertisements are clearly not related to the job and would exclude many good drivers. In some cases information is lacking to decide properly on whether a criterion is required for the job or not.

## Step 2 – Re-writing a job advertisement (Optional – 20 minutes)

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

**Job advertisement No.6:**  
Driver in a Beijing company

**Job description:**

Driver needed to dispatch and deliver orders in Beijing and all over China. The job requires ability to lift heavy weights (up to 80 kg) and to work flexible hours. The work involves spending 10-15 nights away from Beijing every month.

**Requirements:**

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

**Step 3 – Round-up**

➤ Conclude with the key learning points:

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



Refer to Section E. Good practice 1. Tripartite guidelines on non-discriminatory advertisements from Singapore, and Section D. Checklist 6. Guidelines for employers on equality measures in recruitment processes, for further guidance.

**Exercise 3. Writing non-discriminatory job advertisements****Handout****Sample job advertisements****1. Investment Management Co. Ltd. Looking for accountant****Requirements:**

- male preferred
- college degree, intermediary professional level
- 5 or more years of working experience
- experience in accounting for catering business preferred
- local Hukou required

**2. Japanese Fortune 500 Company, Technical Consulting Assistant****Job description:**

- respond to technical inquiries from the clients
- provide feedback to relevant departments about clients requests

**Requirements:**

- male, university degree or above
- Japanese language proficiency above level 1 (fluent speaking)
- automobile or machinery major preferred
- driving license desirable
- user of office software (Word, Excel, PPT, etc.)
- responsible, good teamwork and interpersonal skills

**3. Business Manager, Kangbaolai (China) Healthcare Products Co. Ltd. Xian Branch****Requirements:**

- female only, age 30-45
- 6-7 years of work experience
- educated, strong verbal and communication skills
- passionate and ambitious
- proactive in acquiring new clients
- teamwork and learning oriented
- can cope with work pressure

**4. Assistant to President, Shanghai Runxin Sci. & Tech. Co. Ltd.****Requirements:**

- university degree or above in management, economics, finance or other related fields
- younger than 30, married with child
- minimum 5 years of managerial experience in large enterprises
- fluent in international tax law account systems
- strong team management and coordination skills
- familiar with internal management systems of large enterprises
- excellent English language skills in listening, reading, writing and speaking, with Chinese English proficiency certification of level 6 or above

**5. Secretary to President, China Everbright Imp. & Exp. Corp.****Requirements:**

- master's degree or above, finance-related field preferred
- Party member or pre-qualified Party member
- excellent English, ability to speak a second foreign language desirable (Spanish, German, French preferred)

- male must be no less than 180 cm tall, female no less than 165cm, pleasant appearance and charisma
- can travel frequently
- familiar with office software, good at writing letters and reports
- flexible and good communication skills

**Job responsibilities**

- assist the President in daily work
- draft communications and manage circulation of documents
- take phone calls
- arrange schedule of meetings
- make travel arrangements
- monitor implementation of tasks assigned by the President and report on status
- timely undertake other tasks as assigned by the President

**6. Driver in a Beijing company****Requirements:**

- age 18-23, must be no less than 175cm
- army-man transferred to civilian work, Party member
- no family responsibility, can live in dormitory
- healthy, can work overtime (male)
- over 3 years of safe driving experience, B-type license, familiar with roads in Beijing strong sense of safe driving
- guarantor with Beijing Hukou required for non Beijing Hukou applicants

**7. Cashier, Beijing Tianyu International Software Co. Ltd.**

(Non-Beijing Hukou please do not apply, current year graduates only)

**Requirements:**

- Beijing Hukou
- college degree in accounting, finance or related field, certification for accounting work required
- familiar with national financial policies and accounting practice
- can process accounting sheets and familiar with accounting software
- dedicated, teamworker, good communication skills

**8. Assistant Exhibition Designer, Shanghai Huitu Exhibition Design Co. Ltd.****Requirements:**

- non-Shanghai Hukou
- familiar with software commonly used for exhibition design
- quick learner

**9. Security guard, Starlight Media****Requirements:**

- male, must be no less than 175cm, good appearance, age 35-40
- can drive, well disciplined
- flexible to adjustments required by the company
- good communication skills
- army-man transferred to civilian work preferred

**10. Business assistants (sales), Xiamen Wufeng Plastic Co. Ltd.****Requirements:**

- minimum senior high school education
- good communication skills and strong network
- from Sichuan province, will be assigned to work in Sichuan after training

## Exercise 4. Is it height discrimination?

### Instructions for trainers



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



**Time** – 40 minutes



**Seating arrangement** – Small group seating around tables or other seating that allows people to work in groups of 3-6 people.



### Steps

#### Step 1 – Group work on height discrimination (25 minutes)

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

#### Step 2 – Unveiling indirect discrimination (10 minutes)

- Ask the groups to take a closer look at cases B and C to assess: **What other types of discrimination could be involved? (Question 2)** Help the participants by asking: Are there groups that would be excluded due to the height criteria? Solicit different views and facilitate discussion.

- Conclude that cases B and C may also involve indirect discrimination against women who usually are shorter than men. Height requirements may also constitute indirect discrimination against persons with certain impairments (e.g. wheelchair users) or certain ethnic groups (e.g. members of groups with shorter average height than the majority population).

### Step 3 - Round-up (5 minutes)

- Round-up as follows:
  - Convention No. 111 does not prohibit direct discrimination based on height as such – but that alone, of course, does not make height any more of a relevant factor in employment decisions.
  - Imposing a height requirement that is not related to the contents of job or the conditions under which the job is normally carried out is arbitrary, unfair and amounts to discrimination based on height.
  - Uniform height and weight requirements can have a disparate impact on persons of a particular sex or a particular race. In such cases, such requirements amount to **indirect sex or race discrimination, if they cannot be proven to be inherent to the job**. Significant diversions from the average human height may be recognized as impairment, so that, for example, very short people can challenge job-related distinctions as discrimination on the basis of **disability**.
  - In China, job applicants have started to bring lawsuits against **height discrimination** with some positive results, albeit indirectly.
  - It may also happen, however, that a person's height is relevant to the conditions under which the work is carried out. The question will then arise whether the employer can be reasonably expected to make the adjustments to the working environment which are necessary to accommodate the job applicant or employee.



Refer to Section A. Unit 1.2 - 6. for information on reasonable accommodation.

## Exercise 4. Is it height discrimination?



### Handout

#### Case studies

##### Case 1 - Height as a job factor in China

In January 2003, Jiang Tao, a recent graduate of Sichuan University brought an administrative action in Chengdu, the capital of Sichuan Province against the Chengdu Branch of the People's Bank of China for height discrimination. Mr. Jiang, who is 165 cm (5 ft. 5 in.) in height, alleged that the bank's 168 cm (5 ft. 8 in.) height requirement for male applicants, precluded him from applying for a civil service position at the government bank, therefore violating his constitutionally-protected equal rights to be employed by a government agency and his political right to participate in the management of state affairs. The case was tried in April 2003.

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

Source: *Beijing Youth Daily* (Beijing), 20 Dec. 2003.

##### Case 2 - Height as a job factor in China

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

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

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

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

**Case 3 – Weight and Height as a job factor in the USA**

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

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

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

**Case 4 - Height as a job factor in the UK**

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

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

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

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

## Unit 1.3 Why is equality important for people, society and business?

### Exercise 5. “Do I have a chance of getting the job?” Role-play

#### Instructions for trainers



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



**Time** – 20-40 minutes



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



**Training materials and preparation** – Make a copy of Handout, and cut the identity cards to be distributed to participants in advance.



**Steps**<sup>36</sup>

#### Step 1 – Role-play (20-35 minutes)

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

<sup>36</sup> Adapted from ILO: “Module 4. Promoting equality and diversity in the workplace”, in *The labour dimension of corporate social responsibility: From principle to practice* (Turin, International Training Centre, 2007).

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

**Recruitment criteria:**

- (a) university degree or above in economics, international business, management or other related fields, MBA preferred
- (b) age 25-30, healthy and pleasant appearance
- (c) minimum three years of relevant working experience
- (d) local Hukou required
- (e) be able to work irregular hours and overtime
- (f) be able to travel frequently
- (g) driving license desirable

- Thank the participants who have moved to the back for their participation and dismiss them as they do not meet the criteria – they can take a seat and observe.
  - Congratulate the qualified applicants and announce that interviews will take place in the company's meeting room today at 7.30 p.m. Ask the participants qualified for the interview to confirm their participation, and ask those who cannot attend the interview at 7.30 p.m. to step out. If instructions are correctly interpreted, participants who have family responsibilities (young children, disabled relatives) will not be able to attend. Ask those who gave up to announce why they are giving it up and allow them to voice their reasons, justifications, etc.
  - Note to the facilitator: If the instructions were followed correctly, there should be no more than 6 persons who are able to participate in the final interview. If more participants chose to stay, some of them probably did not respond according to the characteristics of their new identity.
- Ask those who can attend the job interview to share their identity and conclude: They are young, male, have a local Hukou, no family responsibility, no disability....
  - Ask some of the participants who stepped backward to read their ID cards aloud, and explain why they were rejected (education, new graduate, disability, sex, Hukou, family responsibility, etc.), and try to analyse whether they had suffered any type of direct or indirect discrimination in the recruitment process. After soliciting a few responses from participants, point out that some of the requirements are directly or indirectly discriminatory, while some are related to the inherent requirements of the job, e.g. university degree in the required fields.
  - Conclude by emphasizing that discrimination may cause waste of human resources as talented people may not get the opportunity due to factors that are not inherent requirements of a job.

**Step 2 – Round-up (5 minutes)**

- End the activity by asking everybody to return to their seat and discuss as follows: Highlight the high merit and abilities of some of the excluded applicants, pose the question: **Was it really in the employers' interest to exclude these applicants?** Lead the students to discuss whether discrimination has any benefits for anybody (individuals, businesses, society), and what are the costs of discrimination.

### Exercise 5. “Do I have a chance of getting the job?” Role-play



#### Handout - Identity cards

|                                                                                                                                                                                                       |                                                                                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Zhang Feng, male, 28, unmarried, from Hebei Handan city, college diploma in related field, has worked in a trade company in this city over the past 3 years, no driving license                       | Liu Shucui, male, 34, Jiangxi province, rural Hukou, senior high school education, has worked in a local company on business development over the past 3 years, has a good network of clients                                         |
| Li Na, female, 23, unmarried, from Weifang City in Shandong Province, no driving license                                                                                                              | Chen Yanli, female, 28, Local Hukou, BA in related field, 5 years of relevant experience; married, 1 three-year-old child who should be picked up from kindergarten on working days before 7pm; her husband frequently works overtime |
| Liu Liying, female, 30, MBA, years of relevant experience, divorced, has one child who needs to be picked up from primary school before 7 pm everyday, with driving license.                          | Li Aifang, female, 29, married, no children, bachelor's degree in a related field, husband working in another city, has a paralyzed mother-in-law to look after, the day-time helper leaves at 7 p.m.                                 |
| Long An, male, 29, single, Local Hukou, bachelor degree in marketing, fluent in English, lives with disabled mother who is looked after by a day-time helper until 6 pm everyday, has driving license | Zhou Chun, female, 26, single, bachelor's degree in a related field, has worked in sales in an enterprise, local Hukou, lives with parents, has driving license                                                                       |
| Yu Jiang, female, 25, unmarried, bachelor's degree in trade, minor disability on the left leg                                                                                                         | Wang Guolin, male, 30, Local Hukou, bachelor degree in related field, divorced, lives with his primary-school daughter who is looked after by a day-time helper until 7 p.m., no driving license                                      |

|                                                                                                                                                                                                                                                |                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Zheng Lu, male, 35, Local Hukou, years of relevant experience, with driving license                                                                                                                                                            | Peng Min, female, 28, Local Hukou, bachelor degree in business field, years of relevant experiences, married, husband is very busy , and does not want her to travel much                 |
| Pei Guang, male, 30, single, Local Hukou, bachelor degree in business management, years of business experience, no family responsibility and is able to travel frequently, no driving license <sup>37</sup>                                    | Wang Yan, female, 28, single, Local Hukou, MBA, business assistant in a foreign company, with driving license                                                                             |
| Zhao Jialin, male, 28, Local Hukou, MBA, 5 years of relevant experience, divorced, one child who needs be picked up before 7 p.m. every Mon. to Fri., has driving license                                                                      | Fu Conglin, male, 33, bachelor degree, Liaoning Hukou, 5 years of relevant experience, with driving license                                                                               |
| Lin Yuandong, male, 28, Local Hukou, master degree, 4 years of relevant experience, married, has a 6-month old baby, living with parents, wife's returned to work after maternity leave, no driving license                                    | Zhu Ling, female, 30, Local Hukou, master degree, 4 years of relevant experience, married, a 5-month old baby, no driving license                                                         |
| Lin Aihua, female, 29, Local Hukou, married, no children, bachelor degree in relevant field, 6 years of relevant experience, husband works in another country, no driving license                                                              | Qin Gang, male, 27, Xianmen Hukou, single, obtained MBA recently, bachelor's degree in food hygiene, has done technical work in a food company since MBA graduation, has driving license. |
| Xiongjian, male, 28, Local Hukou, 6 years of relevant experience, married, a 5-year-old child who needs to be picked up from the kindergarten everyday, a busy wife who doesn't want him to work overtime or travel a lot, has driving license | Cheng Dongming, male, 27, Local Hukou, bachelor degree in relevant field, 5 years of relevant experience, 156cm, no driving license                                                       |

<sup>37</sup> Note: This person's name is a homophone to the Chinese words for "losing all capital investment."

|                                                                                                                                                                                                                           |                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lin Yin, female, 33, Local Hukou, bachelor degree in relevant field, 5 years of relevant experience, married, no child, no driving license                                                                                | Zhao Kai, male, 34, Local Hukou, bachelor degree in relevant field, 5 years of experience in business, married, no child, no driving license                                                                                       |
| Shi Weidong, male, 27, Local Hukou, married no child, bachelor degree in related field, 5 years of relevant experience, has driving license                                                                               | Yang Xiaoye, female, 28, single, Local Hukou, MBA, 3 years of relevant experience, lives along with a disabled brother who needs care, the maid works from 8 a.m. - 7 p.m.                                                         |
| Chen Yushu, male, 40, Local Hukou, married, bachelor degree, has relevant experience, has driving license                                                                                                                 | He Shunfa, male, 26, unmarried, Hukou in Henan province, bachelor degree in related field, 5 years of relevant experience, no driving license                                                                                      |
| Yang Caiying, female, 38, Local Hukou, unmarried, bachelor degree in related field, years of relevant experience, has driving license                                                                                     | Lin Mufa, male, 29, Local Hukou, master degree in related field, unmarried, 4 years of relevant experience, is the only child in the family, father is paralyzed who needs care everyday, helper leaves at 7pm, no driving license |
| Zhao Xin, male, 26, Local Hukou, unmarried, bachelor degree in related field, 5 years of relevant experience, harelipped, has driving license                                                                             | Bai Hua, male, 29, Local Hukou, married, bachelor degree in related field, 5 years of relevant experience, daughter needs to be picked up from kindergarten before 7 p.m., wife finishes work at 8 p.m.                            |
| Wang Lin, female, 28, Local Hukou, married, master degree in related field, 4 years of relevant experience, has a 6-month baby, no parents living together with her, day-time helper leaves at 6 p.m., no driving license | Lin Siyuan, female, 26, Local Hukou, unmarried, bachelor degree in related field, 5 years of relevant experience, harelipped, has driving license                                                                                  |

|                                                                                                                                                                                                              |                                                                                                                                                                                                             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ding Shuang, female, 28, Local Hukou, MBA, 4 years of relevant experience, divorced, has one child who needs be picked up from kindergarten before 7 pm every working day of the week, has a driving license | Li Shuying, female, 30, unmarried, from Qinghai province, college diploma in related field, has worked in a trade company in Local over the past 3 years, no driving license                                |
| Shao Xiaoming, male, 38, Local Hukou, single, college diploma, years of relevant experience, has a driving license                                                                                           | Song Dawei, male, 30, Local Hukou, bachelor degree in related field, 2 years of relevant experience, divorced, lives with a son in primary school age, day-time helper leaves at 7 p.m., no driving license |

## Exercise 6. Why is equality good for business and society?

### Instruction for trainers



**Aim** – To analyze the benefits of equality and the costs of discrimination.



**Time** – 30-40 minutes



**Training materials and preparation** – Prepare flipchart papers and marker pens for all groups. Use the slides provided for Unit 1.3 Presentation: Why is equality good for society, economy and business? for giving the round up points in Step 3.



### Steps

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

- Ask a volunteer to read aloud the letter sent by a student to Prof. Cai Dingjian in **Handout**.  The letter is available also in Section A. Unit 1.3 Box 1.14 A beautiful wish of a girl.
- After finishing ask participants how this letter made them feel. Get a few comments from the audience, and end by emphasizing that discrimination undermines human dignity and personal happiness. It is unfair, illegal, and also leads to a waste of human resources.

#### Step 2 – Group work (5-10 minutes)

- Introduce the aim of the exercise.
- Show a flipchart or a power point slide with the following questions:
  - Question A: Equality: What are the benefits for businesses?
  - Question B: Equality: What are the benefits for society?
- Divide participants in small groups. Ask half of the groups to discuss question A and half of the groups to discuss question B. Each group should prepare a presentation on a flip chart, and select a spokesperson to present it in plenary. Give the groups 5 to 10 minutes to discuss, as needed.

#### Step 3 – Plenary discussion (10-20 minutes)

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

#### Step 4 – Round up and key learning points (10 minutes)

- Conclude the discussion by emphasizing that discrimination is a waste of talent and reiterate some of the key points from the discussion.
- Round up the exercise by giving a short presentation on the key learning points. Use the **slides** provided for Unit 1.3 Presentation: Why is equality good for society, economy and business?

##### **Question A. Equality: What are the benefits for businesses ?**

- Improved employee well-being and satisfaction
- Improved employee commitment, motivation and productivity
- Improved ability to attract talent and lower turnover rate
- Optimal utilization of human resources: best possible matching of skills/talent and duties/responsibilities
- Human resources are a company's most important asset and competitive edge over competitors
- Greater diversity may foster innovation and creativity
- Legal compliance and risk management (e.g. risk of litigation)
- Shareholder approval, brand value protection
- Consumer and stakeholder satisfaction.

##### **Question B. Equality: Why is it important for the society?**

- Inclusive labour markets are effective and productive
  - Productive enterprises create value for themselves, their employees and the whole national economy
  - Equal opportunities in the labour market motivate people to develop their skills and pursue their own development
  - Important for national human resources and skills development
  - Important for individual satisfaction
  - Important for maintaining social stability
  - Institutional discrimination may lead to an increased risk to social instability
  - Discrimination can cause individual frustration that may even lead to violence.
- Refer also to Section A. Unit 1.3.4, Box 1.17 The business case for equality for factual research based evidence on business benefits of equality promotion.
  - In the end of the discussion, show the two photographs to the participants, and ask who the two persons are. Ask the audience: What do these persons have to do with equality or discrimination?



- Take a few answers from participants, and then conclude the discussion with the following points:
- Mr Bataer was the first ever Chinese basketball player who opened an NBA match in US. After him many more Chinese players have gone to US, and reached many achievements. Mr Bataer's ethnicity is Mongolian. Had he been excluded from his basket ball team on the basis of his ethnicity when he was young, **wouldn't that have been a terrible waste of talent?**
  - If Mr Deng Xiaoping had not led China's reform and opening up, China could look very different today. However, Mr Deng was only 1.52 m tall. If the present day height requirements for recruitment into the Chinese Civil Service had applied at the time, Mr Deng would not have been accepted. **Wouldn't this have been terrible for the country, and also an awful waste of talent?**

## Exercise 6. Why is equality good for business and society?



### Handout

#### A beautiful wish of a girl

21:22 23 April 2005

Dear Professor,

My name is Cai Jian. What a coincidence, but I'm a girl.<sup>38</sup> My father doesn't like boys, but he hopes I can be as brave and strong.

I read about your comments on the case of Zhang Xianzhu<sup>39</sup> 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 (Beijing, 2009)

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<sup>38</sup> The girl's name means 'sword' in Chinese, and is usually given to men.

<sup>39</sup> 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.

## Unit 1.4 Methods of application of Convention No. 111

### Exercise 7. Small enterprise development and employment conditions

#### Instruction for trainers



**Aim** – To assess the possible discriminatory effects of laws and regulations and to discuss the importance of balancing the interests of both employers and workers to ensure well-functioning labour markets.



**Time** – 40 minutes



**Seating arrangements** – Plenary or small group seating around tables enabling participants to work in groups of 3-6 persons.



**Training materials**– Prepare flipchart papers and marker pens for all groups.



#### Steps

- Explain the aim of the exercise. Divide participants into groups of 3 to 6 persons.
- Distribute the Handouts and the flipchart papers. Ask participants to read the case and discuss the questions provided in their group. Each group should prepare a presentation on a flip chart, and select a spokesperson to present it in plenary.
- After 10-15 minutes reconvene in plenary, ask the groups to present their presentations. After the presentations, present the key learning points as outlined in the **Answers and key learning points** highlighting the points raised in the presentations by the groups. In the end, invite the participants to give further comments and facilitate discussion.



Refer to Section D. Checklist 1 for further guidance on identifying discriminatory laws and practices.

## Exercise 7. Small enterprise development and employment conditions



### Handout

#### Case study

China has an emerging private sector, with more and more people starting their own business. The employers' organization representing some of these small and medium enterprises (SMEs) is convinced that administrative requirements and the burden of complying with so many labour laws are too demanding for these budding SME's, and that it will reduce the capacity of SMEs to generate employment. As part of its "regulatory streamlining" campaign, the employers' organization starts lobbying to amend the existing labour laws so as to exempt SMEs from the scope of application of these laws. Adoption of the exemption would mean that SMEs would not need to abide by the national standards on minimum wage, working time, occupational safety etc., and would also not need to contribute to social insurance schemes, such as maternity insurance.

#### Questions:

1. If you were a legislator in the National People's Congress, how would you respond to the request made by the employers' organization to exempt SMEs from the labour laws? Would you approve the requested amendment to the existing labour laws?
2. The employers' organization argues that promoting SME growth and boosting employment creation requires looser regulation on SMEs. Do you think this argument is valid? How do you think the trade union would respond to this argument?
3. If an exemption like this was accepted, would this lead to discriminatory impacts in the labour market? On which grounds?
4. Would passing such an exemption be possible in China today? Are there some legal instruments or institutional mechanisms available that could prohibit or block adoption of this kind of an exemption?

## Exercise 7. Small enterprise development and employment conditions



### Answers and key learning points

This case describes a common situation that is found in many countries, most often in situations when adoption of new labour laws or extension of labour protection to hitherto uncovered groups in the informal economy is under public discussion and debate. Employers often argue that they can only generate employment and economic development if companies do not face too many restrictions. The employers' concern can be legitimate when the informal businesses are small or the employers may not be very well-off themselves.

Labour market regulation requires balancing different kinds of interests in the society. While the employers' argument may be valid in some respects, the employees and workers in these enterprises, the trade unions and other rights groups may likely argue for extension of certain minimum standards of labour protection to all workers for example on minimum wages or safety equipment or other precautions in case of hazardous work, irrespective of the economic sector or size of enterprise they work for. Finding a solution that takes the needs and interests of both employers and workers into account requires dialogue between the two sides. In the end, it is the legislators' responsibility to ensure that in the solution adopted in the law maintains a fine balance between the legitimate interests of the two sides.

One important issue that the legislator should consider when preparing labour laws, or exemptions from existing laws, is whether the proposed law, if adopted, could lead to increased inequality and social exclusion. In this case study, the proposed wholesale exemption of SMEs from the labour law could lead to a discriminatory outcome for women, ethnic or religious minorities, internal rural migrants working in cities or persons in certain age categories, because these groups tend to predominate in SMEs and in self-employment in micro and small enterprises, as they often face difficulties in finding other jobs. Thus, exempting SMEs from protective labour regulations would disproportionately affect these groups of workers, and would, thus, result in indirect discrimination on the grounds of sex, ethnicity, religion, social origin or other grounds.

A similar situation as in this case study was discussed, for example, in the observation of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the application of Convention No. 111 by the Islamic Republic of Iran. In Iran, the labour law does not require SMEs employing less than 20 persons to abide by the regulatory protection for employees in larger enterprises. This means that the employees in these enterprises are not covered by legal entitlements and facilities, including maternity protection. Referring to the fact that many of the employees in SMEs are women, the CEACR concluded that, in practice, women face serious discrimination in the labour market. The CEACR urged the Government to ensure that all entitlements and facilities are made available to women working in temporary contract employment in SMEs.<sup>40</sup>

To support their case in China, anti-discrimination advocates should be able to draw on all legislation and regulations that prohibit discrimination. They will have to build a convincing argument, however, that Chinese law prohibits not only direct but also indirect discrimination. The Employment Promotion Law is likely to be the most comprehensive and most policy-

<sup>40</sup> ILO: "Observation on the application of Convention No. 111 by the Islamic Republic of Iran" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, International Labour Conference, 97<sup>th</sup> Session, Geneva, 2008.

oriented statutory act to refer to. Workers' advocates can also refer to the equality principle in the Chinese Constitution, claiming that adopting the proposed exemption from labour protection would be unconstitutional.

Other points to raise in the debate are:

- From the viewpoint of public interest, the need to protect fair employment standards for vulnerable groups outweigh the regulatory burden on SMEs
- Burdens on SMEs should and can be alleviated by other effective means:
  - an appropriate enforcement policy that at least initially favours promotion over enforcement, including grace periods
  - information campaigns by labour inspection services
  - support to employers' organizations to strengthen their coverage and advisory outreach to SMEs
  - tax breaks for companies hiring a certain number of young persons, women, ethnic minorities, etc.
  - training subsidies encouraging SMEs to invest in training and productivity of vulnerable groups
  - subsidies to assist with specific accommodations required to employ, for example, workers with disabilities or from minority groups.

To support SMEs in complying with their legal obligations, effective SME service infrastructures should be developed. The ILO **Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)**, recommends that the SME service infrastructure covers, among others,“ [...] assistance in understanding and applying labour legislation, including provisions on workers' rights, as well as in human resources development and the promotion of gender equality [...].”<sup>41</sup>

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<sup>41</sup> For more information, see C. Fenwick et al.: *Labour and labour-related laws in micro and small enterprises: Innovative regulatory approaches* (Geneva, ILO-SEED, 2007).

## Exercise 8. Action against sexual harassment

### Instruction for trainers



**Aim** – To analyse what type of regulatory and practical action is needed to implement the requirements of Convention No. 111, based on a case analysis of local regulations on sexual harassment in China.



**Time** – 40 minutes



**Seating arrangements** – Small group seating around tables enabling participants to work in groups of 3-6 persons.



**Training materials** – Flipchart papers and marker pens for all groups.



### Steps

#### Step 1 - Introduction and discussion (10 minutes)

- Share the aims of the exercise with the participants. Explain that the exercise discusses the implementation of Convention No. 111 at national and local level through a case study on sexual harassment.
- Start by asking the participants whether sexual harassment at work is prohibited in China. Take a few answers, allowing for some discussion. Confirm that various Chinese laws have provisions implicitly or explicitly prohibiting sexual harassment of women. Most important provisions are the Article 40 of the Law on the Protection of the Rights and Interests of Women and the Article 237 of the Criminal Law of 1997 that outlaws indecent acts against women.
- Ask the participants what kinds of acts constitute sexual harassment. Invite volunteers to share their views, and write the examples given on a flipchart. After a few examples sum up the discussion by noting that sexual harassment can be physical (e.g. sexual violence or unwelcome physical contact), verbal (e.g. comments, jokes or intrusive questions of a sexual nature about one's private life) or non-verbal (e.g. staring, leering, whistling or sexually suggestive gestures). Note that some main forms of sexual harassment include sexual assault and rape, sexual blackmail ('quid pro quo'), or creating a hostile working environment.

#### Step 2 - Implementation of national law: Group work and plenary discussion (30 minutes)

- Divide the participants in groups and distribute the handouts to all groups. Allocate provincial regulations A, B and C to different groups for discussion. Ask all groups to read the provisions on sexual harassment in Chinese national law, and to compare the provincial regulation allocated to them against the national standards. Instruct the groups to discuss the questions and prepare a presentation on a flipchart.

- When the groups are ready, reconvene the plenary and ask groups to present the outcomes of their reading and discussion. Hang the lists prepared by the groups on the wall. Highlight some good observations made by the groups, and sum up that the important elements in the Anhui, Sichuan and Guangdong provincial regulations improving legal protection against sexual harassment include:
  - definition of acts constituting sexual harassment
  - responsible authorities
  - channels for seeking legal redress
  - sanctions (civil and criminal)
  - employer responsibility for taking active measures to prevent sexual harassment and to ensure a workplace free from sexual harassment
  - employer responsibility for establishing monitoring and grievance mechanisms
- Emphasize that the three provincial regulations on sexual harassment provide good examples of regulations to promote the implementation and enforcement of national law. The regulations in all three provinces provide a clear definition and specify methods for redress. In addition, in Guangdong and Sichuan employers are required to take active measures for the prevention of sexual harassment. One overall drawback of these laws and regulations in China is that only women but not men are protected from sexual harassment.
- Note that effective implementation of the general **discrimination prohibitions** under the Employment Promotion Law and other national laws requires similar clarifications given in local implementation regulations or other legal documents. Ask the participants whether the congresses or government agencies in their provinces have already issued guidance on implementation of the Employment Promotion Law. Facilitate discussion and experience sharing, and list key elements of any local measures on a flipchart. To sum up the discussion refer to the essential elements in non-discrimination legislation under Section A. Unit 1.4 - 2.

#### Essential elements in non-discrimination legislation

- Definition of prohibited discrimination: Direct, indirect and harassment
- Explanation of exemptions to what is prohibited discrimination
- List of grounds of prohibited discrimination – normally expanding with time
- Scope of protection: employment and occupation at all stages of the employment cycle
- Designation of supervisory responsibilities to competent national authorities such as labour inspection services
- Affirmative action, protective measures and reasonable accommodation
- Employer liability and responsibility
- 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.

➤ Round up the discussion as follows:

- Sexual harassment at work is a serious form of sex discrimination. The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has highlighted the importance of addressing sexual harassment within the requirements of Convention No. 111 and encouraged member states to take practical action.<sup>42</sup>
- Addressing sexual harassment against women is an area where interesting developments have taken place at national and local level in China in the last few years. The measures to implement the Law on the Protection of the Rights and Interests of Women (2005) at provincial level provide a good example of local measures that are needed also to ensure effective implementation of national non-discrimination standards at the local level in China.
- To fulfill the requirements of Convention No. 111, member States need to ensure effective implementation of non-discrimination law at local level and adopt policy measures that show concrete results in elimination of discrimination and realization of equal opportunity and treatment at work for everybody.

 For further reading, see: N. Haspels et al.: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok and Geneva, ILO, 2001).

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<sup>42</sup> ILO: “General observation on Convention No. 111: Discrimination (Employment and Occupation), 1958,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conference, 91<sup>st</sup> Session, Geneva, 2003, pp. 463-464.

## Exercise 8. Action against sexual harassment



### Handout

1. Read the national level and provincial level provisions on sexual harassment provided below and discuss the different approaches taken in the three provinces to implement the national law.
2. Analyze what key features the provincial level implementation regulations have added to the general prohibition of sexual harassment in the national law to make it more effective and enforceable. Make a list of these key features.

### 1. Provisions on sexual harassment in Chinese national laws

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

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

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

#### ***Criminal Law (1997)***

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

### 2. Summary of key points from the provincial implementation regulations

#### ***A. Anhui province:***

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

#### ***B. Guangdong province:***

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

#### ***C. Sichuan province:***

Sichuan provincial methods on implementation of the Law on the Protection of Rights and Interest of Women prohibits sexual harassments towards women “in forms of language, text,

picture, information and body contact”, and sets an obligation to employing units and employers to take active measures at the work place to prevent sexual harassment (Article 33). The victim of sexual harassment can file a complaint against the violator at the department of security or file a case in the Civil Court. If the act constitutes a crime, criminal sanctions apply. The employing unit or the employer will also bear civil liability to pay damages to the victim due to physical and spiritual suffering and damage caused to her reputation due to sexual harassment. (Article 47).

## Exercise 9. Action planning to promote equality at work

### Instruction for trainers



**Aim** – To help participants to put into practice what they have learned during the training and plan concrete steps for action.



**Time** – 20-40 minutes



**Seating arrangements** – Small group seating around tables enabling participants to work in groups of 3-6 persons.



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



### Steps

- Divide the participants in groups by province (or by organization). Ask each group to develop an **action plan for promoting equality in employment and occupation** for their province or organization. The action plans should include the following elements:
  - Review of the local employment discrimination situation;
  - Identification of needs for improvement (legislation, partnerships, etc.) and clearly defined objectives;
  - Roles of stakeholders and specific suggestions for measures that each of them should take; and
  - Resources required.
- Guide the groups by encouraging them to formulate objectives and measures that are SMART:
  - S – Specific
  - M – Measurable
  - A – Achievable
  - R – Relevant
  - T – Timely and time-bound
- After the groups have finished their work, ask each group to briefly present their action plan to the other groups. Alternatively, you can also ask all groups to hang their flipcharts on the wall and ask all participants to walk around and look at the group work outcomes of all groups.
- Conclude the exercise by highlighting good examples of action measures in the prepared action plans. Give each participant a copy of the action for their organization and keep one copy for follow-up purposes.

## Section D. Practical tools





## Section D. Practical tools

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

#### 1. Determine what constitutes distinction, exclusion or preference

- Identify the person(s) or groups that face differential treatment.
- Identify the act, omission or process that treats the persons or groups concerned differently or leads to exclusions (a law, administrative regulation, policy or practice etc.).
- Identify the author, if any, of the act or omission (e.g. an administrative body or authority or a private actor, such as an enterprise).

#### 2. Establish that the differential treatment is based on a prohibited ground

- Do the person(s) or groups that face differential treatment or exclusion have personal characteristics that relate to one or more of the prohibited grounds of discrimination, such as race, colour, sex, religion, political opinion, national extraction or social origin, and other grounds defined by national legislation?
- Is the treatment due to the person's characteristics related to the grounds mentioned above?
- In a case of suspected indirect discrimination, do the apparently neutral measures disproportionately affect certain groups of people due to their characteristics related to the grounds mentioned above, as compared to groups of people without such characteristics?

#### 3. What is the negative effect on equality in employment and occupation?

- In which ways does the distinction, exclusion or preference have a negative effect?
- Identify the aspect of employment and occupation that is affected (training, access to particular occupations, access to necessary resources, recruitment, terms and conditions of work, dismissal, etc).
- Examine how men and women of different groups are affected.

#### 4. Is there a valid and legitimate justification?

- Is the differential treatment justified because it is based on an inherent requirement of a particular job?
- In case of suspected indirect discrimination, the following questions should be examined to determine whether the measure concerned could be justified because it is necessary and proportionate to achieve a legitimate objective:
  - Is the objective of the measures concerned based on respect for people's rights and dignity?
  - Has the distinct situation of the people concerned (practical and strategic needs, economic situation, etc.) been taken into account when designing and putting in place the measures concerned?
  - Have the communities concerned been consulted?
  - Have any alternative measures that are more favourable to the groups concerned been explored?

Source: Adapted from ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2007).

## Checklist 2. Strengthening the national policy to eliminate discrimination

In order to effectively eliminate discrimination, the following elements should be considered in the national policy to promote equality in employment and occupation:

- ✓ Legislation prohibiting and preventing discrimination in employment and occupation, as well as effective enforcement of such legislation.
- ✓ Ensuring access of disadvantaged groups including women, persons with disabilities and ethnic minorities to judicial and administrative procedures.
- ✓ Measures to protect disadvantaged groups in the informal economy from work-related discrimination, forced labour and other exploitative labour practices.
- ✓ Provisions to ensure that people of ethnic groups can carry out their traditional occupations without undue restrictions and to this end recognizing their right to exist and to maintain their cultures, traditions and institutions in national law and policies.
- ✓ Public education and social dialogue to promote respect for diversity and difference.
- ✓ Consultation with and participation of groups vulnerable to discrimination in the development and implementation of measures designed to promote their equality of opportunity and treatment in employment and occupation, including any special measures.
- ✓ Mainstreaming the promotion of equal opportunities in employment and occupation in relevant national policies, such as land policies, poverty reduction strategies, rural or local development programmes, training policies, employment policies (including, among others, active labour market measures, environmental policies and gender policies).
- ✓ Enhanced cooperation between governmental units.
- ✓ Integration of a gender perspective in all measures undertaken to promote equality of opportunity and treatment.
- ✓ Monitoring of the situation of different groups of people in employment and occupation on the basis of appropriate data (disaggregated by sex).

Source: M. Lakra: *Weblog posted on 9 July 2008*,  
[http://thetribal-blood.blogspot.com/2008\\_07\\_01\\_archive.html](http://thetribal-blood.blogspot.com/2008_07_01_archive.html) (accessed 16 Sep. 2010).

## Checklist 3. Desk review by labour inspectors

When labour inspectors do an assessment of equality and discrimination in a workplace, the desk review should contain an analysis of the employee records and other relevant documents of the employing unit or company with a focus on the following aspects:

- ✓ Investigate the labour force statistics in the employment unit or company by sex and ethnic origin of employees and any other relevant prohibited ground.
- ✓ Investigate the company's employment profile in terms of types of job, the job requirements and the characteristics of employees on duty with an emphasis on analyzing the sex and ethnic origin of employees in different job positions.
- ✓ Check the payment conditions of different positions, and analyze the wage statistics broken down by sex, ethnicity or any other relevant prohibited ground at different job levels.
- ✓ Check the number and proportion of women in decision making positions in the unit or company.
- ✓ Check whether the company has a policy, regulations or rules to ensure equal opportunity in employment, for example, concerning equal pay for equal work and for work of equal value, and equal chances for promotion for employees.

- ✓ Investigate whether there have been any employment discrimination and/or (sexual) harassment cases, and how these were addressed and resolved.
- ✓ Check whether the company has a trade union or another organization representing employees, or a safety and health committee or a gender equality committee, and the composition, responsibilities and activities of these committees.

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

#### Checklist 4. Questions to ask during on-site labour inspection

When labour inspectors do an assessment of equality and discrimination in workplaces, consider the following questions on the **recruitment practices** of the employing unit or company:

- Does the employer formulate neutral job advertisements, so that the advertisements do not unjustifiably deter members of one sex or ethnic group to apply?
- When recruiting new employees, are the job applicants assessed on their ability and capacity to perform the post or job advertised, and not according to whether the applicant is a man or a woman, or whether he or she is single or married, or belongs to one or another ethnic group?
- Do the job descriptions clearly specify fair and non-discriminatory selection criteria, that are related to the post or job in terms of qualifications, skills, knowledge and experience?
- When an employer requires specific personal characteristics or attributes that could be viewed as discriminatory, does the advertisement specify the inherent requirement of the job that requires this attribute?
- Does the employer use neutral application forms that do not include questions which are unrelated to the job requirements?
- Does the employer use a fair selection process and consistent selection criteria at all stages of the recruitment process, assessing the applicants solely according to their ability and capacity to perform the work described in the advertisement?
- Are the job interviews and placement tests organized in a non-discriminatory manner?
- Have the staff members involved in the recruitment process received training on non-discrimination?
- Does the employer include tests for pregnancy or infectious diseases like HIV during the health checks of job candidates?

Consider the following questions to assess **equal opportunities for career advancement** in the employing unit or company:

- Does the employer inform all the eligible male and female employees when opportunities for promotion or training arise?
- Do all the male and female employees have equal access to educational possibilities and specialist preparation?
- Does the employer use fair and non-discriminatory selection criteria that only refer to the employees' individual character in relation to experience, ability and diligence, when selecting employees for training courses?
- Does the employer use fair and non-discriminatory selection criteria when deciding on promotion?
- Are members of some specific group(s) prioritized when deciding on promotion?
- Has the employer adopted any positive measures of support to proactively enhance the

opportunities of underrepresented groups to compete for advancement in employment?

When assessing **equal remuneration** in the employing unit or company:

- Do all male and female employees working in the same employing unit or company and performing the same work or work of equal value receive equal remuneration?
- If some of the employees performing the same work or work of equal value do not receive equal remuneration, has the employer justified these differences through objective criteria that are unrelated to race, colour, sex, religion, political opinion, national extraction or social origin, or any other prohibited ground of discrimination as defined in national legislation, such as disability or HIV status?
- Do the female and male employees have equal access to housing and family allowances, social security and other benefits provided in connection with employment?
- Are the bonuses, incentives and gifts provided to all employees in a non-discriminatory manner?

Consider the following questions for assessing equality and non-discrimination in **employment conditions** in the employing unit or company:

- Does the employer provide men and women with the same employment conditions, in terms of types of labour contract, regular and over-time working hours and breaks, sick leave and leave days, protection against work hazards, such as (protective) equipment and other safety regulations, conditions for termination of the labour contract, etc.
- Does the company provide maternity protection to women and paternity leave to new fathers? What are the provisions and are these sufficient to guarantee the health of the pregnant woman and the foetus, and the young mother and the baby?
- Are workers provided with opportunities to reconcile work and family? What are the arrangements for parental leave? Do these apply to both male and female employees?
- Are female employees treated less favourably on the grounds of marital status or pregnancy? For example, do women have to promise that they will not marry or become pregnant for a certain period or forego employment when they do.
- Has the employer adopted measures to prevent and redress (sexual) harassment, bullying or other violence at the workplace through awareness raising and training?
- Do employees have access to information about equal opportunities for women and men at work?
- What is the role of the trade unions or other type of employee representative groups in promoting equality in the workplace? What is the proportion of women among members and leaders of the trade union?
- When or how often do management-employee consultations on equality in the workplace take place? Are women represented in these meetings?

Consider the following questions for assessing equality and non-discrimination in **security of tenure** in the employing unit or company:

- Are members of some specific group(s) discriminated in terms of duration of the employment contract or the length of the probation period?
- Are members of some specific group(s) prioritized when deciding on dismissals?
- Is the employer making a decision to dismiss a person strictly based on the reasons connected with the worker's conduct, his or her ability to perform the functions or the strict necessities of operation of the enterprise as stipulated in the relevant laws and

regulations?

- Is the compensation offered to laid-off employees defined in a non-discriminatory manner?

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

### Checklist 5. Questions for union negotiators in preparing to negotiate or review an equal opportunities agreement with employers

Example questions:

- ✓ Do you have an equal opportunities agreement?
- ✓ Do all members and prospective members know about it?
- ✓ Is it published or advertised?
- ✓ Is it monitored?
- ✓ Is it reviewed by management and union representatives? If so, how and how often?
- ✓ Does it deal with job segregation, or lack of promotion for women?
- ✓ Does it commit management to take positive action where the policy is not working? If so, what positive action has been taken and is it showing results?
- ✓ Are management and employees trained on the policy? Is the training regularly updated?
- ✓ Is there a joint union/employer equal opportunities committee? Does it meet on a regular basis?
- ✓ Is there an agreed procedure for investigating complaints about recruitment, appointments and promotions?
- ✓ Can staff get paid time-off to attend union training on equal opportunities?
- ✓ Does the agreement demand that all collective agreements are reviewed to eliminate any sex bias?

Source: ILO: *Promoting gender equality: A resource for trade unions, Book 3. Issues and guidelines for gender equality bargaining* (Geneva, Gender Promotion Programme, 2002).

### Checklist 6. Guidelines for employers on equality measures in recruitment procedures

Following is a series of guidelines for an effective application of the principle of equal opportunity by employers in recruitment. It can be considered a non-exhaustive checklist to guide and/or inspire action and reflection to promote equality at work.

#### 1. Advertising

Advertisements should not indicate a preference for applicants of a particular group or sex unless the preference is clearly justified as job-related and necessary:

- ✓ Advertisements should avoid illustrations which suggest that the job is only performed by members of a particular group or sex
- ✓ In cases where jobs have traditionally been occupied by only one group or sex, advertisements may state that the position is now expressly open to all applicants
- ✓ Advertisements should, whenever practicable, state that the employing entity is an equal opportunity employer
- ✓ Advertisements should be placed in locations and publications which would reach the widest range of potentially qualified applicants, particularly those of a particular group or sex underrepresented in the workplace
- ✓ Advertisements should not contain irrelevant job requirements which could preclude

individuals of a particular group or sex from applying for the job.

## 2. Selection criteria

Selection criteria should be objective, genuine, related to the inherent requirements of the job and consistently applied to all applicants irrespective of their group or sex. Specifically, it should be ensured that:

- ✓ Non-job-related qualifications and higher than necessary qualifications such as educational degrees and linguistic abilities are not required
- ✓ Appearance, physical characteristics, length and style of hair, dress and other aspects of appearance, which are common to a particular group or sex, are not considered a basis for refusal to select for employment
- ✓ The extent of an applicant's academic and employment experience is not exclusively considered the best qualification for the job, particularly where on-the-job training and experience would provide an applicant with the most appropriate skills to perform the job
- ✓ Any qualification or condition, which would effectively restrict a position to applicants of a particular group or sex, must be clearly justified as job-related, and necessary
- ✓ Qualifications required for a position should be based on a current job description which accurately identifies the nature, purpose and functions of the job without regard to preconceived notions of who should be performing it
- ✓ Job descriptions should not be adapted to meet the qualifications of any particular individual whose application is anticipated
- ✓ Job descriptions should be made available to all potential job applicants and to staff members involved in the recruitment and selection process.

## 3. Selection tests

The content and evaluation of selection tests should be free from bias against any particular group or sex:

- ✓ The use of selection tests should be controlled to ensure that they are job-related; and that differences in test performances do not correspond to particular group or sex differences
- ✓ The administration of the selection tests should be consistent and, as far as possible, should consider the needs of any particular group or sex underrepresented in the workplace
- ✓ Test instructions should be clearly given, test locations should be accessible, e.g. in close proximity to public transport, and other relevant measures should be considered.

## 4. Interviews

The scope of job interviews should be job-related and the interview should cover each applicant's relevant qualifications:

- ✓ The same or similar questions should be asked of each applicant
- ✓ The applicant's responses should be evaluated on an objective basis. It may be helpful if more than one person evaluates an applicant's responses to avoid individual bias
- ✓ Wherever questions are asked which are not obviously related to the job, the applicant should be informed of the reasons why such questions are necessary and job-related
- ✓ The interview atmosphere should be free from patronizing approaches and intimidation for all applicants irrespective of their particular group or sex and irrespective of the position for which they are applying
- ✓ Records of interviews, where possible, should be kept in a systematic manner and should be available for retrieval.

## 5. Recruitment

Potential applicants from all groups should be encouraged to apply for positions:

- ✓ The equal employment opportunity policy should be emphasized in the recruitment process
- ✓ Employment agencies and other recruitment sources should be instructed to refer applicants from all groups and both sexes for positions at all levels
- ✓ Recruitment should be undertaken from a wide variety of sources, including schools, universities and training institutions or programmes
- ✓ Measures should be taken, where appropriate, to encourage the recruitment of qualified personnel from any under-represented group or sex in the workplace, to help adjust prior disproportionate hiring practices
- ✓ Recruitment practices which exclusively use informal procedures such as "word of mouth" should be avoided so that, for example, recommendations from employees and associates do not constitute the main source of potential candidates
- ✓ Records of applications received from the underrepresented groups and sex should, as far as possible, be maintained as a source of potential future candidates who should be invited to reapply whenever positions become available.

Source: ILO: *Women workers' rights: Modular training package* (Geneva, 1994).

## Checklist 7. Guidelines for employment agencies

Employment agencies, whether they are under the control of a national authority, independent statutory authorities or privately operated, should promote equal employment opportunities in their services to clients, and not condone or follow discriminatory practices. Specifically, employment agencies should:

- ✓ Encourage the registration of all eligible individuals, irrespective of a particular group or sex, and review regularly the records of recruitment concerning particular groups and both sexes
- ✓ Ensure that job advertisements do not indicate, or could not be understood to indicate, that applicants from any particular group or sex will not be considered or will be treated more or less favourably than others
- ✓ Discourage discriminatory instructions from employers
- ✓ Attempt, where necessary, to educate employers in the principles of equal employment laws and policies; and, as a last resort, break off cooperation with employers who refuse to withdraw discriminatory instructions
- ✓ Provide adequate training and guidance to agency staff on their duty not to discriminate and on the effect which generalized assumptions and prejudices can have on their treatment of individuals of a particular group or sex. In particular, staff should be instructed to:
  - avoid restricting the range of job opportunities to applicants by making assumptions about abilities on the basis of a particular group or sex or by sending such applicants only to employers who are believed to be willing to employ a particular group or sex
  - avoid drawing attention to such matters as ethnic or social origin or sex when recommending applicants, unless the employer has specified, justifiably, that the job requires applicants of a particular group or sex
  - inform applicants of their right to equal employment opportunity before they are put into contact with prospective employers.

Source: ILO: *Women workers' rights: Modular training package* (Geneva, 1994).



## Section E. Good practices and cases for further reading





## Section E. Good practices and cases for further reading

This section gives an overview of good practices from international experience, as well as cases from other countries that have been selected for their relevance to the employment and discrimination situation in China.

### Good practice 1. Tripartite guidelines on non-discriminatory job advertisements – Singapore

The Ministry of Manpower together with the Singapore National Employers' Federation, the Singapore Business Federation and the National Trades Union Congress issued the Tripartite Guidelines on Non Discriminatory Job Advertisements in 1999 to promote the use of objective criteria in the recruitment of job candidates. The Guidelines have been reviewed in consultation with the tripartite partners and taking into consideration public feedback on job advertisements. It serves as a reference for employers in their recruitment process.

#### Principle

Under the Singapore constitution, all persons are equal before the law and are entitled to equal protection under the law. In line with the principle of equality and responsible employment practices, employers should select candidates based on merit i.e. qualification, skills, experience and attributes which are pertinent to the job.

Employers are encouraged to implement the tripartite guidelines to select the best candidate for the job, based on the job requirements. Employers should provide equal opportunity in the selection of candidates regardless of age, race, gender, religion, marital status, criminal record and disability as part of their enlightened employment practices. In the case of a female candidate with family responsibilities, employers should also extend the same opportunity to the candidate and consider her job suitability on the basis of her qualification, skills, aptitude and experience.

As valued employees and talents are critical to the success of an organization, companies should, therefore, not limit its pool of candidates but extend the scope to attract the best candidate for the job. This would benefit the company and at the same time provide equal opportunities to candidates of diverse background and attributes. The principle of providing equal opportunities should be clearly spelt out as part of the company's Human Resource policy, communicated and implemented in the recruitment process. In its placement of job advertisements in all advertising media including online advertisements, employers should set out clear, objective and relevant criteria.

Criteria which should **NOT** be in job advertisements:

**Age.** Employers should not stipulate age as a requirement for employment. Words or phrases that suggest preference for job candidates of a particular age group should also not be used in job advertisements. Examples include “young”, “youthful working environment” or “fresh school leaver or fresh graduate.”

If the nature of the job is physically demanding such as the handling of heavy cargo, the required physical attributes or other job-related criteria should be clearly described in the job advertisements, rather than indicating an age cut-off. Examples:

- Candidates are required to load and unload sacks of rice of at least 10 kg each.
- Candidates are required to handle heavy equipment.

**Race.** Race should not be a criterion for the selection of job candidates as multi-racialism is a fundamental principle in Singapore and selection based on race is unacceptable. Job advertisements featuring Statements like “Chinese preferred” and “Malay preferred” are therefore unacceptable.

**Language.** If a job entails proficiency in a particular language, employers should justify the need for the requirement. This would reduce ambiguity and minimize incidence of misunderstanding between the job seekers and the recruiting party. Examples:

- Chinese language Teacher for Pre School Centre, good credit in ‘O’ Level Chinese.
- Translator for a leading Malay sports magazine. Proficiency in Malay is a must.
- Tour guides to take Chinese, Japanese or Indian tourist groups. Knowledge of Mandarin, Japanese or Indian dialects respectively is essential.

**Gender.** Where a practical requirement of the job dictates the need for employees of a particular sex, this must be supported by valid reasons. In addition, words or phrases that suggest preference for job candidates of a particular gender such as “female working environment” or “waitress” should not be used in the job advertisements. Example: Women’s Fashion Boutique requires salesgirl to model clothes while on the job.

**Marital status.** This is an irrelevant criterion in employment, as jobs can be performed equally well by either married or single persons.

**Religion** is unacceptable as a criterion for recruitment **except** in cases where employees have to perform religious functions as part of the job requirement. In such cases, the requirements should be clearly and objectively presented.

**Other guidelines.** In line with the principle of equal opportunities, fair and objective employment practices should be extended beyond the recruitment stage to cover all stages of human resource management. To apply this principle consistently across the various functions of human resource management, employers can use:

- the Code of Responsible Employment Practices
- the Tripartite Guidelines on Family Friendly Workplace Practices
- the Employer’s Guide to Age-Friendly Employment Practices
- the Tripartite Guidelines on the Employment of Older Workers Above 62 years old.

Source: Singapore, Ministry of Manpower, Singapore National Employers’ Federation, Singapore Business Federation and National Trades Union Congress, Singapore. 1999. *Tripartite guidelines on non discriminatory job advertisements* (Singapore), <http://www.jobsdb.com/SG/EN> (accessed 30 Nov. 2010).

## Good practice 2. Combating sexual harassment – Beijing, China

Using a mobile phone to send “yellow [pornographic] material” can possibly constitute sexual harassment now. Yesterday morning, in Beijing new additions were made to the Law for the Protection of Women’s Rights; now language, letters, pictures, electronic information, and physical conduct can all be cause for sexual harassment towards women. This is the first time that Beijing has defined the situations in which sexual harassment can happen in Beijing.

It is understood that “electronic information” basically means text messaging. The specific dividing line [of what is considered sexual harassment] will be decided during real situations. The director of the Law Department in Beijing Mr. Zhou Jidong said that these actions were taken so

that women will have a better idea of self-protection. Also added into the draft was the responsibility of the workplace in preventing sexual harassment.

The above-mentioned draft Methods on the Implementation of Law on the Protection of Rights and Interests of Women (revised) of Beijing were adopted on 25 September 2009 and entered into force on 1 November 2009.

Source: <http://chinadigitaltimes.net/china/sexual-harassment/> (accessed 22 May 2009).

### Good practice 3. Regulations on religious affairs – China

Promulgated by the State Council of the People's Republic of China - effective as of March 1, 2005:

Article 2 Citizens enjoy freedom of religious belief.

No 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 any religion (hereinafter referred to as religious citizens) or citizens who do not believe in any religion (hereinafter referred to as non-religious citizens).

Religious citizens and non-religious citizens shall respect each other and co-exist in harmony, and so shall citizens who believe in different religions.

Article 3 The State, in accordance with the law, protects normal religious activities, and safeguards the lawful rights and interests of religious bodies, sites for religious activities and religious citizens.

Source: Chinese Journal of International Law: "*Regulations on religious affairs, China*" (2006), Vol. 5, No. 2475. In English.

### Good practice 4. Affirmative action on religion and political opinion – Northern Ireland

In Northern Ireland, a part of the United Kingdom that has traditionally experienced deep-seated social divisions between the Protestant and the Roman Catholic communities, the Equality Commission for Northern Ireland issued guidelines and a code of practice, explaining the laws on affirmative action and how employers can promote fair employment and comply with the law.

Affirmative action is a key mechanism for change contained in the fair employment legislation. Affirmative action measures are designed to address underrepresentation in the workplace and ensure fair participation regardless of community background. This may involve the adoption of practices aimed at encouraging fair participation, for example, including a Statement welcoming applications from the underrepresented community in an organization's job vacancy advertisements or modifying practices that may discourage fair participation.

To ensure the active practice of fair employment in Northern Ireland, the law places five **key duties on employers** with eleven or more employees:

- **Registration** with the Equality Commission
- **Monitoring** the religious composition of the workforce and applicants for posts and returning these statistics annually to the Equality Commission
- **Reviewing** the composition of the workforce and employment practices every three years to ensure that each community is enjoying fair participation in employment
- Taking **affirmative action** if an underrepresentation of one community is identified

within the workforce

- **Setting goals and timetables** to assist in evaluating progress towards fair participation.

Employers should consult and follow the advice of the Fair employment code of practice. Detailed advice and information on these duties is available to employers free of charge from the Equality Commission.

Source: Equality commission for Northern Ireland: *Religious belief and political opinion: Discrimination law in Northern Ireland - A short guide* (Belfast, 2004).

### Case 1. Discrimination in career progression – France

#### Key facts of the case

The plaintiff, a woman of 44 years of age, has continuously worked for the defendant bank under a succession of fixed term contracts between February 2000 and December 2004, in the capacity of client relations assistant. Through the entire period, she received praising evaluations.

While continuing employment under her fixed term contract, she applied to the same bank for a long term employment contract upon the opening of 46 vacancies for the same position. The recruitment process was managed by a head hunter who was mandated to provide an evaluation of the candidate's personality, commenting among other items on the candidate's development potential. The headhunter did not retain her application, dismissing it at the second stage of the recruitment process after her job interview.

#### Main arguments

The Bank claimed that her application was dismissed on the ground that "she did not show the required development potential". The court substantiates this criteria by indicating that it is evaluated on the basis of the candidate's professional plan, his/her motivation and ambitions and a projection on his/her future development.

The investigation by HALDE, the French Equal Opportunity and Anti-Discrimination Commission concluded that many of the hired candidates were not as competent or experienced as the plaintiff and that the employer had not sufficiently justified the criteria of development potential which did not appear in the job description. It further pointed out that of the 46 candidates hired, 41 of them were less than 29 years of age, and the other five were aged between 30 and 38.

#### Decision of the Court

The plaintiff's case was dismissed in first instance, because the court considered that there was not enough evidence to prove differential treatment by the employer. However, in the appeal, the Court stated that the plaintiff was a better candidate than most of those hired, whether on the tests undertaken, her experience or the results of her ability test. Moreover, some candidates who showed low development potential were hired. Thus, the review of the scores and profile of candidates gave rise to a presumption of discrimination on the part of the employer.

The court awarded to the plaintiff the amount of Euro15.000 in damages, since her employment ended at the end of her fixed term contract and her present employment paid less than the long term employment offered by the bank.

Source: France/Poitier Court of Appeal, Case no 08/00461 (17 February 2009), <http://www.non-discrimination.net/content/media/FR-37-age%20employment.pdf>. (accessed 16 Sep. 2010).

## Case 2. Discrimination in regard of promotion – France

### Key facts of the case

Two former employees of the car company Renault argued that their career advancement had been blocked or delayed because they were black (African and Martinican).

The claimants' individual assessment reports from Renault showed that they were good employees who were motivated and undertook training. However, other comparable non-black employees of the same staff level had enjoyed significantly greater career progression than the non-black employees of the same staff level.

### Main arguments

The court judged that the discrepancy between career development of the two men as compared to their non-black colleagues was caused by their racial and ethnic origin. According to the court Renault had failed to provide evidence that the differential treatment was justified by objective elements, and did not constitute unlawful discrimination.

### Key concepts and interpretations clarified by the case

This case builds on a series of case-laws on discrimination in employment, in particular concerning the application of the reversal of the burden of proof.

At the end of the 1990s, French trade unions bringing claims of discrimination would use the concept of the reversal of the burden of proof as established in Community law. In particular they would use a comparison between the situation of a discriminated employee and other employees in a similar situation in order to create the presumption of discrimination. Even before the adoption of Directives 2000/43 and 2000/78 and their transposition into national law, the Social Chamber of the Final Court of Appeals gradually recognized the validity of this comparative approach, which was inspired by the rules of Community law.

The case-law has progressively extended the reversal of the burden of proof to allegations of discrimination in general, beyond the sphere of employment law.

### Results

The Appeal Court of Versailles ordered the Renault company to pay the two former employees Euro 80.000 and 60.000 in damages respectively and an additional Euro 8.000 each for non-pecuniary damage. The company said it was surprised and disappointed by the decision of the court. The company emphasized that it condemns racism and does not practice discrimination. The Court turned down the claims of three other former employees and one current employee of the company.

Source: France Cour d'Appel de Versailles (78), *B. & K. vs. Renault*, Case 306/1, Decision of 02.04.2008, <http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?id=300> (accessed 16 Sep. 2010).

## Case 3. Retrenchment at Allianz Life Insurance – Republic of Korea

### Key facts

- Allianz Life Insurance (the Company) gave two training sessions for would-be shop heads during 4-20 March and 6-22 April 1998.
  - The training sessions included new programs that were physically challenging to

female workers, such as mountain climbing and intensive physical exercise.

- Shortly after the first training session, workers of 25-26 years in length of service were dispatched to a workplace far away from their residence.
- In July 1998, a director of the Seoul Head Office notified branch heads that workforce cuts were inevitable due to the financial difficulties of the Company. Therefore, they should persuade one spouse of married couples who were working for the Company to leave, reasoning that such retirement would not be an immediate threat to their living. The director also sent a list of the “married couple workers” to each branch.
- In early July 1998, branch heads repeatedly asked the husbands of the married couples to persuade their wives to retire. They even told the workers that “they would be unfavourably treated if their wives did not leave the Company.”
- In mid July 1998, the trade union strongly protested against married women being the first target of dismissal and distributed messages that urged employees not to succumb to the pressure of the Company. The union requested the Company to meet for a working-level discussion on the forceful dismissals, but the Company replied that it had no idea about such dismissals.
- Between 3-24 August 1998, 86 of the total of 88 married couples in the Company had one spouse tender a resignation letter.
- In September 1999, the workers submitted a complaint on unfair dismissal to the Office of Presidential Secretaries.
- In December 1999, the Seoul Regional Labour Administration investigated the case to see if the Company had violated any provision of the Labour Standards Act.
- Alleging that the employer violated the Labour Standards Act, 79 retired workers made a complaint against the head of the Company before the Seoul Regional Labour Administration.
- In February 2000 when the Seoul District Prosecutor’s Office was investigating the case that had been brought by the Seoul Regional Labor Administration, the Company offered the retired workers two months of basic pay and an additional 1 million Won each on the condition that they dropped the suit against the Company. The complainants withdrew the suit in May.

### Court ruling

- It seems that branch heads repeatedly demanded of the married couples working in the Company that one of the couple should retire. As a consequence, 86 of the total of 88 married couples working for the Company had one spouse leave the Company.
- The married couples were subject to repeated pressures that one of them should retire from the Company or they might be unfavourably treated. In this case, it is likely that the workers felt helpless with no choice but to retire. Therefore, the request by the middle-level managers to tender the letter of resignation is seen as a forceful act.
- Moreover, the workers did not receive any benefits in exchange for their resignation.
- The Company failed to comply with the provisions of the employment rules specifying justifiable causes and procedures of dismissal as well as the requirements for corporate dismissal provided for in Article 31 of the Labor Standards Act.
- In view of the above, it is believed that the Company unilaterally terminated the employment relationship with its employees, leaving the employees with no choice but to resign, although the termination took the form of “retirement at one's own request.” Therefore, the dismissal in this case is unfair.\*

### Commentary

1. Other commentators noted that the sex of the forcefully retired workers was not made explicit

in the above summary. They noted that it was the women who retired among 86 of the 88 married couples who were subject to unfair dismissal.

2. In subsequent cases, the courts in the country have been more deferential to employers' decisions to retrench or reorganize, and less inclined to consider disproportionately negative labour market outcomes for female employees as indirect discrimination.

Source: Korea International Labour Foundation (KOILAF): "Court rulings on cases of dismissal for restructuring purpose" in *Labor Today*, No. 3, Sep. 2002.

#### Case 4. Discrimination in employment due to political opinion – Slovenia

The Administrative Court found that the Minister of Justice discriminated against the claimant on the basis of political opinion by selecting another candidate for the position of president of a district court.

In accordance with the rule on the burden of proof, the Administrative Court concluded that the Minister did not prove that the reasons for the non-selection of the claimant were not discriminatory. By stating his qualifications and comparing them to the selected candidate, the claimant succeeded in proving that, in fact, he was a better candidate for the position. In addition, by listing media reports in which the Minister of Justice publicly opposed the claimant due to their political differences, the claimant succeeded in proving that the reason for his non-selection was discrimination. In this case the Court ruled that decisions to appoint members of the judiciary, even though the judicial function involves decisions that may have political repercussions, should be taken on the basis of qualifications of the candidates.

This is the first judicial decision invoking political opinion as a ground of discrimination in Slovenia, based on Article 14 of the Constitution of the Republic of Slovenia and Articles 2, 22, and 4 (§2) of the Act Implementing the Principle of Equal Treatment. Due to the fact that the new Administrative Dispute Act, adopted in 2007, limited the right of appeal to the Supreme Court, it is not yet clear whether or not this decision is final. Namely, the Minister of Justice filed both an extraordinary legal remedy and an appeal to the Supreme Court stating the reason why such an appeal is justified. If the Supreme Court accepts the appeal and decides on its merits, only the Supreme Court decision in this case will be final.

Source: Administrative Court, Slovenia: Decision No. U 1324/2007-24 of 26 November 2007, <http://www.non-discrimination.net/content/media/LR-6+7-SI-3.pdf>. (accessed 16 Sep. 2010).

#### Case 5. Age requirements for police officers and fire-fighters – Republic of Korea

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

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

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

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

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

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

Source: NHRCK: *Age limit on hiring police officers and fire-fighters is discrimination* (2009-06-04)  
<http://www.humanrights.go.kr/> (accessed 16 Sep. 2010).

### Case 6. Education as ground of discrimination – Republic of Korea

The National Human Rights Commission of Korea (NHRCK) recently recommended that Asiana Airlines amend their recruitment policies and remove arbitrary education requirements from the recruitment criteria, which currently discriminate against candidates with fewer years of education.

Regarding a complaint filed in January 2007, the Commission recommended that the representative director of the aviation company eliminate unreasonable discrimination based on education background when recruiting international crew members.

In January 2007, complainants “Do” and “Wu,” both graduates of a community college, filed a complaint against the Company with the NHRCK, stating that “Asiana Airlines requires at least a four-year college diploma for its international crew while requiring only a two-year community college diploma for its domestic crew, which is discriminatory.”

Asiana Airlines, (the respondent) contended that it had adopted this policy based on a human resources strategy to differentiate itself from competitors, although the additional requirement reduces the efficiency of the company’s human resource management, including the cost of labour. The airline also argued that the tasks performed by the international crew differ from those carried out by the domestic crew, leading to different requirements in terms of foreign language competence and interpersonal skills.

The Commission considered this argument to be unfounded and inconsistent. From investigation, the Commission found:

- The Asiana Airlines’ cabin crew manual, which is a job manual for employees, did not

make a distinction between international and domestic lines

- Asiana Airlines' recruitment advertising states that international crew members are expected to ensure on-board safety and provide in-flight services on international routes, while domestic crew are expected to perform the same tasks on domestic routes
- Different routes may have different service procedures, entry and exit procedures and cabin announcements depending on the destination, but such variations are not deemed great enough to justify different educational requirements.

The respondent's current procedure for the recruitment and selection of international crew members already assesses foreign language competency, physical strength, swimming ability and other basic skills required of employees. Once selected, new employees must develop their job-related capabilities and accumulate job experience as interns before becoming full-time international crew members.

In addition, the respondent failed to provide any specific explanation of the managerial gains it had obtained by imposing the requirement. On the contrary, the respondent recognized that the requirement at issue might hamper the efficiency of human resources management. The Commission concluded that it is therefore unreasonable to view the requirement of the four-year college degree for candidates as necessary.

After the Commission's investigation, the airline announced that it had introduced a job rotation system to give experienced domestic crew members the opportunity to work on international routes. However, the job rotation policy that was put in place is still in its infancy as it has yet to stipulate the number of years of experience on domestic routes required for job rotation eligibility and other procedural details. However, even with this system in place, applicants would still be subject to discrimination in the airline's hiring process.

The Commission believes that imposing education requirements in the recruitment and selection of international crew members represents an act of unjustifiable discrimination, in that it denies those without a four-year college degree an opportunity to apply without just cause. The National Human Rights Commission of Korea has therefore reiterated that the airline amend its recruitment and selection policy appropriately.

Source: NHRCK: *Arbitrary education requirement for employment is discrimination* (2007-12-03)  
<http://www.humanrights.go.kr/> (accessed 16 Sep. 2010).

## Case 7. "Over qualification" as permitted ground for job refusal – Sweden

### Key facts of the case

A Bosnian man, A.H., applied through a temporary agency firm (Adecco) for a job regarding graphic description at ICA (a food store chain). Following the recruitment procedure, three other persons – all of Swedish ethnic origin – were employed by ICA, even if A.H. had equal or better educational and professional merits compared to the three persons employed.

However, ICA regarded him as "over qualified". The employer thought that he had worked with graphic design rather than with graphic description and doubted that he would be content with a "non artistic" job producing promotional material from templates. The two persons interviewing A.H. perceived him to be an "individualist" with a creative disposition rather than a "team player" and two persons working at two of A.H.'s previous workplaces described him in the same way.

**Decision of the Court**

The Labour Court found that the employer had valid reasons to prefer “team oriented” persons and persons who would concentrate on their work with the templates without thinking about the graphic design issues involved earlier in the production process. Since A.H. did not have the personality required for the job he was not better qualified than the three persons employed. Thus, in legal terms, there was no “prima facie” case of discrimination based on merit alone and the Ombudsman against Discrimination who had filed for discrimination on the basis of ethnic origin lost the case.

Source: Labour Court, Sweden: *Case 2009 nr 16, The Ombudsman Against Discrimination v. ICA and Adecco*, 11 February 2009,

<http://www.non-discrimination.net/content/media/764-SE-5-FLASH%20REPORT.%20Case%202009%20nr%2016.pdf>.

(accessed 16 Sep. 2010).

**Case 8. Legal effects of a Code of practice – United Kingdom**

Organizations are liable for acts of racial discrimination carried out by their employees against other employees. If an organization learns about its employees' acts of racial discrimination but does nothing appropriate about them, it can find its conduct counting against it in legal proceedings.

This was the situation that Abbey National (part of the Banco Santander Group) faced in the 2006 UK landmark case of *Chagger v Abbey National plc & Hopkins*. Abbey National's lack of compliance with the Code of practice on racial policy in employment contributed to the Employment Tribunal's judgement of race discrimination. Abbey National's refusal to comply with the Tribunal's order to re-instate the discriminated employee, Mr Chagger, and remedy its wrongdoing led to a record compensation order amounting to 2.8 million English Pounds.

Balbinder Chagger, of Indian origin, was employed by Abbey National and reported to Nigel Hopkins. In 2006, he was dismissed ostensibly for reason of redundancy. The Tribunal found that Mr Hopkins had used the redundancy process as a means to remove Mr Chagger from his position, and that both Mr Hopkins and Abbey National had discriminated against Mr Chagger on the grounds of race in respect of his dismissal.

An organization is able to defend itself in a case of alleged racial discrimination brought against it if it can show that it complied with the steps recommended in the Code of practice. The Code provides employers with guidance on what is good equal opportunity practice, how to achieve equal opportunity and how to prevent racial discrimination. It recommends steps for employers to adopt and put into practice effective policies designed to prevent racial discrimination and to ensure equal opportunity for everyone.

The Code recommends that employers establish an Equal Opportunities Policy, which makes explicit reference to racial equality. Furthermore, the code recommends that employers put their Equal Opportunities Policy into practice, thus demonstrating that they are serious about equality. The Code recommends that employers promote the Equal Opportunities Policy; provide appropriate Equal Opportunity training for officers who have particular responsibilities under it (some officers may need more advanced training, depending on their responsibilities); monitor employees and applicants for employment, promotion and training by racial group; review all employment policies, procedures and practices, to see if they are potentially discriminatory or obstruct equality of opportunity; and take steps to remove potential discrimination and reduce

any significant disparities between racial groups. Monitoring allows employers to discover any disparities between racial groups and to investigate the underlying causes. Monitoring and investigating disparities sends a clear message that the organization is serious about achieving fair and equitable participation.

The Employment Tribunal in *Chagger v Abbey National plc & Hopkins (2006)* noted that Mr Chagger had tried to address his allegations of race discrimination directly with Abbey National and Mr Hopkins, through the company's own complaints and grievance procedures. However, there was a culture at Abbey National of tending to deny and refuse Mr Chagger's issues and these were dismissed out of hand. The Tribunal in particular criticized two of the senior managers who heard and decided on Mr Chagger's concerns for appearing to believe that if there was no overt 'racial prejudice' then there could be no race discrimination. The Tribunal found that Abbey National was in breach of the steps recommended by the Code by not providing any managers with Equal Opportunity training.

Employers can also demonstrate their commitment to equality in the workplace by implementing procedures that monitor fairness. The Tribunal found that Abbey National was in breach of the steps recommended by the Code with regard to monitoring too. The Tribunal noted a multitude of monitoring failures, including the failures to take allegations of race discrimination seriously and to investigate them promptly.

Employers who do not comply with the steps and practices recommended by the Code of Practice on Racial Policy in Employment can find their apparent lack of commitment to equality counting against them. Abbey National's lack of compliance with the employment practices recommended by the Code contributed (among other factors) towards the Employment Tribunal's finding that Abbey National and Mr Hopkins had discriminated against Mr Chagger on the grounds of race in respect of Mr Chagger's dismissal.

Source: Employment Tribunal, United Kingdom: *Chagger v Abbey National plc & Hopkins (2006)*, [http://www.articlealley.com/article\\_911223\\_15.html](http://www.articlealley.com/article_911223_15.html) (accessed 16 Sep. 2010).



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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](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/lang--en/index.htm)

ILO Programme for the Promotion of the Declaration on Fundamental Principles and Rights at Work  
[http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static\\_jump?var\\_language=EN&var\\_pagename=ISSUESDISCRIMINATION](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.static_jump?var_language=EN&var_pagename=ISSUESDISCRIMINATION)

ILO 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>

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

### Annex 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.

## Annex 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.

### **Annex 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

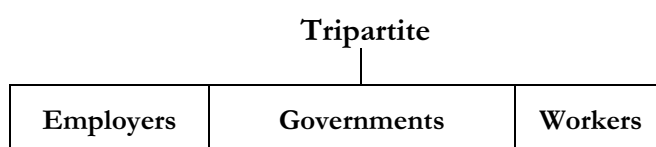
The English and French versions of the text of this Convention are equally authoritative.

## Annex 4. The ILO and international labour standards<sup>43</sup>

### 1. What is the ILO?

The International Labour Organization (ILO) was established in 1919. The ILO is a specialized agency of the United Nations system which pursues social justice and promote decent work for men and women everywhere regardless of their race, sex, gender or social origin. The ILO pursues this aim by a combination of standard-setting, technical cooperation and sharing of information.

The ILO is unique among UN agencies because it is a tripartite organization. It is composed not only of governments, but of three partners: governments, employers and workers. The ILO is built on dialogue and cooperation among these three parties, with two votes from government and one each from employers and workers' representatives respectively from each country at the International Labour Conference.



The ILO has three main organs: the International Labour Conference, the Governing Body, and the International Labour Office.

#### 1.1 The International Labour Conference

The International Labour Conference (ILC) is the principal policy-making body of the ILO. It provides a forum for debate and discussion on important social and labour issues. Each year in June, tripartite delegations from all member States come together to discuss, adopt and supervise the application of international labour standards. The ILC adopts the budget and elects the members of the Governing Body. See Box 1 below.

Each of the 183 member States (as of 30 November 2010) is represented by four delegates to the annual Conference. Two delegates represent the government, and one delegate each represents the employers and the workers from each country. The government designates the employer and worker delegate after consultations with the most representative national organizations of employers and workers—and pays for their participation.

#### 1.2 The Governing Body

The Governing Body is the ILO's executive council of the International Labour Office, or 'board of directors'. It reviews the ILO programme and budget for approval by the ILC. It also sets the Conference agenda, and elects the Director-General of the ILO, its chief executive official, for a five-year term. The Governing Body is composed of 56 members: 28 government members, 14 employer members and 14 worker members. Representatives of 10 governments are permanently represented on the Governing Body and the others are elected.

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<sup>43</sup> Updated from: ILO: *International labour standards on migrant workers' rights: Guide for policymakers and practitioners in Asia and the Pacific*, (Bangkok, 2008).

**Box 1. ILO structure****1.3 The International Labour Office**

The International Labour Office is the permanent secretariat and the focal point to carry out the activities of the ILO, including research, investigations, technical co-operation and publications.

The organization's Office headquarters are in Geneva and it has 58 field offices. ILO provides assistance to its member States with the ratification and application of international labour standards, and provides technical cooperation covering fields such as labour law reform, the fundamental principles and rights at work, employment policies, labour market information, enterprise development and vocational training, microfinance, social security, occupational safety and health, conditions of work, labour administration, industrial relations and labour inspection.

## 2. What are international labour standards?

International labour standards are universal reference points marking levels of achievement in economic and social development. They lay out basic principles, articulate rights and duties of employers and workers, establish policy objectives, outline areas of action, or provide guidance on means and procedures to be employed. International labour standards are designed to promote decent work for workers of all nationalities. They take the legal form of either:

- **Conventions or Protocols:** legally binding international treaties that may be ratified by member States, laying down the basic principles to be applied by ratifying countries, or
- **Recommendations:** non-binding, but authoritative guidelines that do not have to be ratified and become effective upon adoption at the International Labour Conference.

Conventions set out the minimum standards that were subject to extensive negotiations and resulting agreement between the ILO governments, employers' and workers' organizations from the member States. Recommendations provide more specific guidance for national law and practice, as well as for international advocacy. Usually Recommendations accompany and supplement a Convention but they can also be autonomous, i.e. not linked to any specific Convention.

In today's world, the role of international labour standards is to provide authoritative guidance on work-related matters, so that work can fulfil its function as a lever lifting people out of poverty, while providing space to economies to make the necessary adjustments to raise productivity and income levels. To date, 76 international labour conventions, 5 protocols and 79 recommendations are considered up-to-date.

## 3. How are international labour standards developed?

International labour standards are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labour Conference. As a first step, the Governing Body agrees to put an issue on the agenda of a future International Labour Conference. The International Labour Office prepares a report that analyzes the laws and practices of member States with regard to the issue at stake. The report is circulated to member States and to workers' and employers' organizations for comments and is discussed at the International Labour Conference.

A second report is then prepared by the Office with a draft instrument for comments and submitted for discussion at the following Conference, where the draft is amended as necessary and proposed for adoption. This 'double discussion' gives Conference participants sufficient time to examine the draft instrument in the light of their own experience, and make comments on it. A two-thirds majority of the votes cast is required for an international labour Convention or Recommendation to be adopted.

## 4. How are international labour standards applied?

Once a standard is adopted at the International Labour Conference, member States are required under the ILO Constitution to *submit* it to their legislative assemblies for information and consideration. In the case of Conventions, this means consideration with a view to giving effect in *national law and practice* and to their *ratification*.

The application of international labour standards is most commonly done through dialogue and persistent persuasion, and procedures are in place to ensure their application. A comprehensive

supervisory system helps countries implement the Conventions that they have ratified and the Recommendations they have adopted. Through this supervisory system, the ILO helps its members to translate the standards into concrete policies and action. Standards set in numerous Conventions and Recommendations have been incorporated into the laws and practices of the vast majority of the ILO member countries.

## 5. What is ratification?

*Ratification* is a formal acceptance of an international convention or treaty by a government. It is a sovereign and voluntary act of a State. When a government ratifies a Convention, it is legally bound by its contents.

After a Convention is ratified, it generally comes into force one year after the date of ratification. This means the ratifying country must take necessary steps to apply the Convention in national law and in practice, for example, by adopting appropriate laws and policies. The country must submit reports to the ILO on the progress in applying the Convention.

Ratifying an ILO Convention is the start of a process of dialogue and cooperation between the government and the ILO. Unlike other international treaties, international labour Conventions cannot be ratified with reservations, and have to be accepted in their entirety. Therefore, before ratifying a Convention, it is desirable that government, employers' and workers' organizations discuss and reach a common understanding of the obligations they are about to undertake.

### Box 2. Ratification process



Source: ILO: *ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169): A manual*, Geneva, 2003, p 71.

Worldwide, Conventions No. 100 and No. 111 have been ratified by 167 and 169 countries respectively (as of 28 Nov. 2009). In the Asia-Pacific region, they have been ratified by 33 and 32 countries respectively. China ratified Convention No. 100 in Nov. 1990 and Convention No. 111 in Jan. 2006.

## 6. Process of dialogue and access to the ILO

Dialogue between the ILO and its constituents usually starts well before a country ratifies a Convention, and continues after the Convention has been ratified. The purpose of the dialogue is primarily for the ILO and its constituents to work together to ensure that national legislation and practice are in line with the provisions of the Convention.

Due to its tripartite structure, the ILO allows non-State actors opportunity to participate in its activities and access to its mechanisms to a greater extent than do other international bodies. The relation with the non-governmental sector involves the following:

- the integration of non-governmental social partners in the ILO itself
- according consultative status to non-governmental international organizations that meet certain criteria
- collaboration at the operational level with a variety of international, national and local organizations.

Individual workers do not have a formal position within the ILO tripartite structure. However, they can participate in ILO meetings and other activities in the following manner:

- as representatives of governments, or of workers' and employers' organizations, including as organizations representing different categories of workers
- as advisors to the delegations at the International Labour Conference
- as representatives of a non-governmental organization (NGO) on the ILO Special List of Non-Governmental International Organizations.

The ILO's Special List is a list of NGOs whose aims and activities are in harmony with the spirit, aims and principles of the ILO. NGOs should work internationally and cover a number of countries in their work.

NGOs wishing to be on the list can send a request to the Director-General of the ILO. For an NGO on the special list to participate in a meeting, a written request must be submitted to the Director-General of the ILO at least one month before that meeting or conference is scheduled to start.

Individual workers can also send information directly to the ILO. This can be done:

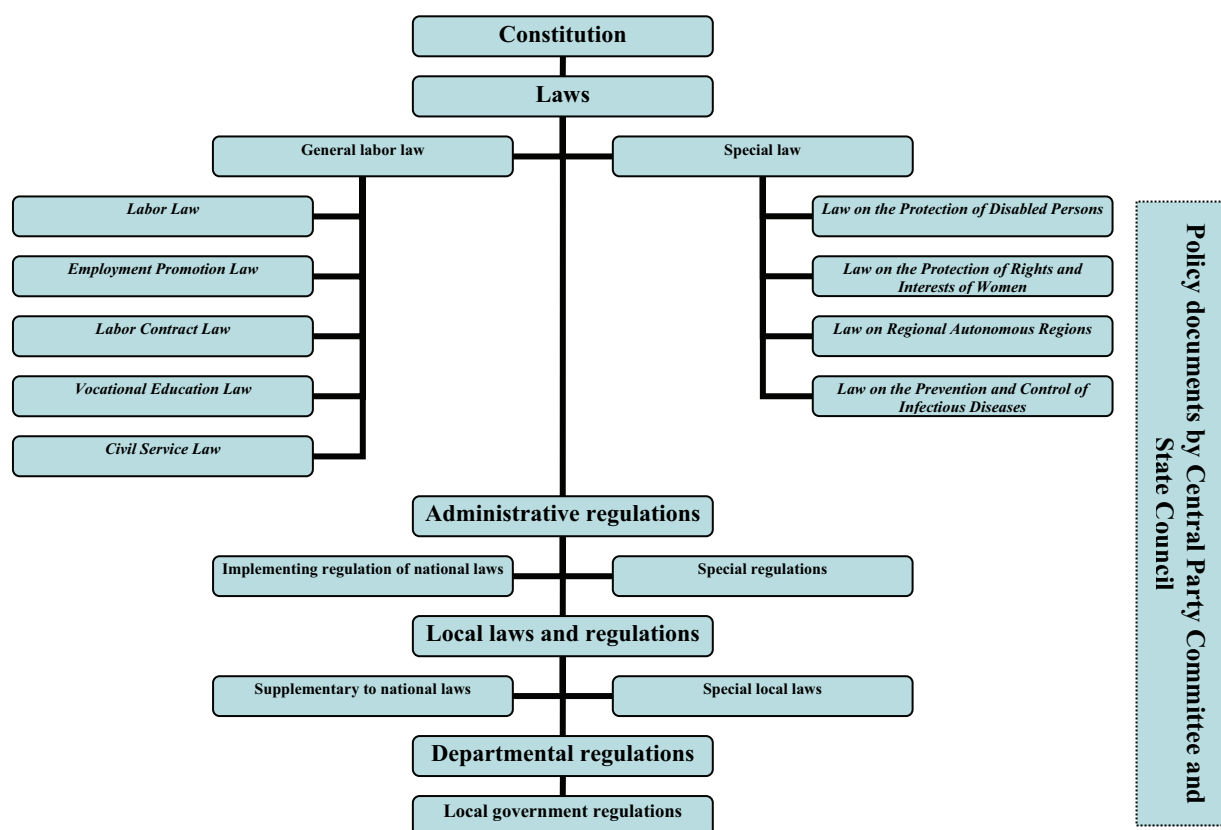
- through any workers' or employers' organization
- by sending the information themselves.

The ILO Committee of Experts and the Conference Committee on the Application of Standards have emphasized the value of such comments for their work if the comments contain verifiable information such as laws, regulations or other official documents such as judicial decisions.

## Annex 5. Overview of legal framework to combat discrimination and promote equality in employment in China

China has included anti-discrimination provisions in different legal documents adopted at various levels as shown below in Figure 1. Until now, it has not adopted a single, unified statutory instrument outlawing discrimination in employment and occupation.

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



### 1. The Constitution

The Constitution is the fundamental law of the country and no laws, administrative laws and regulations, local laws and regulations, autonomous regulations and separate regulations or rules shall be in conflict with the Constitution.

On citizens' equal rights, including equal employment rights, the Constitution of the People's Republic of China has put forward three principle norms: citizens' equal rights and human rights in general; citizens' rights to work, rest, and social guarantees; and the equal rights of special groups', including women's equal rights. The Regulations in the Constitution provide the guiding principles for other legislation against discrimination in employment.

#### Box 1. The Constitution of the People's Republic of China – (Revised in 2004)

- **Ethnicity.** Article 4. 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; any acts that undermine the unity of the nationalities or instigate their secession are prohibited. The state helps the areas

inhabited by minority nationalities speed up their economic and cultural development in accordance with the peculiarities and needs of the different minority nationalities. Regional autonomy is practised in areas where people of minority nationalities live in compact communities; in these areas organs of self- government are established for the exercise of the right of autonomy. All the national autonomous areas are inalienable parts of the People's Republic of China. The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.

- **General.** Article 33. 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. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.
- **Religion.** Article 36. 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. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.
- **Right and duty to work.** Article 42. Citizens of the People's Republic of China have the right as well as the duty to work. The State undertakes to create employment opportunities, strengthen workplace protection, improve working conditions, and raise remuneration and welfare on the basis of increased production. The State will also provide necessary training to citizens prior to their employment.
- **Rest.** Article 43. Working people in the People's Republic of China have the right to rest. The State develops infrastructure for people to rest, and issues regulations on working hours and holidays.
- **Retirement.** Article 44. The State prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of [the] State. The livelihood of retired personnel is ensured by the State and society.
- **Disability.** Article 45. Citizens of the People's Republic of China have the right to material assistance from the state and society when they are old, ill or disabled. The state develops the social insurance, social relief and medical and health services that are required to enable citizens to enjoy this right. The state and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel. The state and society help make arrangements for the work, livelihood and education of the blind, deaf-mute and other handicapped citizens.
- **Women.** Article 48. 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.

## 2. Laws

Laws drawn up by the National People's Congress (NPC) and its standing committee are the lynchpin of China's legal system. They take precedence over administrative laws and regulations, local laws and regulations, department regulations and other local regulations. Over 530 laws are currently in effect.

Provisions prohibiting discrimination may be found either in general labour law (legislation governing employment and human resources) or in specific laws governing the protection of groups of people as shown above in Figure 1.

### 2.1 General labour laws

#### The Labour Law

The Labour Law is the fundamental law on equal rights to employment and prohibition of

employment discrimination. Key content includes:

- The right to equality in employment is stated: Labourers enjoy equality in rights to employment and the right to choose their occupations
- The causes (or factors of discrimination in employment) for discrimination in employment are listed: Labourers shall not be discriminated against in employment due to their nationality, race, sex, or religious belief
- Equal payment for equal work is provided: Payment shall be in line with work, equal payment for equal work.
- Equal employment rights for women and special protection for female employees and under-age workers is secured, and directions are provided to promote the employment of the disabled, ethnic minorities and veterans.

#### **Box 2. The Labour Law (1994)**

- Article 3. Labourers shall have the right to be employed on an equal basis and the right to choose occupations...as well as other labour rights stipulated by law.
- Article 12. Labourers shall not be discriminated against in employment, regardless of their ethnic community, race, sex or religious belief.
- Article 46. The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.
- Article 13. Women shall enjoy equal rights with men in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding women from employment or to raise recruitment standards for women, except for the types of work or posts that are not suitable for women as stipulated by the State.
- Chapter 7. Special Protection for Female and Juvenile Workers as specified in eight articles (See also Box 8 in this Annex).
- Article 14. Where there are special stipulations in laws, rules and regulations on the employment of the disabled, the personnel of national minorities, and demobilized army men, such special stipulations shall apply.

#### **The Vocational Education Law**

Vocational education is a major method to promote labourers' ability in employment and occupation. The Vocational Education Law clearly stipulates that citizens are entitled to vocational education (Article 5). Regarding the disabled, it provides that, besides access to vocational education from education institutions for the disabled, disabled students shall also be admitted to vocational schools, vocational training institutions and other education institutions according to related stipulations of the State.

#### **The Civil Servant Law**

The civil service is a popular choice among job seekers and the protection against employment discrimination in the civil service serves as guidance for employment promotion in the private sector. Article 5 of the Civil Servant Law stipulates: "The principle of openness, equality, competition and selecting the superior ones shall be held in the administration of civil servants, which shall be carried out according to the legal power limits, qualifications, standards and procedures." Article 21 states: "Measures of open examination, strict inspection, equal competition and enrolment on the basis of competitive selection shall be adopted in the recruitment of civil servants for the posts lower than division director or in any other non-leading posts at the corresponding level. Where there is any employment of civil servants in an autonomous region according to the provisions of the preceding paragraph, the applicants of ethnic minorities shall be given appropriate preferential treatment according to laws and other relevant provisions."

### **The Employment Promotion Law**

The Employment Promotion Law of 2007 is the first legislation which explicitly prohibits discrimination in employment. It has further developed and enriched the content of the Labour Law. A special chapter on equal employment is included in the Employment Promotion Law, which highlights the importance of practical measures and action against discrimination in employment.

The main provisions against discrimination in employment in the Employment Promotion Law include:

- Reconfirmation of the equal employment rights for labourers.
- Expansion of the causes for discrimination in employment: “and so on” was added after the four causes triggering discrimination in employment as listed in the Labour Law.
- Broadening the scope of anti-discrimination. In the chapter on Equal employment it is not only stipulated that no discrimination is allowed in recruitment, but also that no discriminatory restrictions should be set on the employment of labourers from rural areas. Meanwhile, it strengthens clauses on forbidding discrimination on the grounds of sex, race, disability and carrying an infectious disease pathogen.
- Correction measures against bias are strengthened, as regulated in Chapter 6. Employment support, specifying support for persons, industries and regions with difficulties in employment.
- It also provides for remedies. Article 62 of this law states: “The labourer is entitled to propose bringing the case to the court for discrimination in employment against stipulations stated in this law.”

#### **Box 3. The Employment Promotion Law (2007)**

- Article 4. Workers shall have the right to equal employment and to choose a job on their own initiative in accordance with the law. Workers seeking employment shall not be subject to discrimination based on factors such as ethnicity, race, sex, religious belief etc.
- Chapter 3. Equal Employment: 7 articles in total
- Chapter 6. Employment Support: 6 articles in total
- Article 60. The administrative departments of labour shall carry out supervision on the implementation of this law, establish a reporting system to accept complaints, and give prompt confirmation and settlement.
- Article 62. The labourer can file a case with the People’s Court if discrimination in employment in contradiction with this law occurs.

### **The Labour Contract Law**

The Labour Contract Law promulgated in 2007 is important for regulating and adjusting labour relations and guaranteeing equality in employment and occupation. It puts forward the principle of equality and justice in entering into contracts. It states that the employing unit has the responsibility of informing and safeguarding the right to information during recruitment and it sets boundaries to the right of information of the employing unit. This may limit the rights of the employer to ask information which is not related to the requirement of a job and may reduce discrimination in employment to some degree.

Limits have been set on the dissolution and termination of a labour contract, which provides protection for pregnant women and young mothers, and senior and sick employees. In addition, dispatched workers are guaranteed the right to equal pay for equal work.

**Box 4. The Labour Contract Law (2007)**

- Article 3. When entering into a labour contract, the principles of legitimacy, equity, equality and voluntariness, reaching consensus through consultation, honesty and good faith should be followed. A labour contract entered into according to the law is legally binding and both employers and employees must carry out the responsibilities specified in the labour contract.
- Article 8. The employing unit shall tell truthfully the content, condition, and location of the work, dangers of the occupation, security status, payment and compensation, as well as other information asked by the labourers. The employing unit is entitled to know the basic information on the labourer directly related to the labour contract, and the labourer shall answer truthfully.”
- Article 11. If an employer does not enter into a written labour contract when recruiting a employee, or if the remuneration is not specified clearly, the amount of the remuneration of the newly recruited employee should be defined according to the collective contract. If there is no collective contract or no specifications in the collective contract, the principle of equal pay for equal work should be followed.
- Article 43. 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:
  1. With respect to employees who are employed in positions that may give rise to occupational diseases and who have not undergone a medical examination before departure or are diagnosed as possibly having contracted an occupational disease or who are under medical observation for an occupational disease.
  2. With respect to employees who suffer from an occupational disease or an employment injury and are confirmed as being completely or partially incapacitated to work;
  3. With respect to employees who suffer from illness or non-work related injury and who are still under prescribed medical treatment;
  4. With respect to women employees during their pregnancy, maternity and breast-feeding period;
  5. With respect to employees who have served their employer for 15 consecutive years, or are less than 5 years away from their retirement age;
  6. Other circumstances that are stipulated by law or regulations.
- Article 63. 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.

**2.2 Specific Protection Laws****The Law on the Protection of Rights and Interests of Women**

Women make up 48.5 per cent of the overall population in China, and constitute 45.4 per cent of the overall working population in China.<sup>44</sup> Sex discrimination is one of the most serious types of discrimination in China.

The protection of women’s equal employment right in this Law stipulates:

- Women enjoy equal rights with men in working and social guarantees
- The employing unit shall not discriminate against women in recruitment, compensation, promotion, or technical expertise assessment
- Special protection measures are in force
- There shall be “no sexual harassment of women.”

<sup>44</sup> Report of In-depth Implementation of Scientific Development Vision and Striving to Create a New Prospect for the Work of Women’s Federation made by Huang Qingyi at the 10th Women’s National Convention

**Box 5. The Law on the Protection of Rights and Interests of Women (passed in 1992, revised in 2005)**

- Article 22. The State guarantees that women enjoy equal working and social guarantee rights with men.
- Article 28. The State develops social insurance, social relief, social welfare and medical and health care systems, guaranteeing that women are entitled to all the above mentioned benefits.
- Article 29. The State promotes the system of maternity insurance and builds other guarantee systems that are sound and related to maternity. Regional governments of all levels and related departments shall provide necessary maternity relief to poor women according to related rules.
- Article 23. When recruiting, no unit shall refuse women employees or raise recruitment standards for women except for work or positions that are unsuitable for women. When recruiting a woman employee, no unit shall sign with her the labour (hiring) contract or service agreement with stipulations limiting marriage or maternity.  
Women under the age of 16 shall not be recruited except when otherwise stipulated by the State.
- Article 24. Equal payment for equal work for both men and women [shall be provided]. Women shall enjoy equal rights in terms of welfare and compensation.
- Article 25. Women shall be equal with men in aspects including promotion and professional expertise assessment. No discrimination against women is allowed.
- Article 27. No unit shall reduce the salary of its female employee, fire her or terminate the labour (hiring) contract or service agreement unilaterally for reasons including marriage, pregnancy, maternity leave and nursing.  
But exceptions are given in the situation when the female employee requests to terminate the labour (hiring) contract or service agreement.  
No unit shall discriminate against women due to their sex when executing the national retirement system.
- Article 26. All units shall guarantee the safety and health of women during their work or jobs according to the feature of women. The units are not allowed to assign women to types of work or jobs that are not suitable for women.  
Women are entitled to special protections during their menstruation period, pregnancy, maternity and nursing.
- Article 40. No sexual harassment towards women is allowed. The female victim is entitled to file a case with the employing unit and related authorities.

**The Law on the Protection of Disabled Persons**

Employment is the basis for the disabled to improve their living condition and involve in social life on an equal footing. According to the results of the second sample survey in 2006 of the disabled, the population of the disabled in China has reached 82.96 million amounting to 6.34% of the overall national population. In 1990, China published the Law on the Protection of Disabled Persons, which was revised in 2008.

**Box 6. The Law on the Protection of Disabled Persons (passed in 1990, revised in 2008)**

This law provides for equal employment and prohibition of employment discrimination in three aspects:

- Equal rights for the disabled, including the right to work.
- Adoption of preferential policies, support and protection measures, and government incentives for employing units and companies which employ many disabled workers and for disabled persons who set up their own business.
- Special efforts to enhance the employment of disabled people, for example, through the provision of subsidized skills training or employment services, and provision of reasonable accommodation in workplaces.

 For the relevant articles on discrimination in this Law, see Unit 5.2 in Module 5. Discrimination, health and disability.

### **The Law on Regional Ethnic Autonomy**

China is a multi-ethnic country, and follows the policy of Regional Ethnic Autonomy in ethnic areas. It is stipulated in the Law on Regional Ethnic Autonomy (1984) that self-governments in those autonomous regions can adopt all measures to train officials, talents on science and technology, and management, as well as professional technicians from the women of minority nationalities. (Article 22)

“When recruiting personnel, enterprises and institutions in national autonomous areas shall give priority to minority nationalities and may enlist them from the population of minority nationalities in rural and pastoral areas. (Article 23)

### **The Law on the Prevention and Treatment of Infectious Diseases**

Society pays close attention to disease-related discrimination, especially to Hepatitis B and HIV discrimination. Article 16 of the Law on the Prevention and Treatment of Infectious Diseases, promulgated in 1989 and revised in 2004, stipulates that the government and society should care and help patients with infectious diseases, pathogen carriers and those suspected of having an infectious disease. They should get timely treatment and should not be discriminated in employment.

## **2.3 Administrative regulations and policy documents issued by the State Council**

The administrative regulations and policy documents issued by the State council on anti-discrimination of employment can be divided into three categories:

- Comprehensive supporting regulations carried out for implementing relevant laws. Example: Provisions on the Implementation of the Law on Regional Autonomy by the State Council.
- Laws aimed at specific issues. Examples:
  - Regulations on Labour Protection of Women Workers
  - Regulations on the Employment of Disabled Persons
  - Regulations on the Prevention and Control of HIV/AIDS
  - Regulations on Religious Affairs (See Good practice 3 in Section D of this module).
- Policy documents issued by the Central Government and the State Council. Examples:
  - Circular of the Central Government and State Council on Work Related to Employment and Re-Employment of Laid-Off Workers (2002)
  - Circular of the Central Government and State Council on Intensifying Work on Talents (2003)
  - Circular of the State Council on Further Intensifying Work on Employment and Re-Employment (2005)
  - Directive of the State Council on Management and Service for Rural Migrant Workers Seeking Jobs in Cities.

### **Provisions on the Implementation of the Law on Regional Ethnic Autonomy**

Based on the Law on Regional Ethnic Autonomy, the Provisions give instructions on how to promote the employment of ethnic minorities in autonomous regions.

### Box 7. The Law on Regional Ethnic Autonomy

Upper level government shall comply with State regulations, helping autonomous regions to accelerate the establishment of a social security system, set up and complete the endowment insurance, unemployment insurance, medical insurance, employment injury insurance, maternity insurance and an urban resident's minimum living guarantee system. (Article 27)

Upper level government and leaders of other departments shall contain a few ethnic minorities; the local government of autonomous regions shall include the ethnicity of the autonomous region and other ethnic minorities. When selecting leaders by public selection and competition, certain quota and positions can be reserved for ethnic leaders. The ethnicity of the autonomous region and other ethnic minorities enjoy preferential policies in applying for positions in State organizations [in their region of origin]. Specific methods and implementation procedures shall be worked out by the department in charge of employment. (Article 28)

The upper government guides the autonomous region to design and implement human resources development planning, and adopt all the effective measures for training and using the talents from the ethnicity of the autonomous region and other ethnic minorities. (Article 29)

### Regulations on Labour Protection of Women Workers

The Regulations issued by the State Council in 1988 are important in protecting the lawful rights and interests of female workers. They include four aspects:

- Reaffirm that female staff have the same rights of employment as male workers.
- Stipulate special protections for female workers. The fourth article in the Regulations Concerning the Labor Protection of Female Staff and Workers stipulates that during the pregnancy, maternity leave and nursing period of female staff and workers, their basic salaries may not be reduced and their labor contracts may not be cancelled.
- Stipulate work that shall be avoided by female staff and workers.
- Stipulate the restrictions to terminate labor contract with female staff.

### Box 8. Regulations on Labour Protection of Women Workers (1988) – Under revision

- Article 3. Units suitable for women employees shall not refuse to recruit them.
- Article 4. It is not allowed to lower the basic salary or terminate the labour contract when women are in pregnancy, maternity or nursing.
- Article 6. Women shall not be assigned to works of upper-air, low temperature, cold water or other 3rd level labor intensity regulated by the State.
- Article 7. During their pregnancy, women shall not be assigned to types of work of 3rd level labour intensity regulated by the State and other types of work not suitable for pregnancy, or work beyond the normal working hours, or types of work they are not competent at, and their workload shall be reduced or they shall be assigned to other types of work according to the certification issued by the medical department.

Women employees who are pregnant for 7 months or more, no night shift shall be assigned and a certain time for breaks shall be granted during the work.

Pregnant employees shall be allowed to take a pre-maternity check, which shall be considered as working time.

- Article 8. Maternity leave for women employees shall be 90 days, including 15 days before maternity. For those with a difficult delivery, another 15 days shall be added. For those giving multiple births, 15 days are added for every other baby.  
For women employees who suffer from a miscarriage, a certain time of maternity leave shall be granted by the employing unit according to the certification issued by the medical department.
- Article 9. Women employees with a baby less than one year old are allowed two nursing times of 30 minutes each (including artificial feeding) in one shift. For those who give multiple births, another 30

minutes shall be given for every other baby. The women employees are entitled to combine the two nursing times. The time for commuting shall be considered as working time.

- Article 10. During the nursing period, women employees shall not be assigned to types of work of the 3rd level intensity regulated by the State or types of work which are not allowed during nursing; postponing working hours is not allowed; and no night shift is allowed.
- Article 11. An employing unit with more [...] proportion of women employees shall build facilities including a clinic for women employees, lounge for pregnant employees, nursing room, day-care center, and kindergarten, and it shall also help its women employees on their difficulties in physical hygiene, nursing, and baby-sitting.
- Article 12. If the right and interests of female staff and workers in respect of labour protection are infringed upon, such female staff and workers shall have the right to appeal to the department in charge of the unit employing them or the local labour department. The department accepting the appeal shall decide on it within thirty (30) days after receipt of the letter of appeal. Female staff and workers who object to the decision or the handling of the appeal may initiate legal proceedings at the People's Court within fifteen (15) days after their receipt of the notification of the decision.
- Article 13. If a unit violates these regulations by infringing upon the rights and interests of a female staff member or worker in respect of labour protection, the department in charge of such unit shall take administrative disciplinary action against such unit's person(s)-in-charge and person(s) directly responsible for the infringement, according to the seriousness of the case, and shall order such unit to pay such female staff member or worker reasonable financial compensation. If a criminal offence is constituted, the judicial authorities shall investigate criminal liability according to the law.

### **Regulations on the Employment of Disabled Persons**

The State Council published the Regulations in 2006. They detail measures for the promotion of employment of disabled persons on the basis of the Law on the Protection of Disabled Persons.

#### **Box 9. Regulations on the Employment of Disabled Persons (2006)**

- Article 2. The State implements the guidelines of combining centralized employment with decentralized employment to the employment of the disabled, and promotes the employment of the disabled.  
The State encourages social organizations and individuals to help and support the employment of the disabled through various channels and forms, encourages the disabled to find jobs by various means, and prohibits discrimination against the disabled in employment.
- Article 8. An employer shall arrange a certain proportion of the disabled for employment, and provide suitable kinds of work and posts for them.  
The proportion for an employer to hire disabled people shall not be lower than 1.5 per cent of the total number of its staff members in office.  
In case an employer hires any disabled person in a region other than where it is registered, the disabled hired in that region shall be incorporated into the number of disabled employees it has hired.
- Article 9. In case the number of disabled persons hired by an employer is less than the proportion as prescribed by the people's government of the local province, autonomous region or municipality directly under the Central Government, the employer shall pay the employment protection fund for the disabled.
- Article 10. Welfare enterprises for the disabled, blind massage centers and other welfare entities (hereafter referred to as employers that hire the disabled in a centralized manner) launched by governments and the society shall arrange the employment of the disabled in a centralized manner.  
The qualification accreditation of the employers that hire disabled people in a centralized manner shall be carried out according to the relevant provisions of the State.
- Article 11. The disabled employees engaging in full-time employment by an employer that hires the disabled in a centralized manner shall account 25 per cent or more of the total number of its full-time employees.
- Article 12. An employer shall, for the employment of disabled employees, conclude labor contracts or service agreements with them.

- Article 13. An employer shall provide the disabled employees with the labour conditions and labour protection suitable for their healthy situation; and shall not discriminate against the disabled employees in the aspects of promotion, rise in rank, conferring of professional titles, social insurances and living welfare treatments, etc.
- Article 17. The State shall provide preferential taxation and support in the production, operation, technology, capital, materials and the use of land or premises for business operations to employing units who employ the disabled.
- Article 18. People's government and related authorities above the county level shall define products and projects that are suitable for the disabled to produce and operate. Priority shall be given to employing units hiring a large amount of the disabled in their production or operation, and exclusive production right shall be granted to them for certain products according to the characteristics of these units.  
The government shall consider the product or services provided by the employing units who hire a large number of the disabled during its purchasing, given the same conditions.
- Article 19. The State shall encourage and support the disabled to choose their careers or create their business independently. For those disabled who are involved in independent business, preferred taxation policy shall be granted to them according to the legal requirements, and related authorities shall provide support in aspects including business location, and exempt them from administrative fees for management, registration or certificates.  
The State shall give support including providing small credit for a certain period to the disabled who choose to open their own business independently.
- Article 20. The local governments of all levels shall raise capitals from all channels to organize and support the disabled from rural areas in planting, breeding, handicraft, and other forms of work.  
Related authorities shall provide help including production service, technical guidance, farm material supply, agricultural by-products and credit to the disabled in the rural area who are involved in agricultural industry.

### **Regulations on the Prevention and Control of HIV/AIDS**

AIDS is a serious infectious disease with a high fatality rate if left untreated; and the virus that transmits AIDS is called HIV. At the moment, China is facing great challenges in curbing the spread of HIV/AIDS in the country. Some people lack accurate and scientific understanding of the means of transmission of HIV, and they usually hold a discriminatory view of people living with HIV/AIDS.

In January 2006, the State Council promulgated the Regulations on the Prevention and Control of HIV/AIDS. Article 3 stipulates that “no company or individual shall discriminate against HIV carriers, AIDS patients or their families. The legitimate rights of HIV carriers, AIDS patients and their families, such as the rights to marriage, employment, hospitalization and schooling, are under the protection of the law.”

### **Policy documents on employment and re-employment**

In 2002, in light of the severe employment situation, especially the critical problem of unemployed and laid-off workers, the Central Committee of the Communist Party of China and the State Council jointly issued a Notice on Strengthening the Employment and Re-employment Works for Unemployed and Laid-off Workers. The Notice states 10 policies toward unemployed and laid-off workers, including reduction of tax, small loan, subsidy on social security, assistance in employment, separating primary and auxiliary works, employment service, financial input, social security, standardized reduction rule of the staff and the community platform. Especially for the unemployed and laid-off workers over age 50 (for men) or 40 (for women) (usually called the “40-50” people), the government put forward some special preferential policies, such as aid in employment, priority for some public welfare jobs, subsidy on social security or on special works.

In 2005, the State Council promulgated a Notice on Further Strengthening the Employment and Re-employment Works. Compared to the Notice in 2002, the new regulation extends the period of the policy, enlarges the scope of application and enriches the contents of the policies.

### **Policies on enhancing human resources development**

In 2003, the Decision of the Central Committee of the Communist Party of China and the State Council on Further Enhancing the Development of Human Resources was promulgated. The document stipulates that employment, staffing and flow of personnel shall adhere to the rule of equality.

The Decision's priorities are as follows:

- Forming a scientific concept of talents...we should put equal emphasis on a person's ability and integrity, judge a person by his integrity, knowledge, ability and performance, instead of merely by his educational background, professional title, seniority ranking or social identity, and select talents in a flexible manner.
- Establishing a talent selection and appointment mechanism featuring openness, equality, competition and selection of the fittest so that outstanding people can come to the fore and be put to best use.
- Promoting a rational flow of human resources. We should further remove such restrictions on human resource flows as urban-rural, regional, departmental, trade, identity and ownership barriers, and smoothen the human resource flow channels between Party and government officials, enterprise managers and technical professionals, between public and non-public ownership organizations, and between different regions.

### **Policies on rural migrant workers**

In 2003, the General Office of the State Council promulgated the Notice on Strengthening the Employment Management and Service Work for Rural Migrant Workers, requiring all local governments and departments to take effective measures to strengthen the management and service work for rural migrant workers. The Notice defines that the administrative examination and approval procedures by enterprises employing rural migrant workers will be abolished, the limitations on types of work assumed by rural migrant workers will be abolished, employment procedures for rural migrant workers will be simplified; and no excessive charges or increased charging criteria shall be established for migrant workers.

The Notice requires efforts be made to:

- solve the problem of wage arrears or non-payment for migrant rural workers
- improve the living and working conditions for migrant rural workers
- provide more training opportunities for them
- solve the schooling problems for children of migrant rural workers through many channels
- strengthen the management of migrant rural workers.

#### **Box 10. Notice of the General Office of the State Council on Strengthening Employment Management and Service Work for Rural Migrant Workers (2003)**

All local governments and departments concerned shall take effective measures to strengthen the management and service work for rural migrant workers based on the rules of "equal treatment, reasonable guidance, improved management and good service".

Local governments and departments concerned shall abolish the administrative examination and approval toward enterprises employing migrant rural workers, abolish the limitations on types of work assumed by rural migrant workers, and shall not interfere in the legitimate employment of migrant rural workers by

enterprises. They shall strictly review and rectify the employment procedures of migrant rural workers, cancel the registration items designated for them, and gradually implement the management method of the temporary residence permit. The technical qualification and health requirements of all professions and types of work, especially for special industries, shall be unbiased toward migrant rural workers.

To transact the employment procedures, no other fees than the certificate production cost defined by the rules of the State Council shall be charged. It is strictly forbidden to charge for items beyond what is authorized, or increase the charging standard. [Commodity price] and Financial departments of all levels shall carry out strict inspections and supervisions to prevent any arbitrary collection of fees from migrant rural workers.

The Several Opinions of the State Council on Solving the Problems Related to Rural Migrant Workers, issued in 2006, define the guiding ideology and basic principles for strengthening the management of rural migrant workers; putting forward requirements on standardizing wage management; improving the low income situation and different payment for the same work; gradually achieving an employment system on the basis of equality between rural and urban areas; and forbidding the phenomenon of expelling migrant rural workers with the excuse of solving the employment problem for urban labourers.

#### **Box 11. Several Opinions of the State Council on Solving Problems Related to Rural Migrant Workers (2006)**

The guiding ideology of strengthening the management of migrant rural workers aims: To plan the development of rural and urban areas based on the national conditions of our country. To be people-oriented. To solve the problems of interests of migrant rural workers. To gradually construct the labor market with uniform systems for both rural and urban workers. To set up a policy system, and law enforcement and supervision mechanism that guarantees the legitimate interests of migrant rural workers. To establish the rural and urban public service system favouring migrant rural workers. To widen the employment channels for the labour force in rural areas. To protect and activate the enthusiasm of migrant rural workers. To promote the economic prosperity both in rural and urban areas and the overall social progress. To push the construction of the new Socialist countryside and the healthy development of industrialization, urbanization and modernization with Chinese characteristics.

Basic rules for the management of migrant rural workers are:

- Treat equally without discrimination
- Strengthen service and improve management
- Overall plan and reasonably guide
- Adjust measures to local conditions
- Keep a far-sighted eye
- Reasonably define and improve the wage level of migrant rural workers
- Standardize the wage management. Improve the condition of low income and different payment for the same types of work.

Gradually realize an equal employment system between rural and urban areas. Reform the currently divided or two-tier employment management system in different areas. Construct the labour market on the basis of equal competition. Gradually form the mechanism of promoting the shift of surplus rural labours under market economic conditions. Provide equal employment opportunities and services for both rural and urban workers. All local governments and departments concerned shall eliminate all discriminatory regulations toward or unreasonable restrictions on migrant rural workers, and simplify the administrative examination and approval procedures, as well as reduce administrative charges. No employing unit is allowed to expel migrant rural workers with the excuse of solving the employment problem for urban labourers.

## 2.4 Local rules and regulations

Two types of local legislation exist, local supporting legislation and special local legislation. Relevant local laws addressing discrimination in employment are briefly described below.

### Local supporting legislation

Local supporting legislation is set to implement higher-level legislation. It puts forward detailed regulations to make it easier to implement the laws. The features of local legislation include wide contents, multiple layers and detailed instructions. Some examples are given below.

#### Example 1. Prohibiting sexual harassment in local regulations on the implementation of the law on the protection of rights and interests of women

The national law states: “No sexual harassment is allowed toward women. Women victims are entitled to file a case with the employing units or the related authorities” (Article 40); “The victim can seek the application of penalty against the violator of the law at the department of security or file a case with the court for civil procedure toward deeds violating the security administration including sexual harassment or domestic violence toward women.” (Article 58)

Local supporting legislation further elaborates issues not specified in the national law. It answers questions such as what is sexual harassment? how to prevent it? what are the responsibilities of various parties in preventing or redressing sexual harassment?

#### Box 12. Action against sexual harassment: Methods of provinces on the implementation of the Law on the Protection of Rights and Interests of Women

##### Anhui

Measures for the Implementation of the Law on the Protection of Women’s Rights and Interests (Amendment), adopted on 27 April 2007:

Article 34. Sexual harassment of women through physical contact, verbal abuse, written text, pictures, text messaging and other forms that contain sexual contents or are sexually related and are against the woman’s will is prohibited.

Women victims have the right to make a complaint with the working unit and relevant authorities. The women’s federation, legal aid organizations, public security and other relevant departments shall provide support for women victims according to their own scope of responsibilities.

Employers and administrators of public places shall take measures to prevent and stop sexual harassment of women.

Without consent of women victims, mass media shall not disclose their names and other information that will lead to disclosure of their identities.

Article 42. In case of an act which results in sexual harassment of women and constitutes a violation of the administration of public order, the victim can ask the public security organs to impose administrative punishment, and also bring civil litigation to the People’s Court.

##### Sichuan

Measures for the Implementation of the Law on the Protection of Women’s Rights and Interests (Amendment), adopted on 27 September 2007:

Article 33. Sexual harassment of women in the form of spoken and written language, pictures, text messaging, physical contact and other forms is prohibited.

Employers shall take measures to prevent and stop sexual harassment in the workplace.

Article 47. For any violation of stipulations herein that results in sexual harassment or domestic violence

against women, if it constitutes violation of the administration of public order, the victim can ask the public security organs to impose administrative punishment, and also bring civil litigation to the people's court. If it constitutes a crime, criminal responsibility shall be investigated and dealt with in accordance with the law.

For sexual harassment of women that occurs in the workplace and causes physical, psychological and reputational damages to the woman, the employer shall take up the corresponding civil compensation obligation according to law if it is responsible for the harassment.

### Guangdong

Measures for the Implementation of the Law on the Protection of Women's Rights and Interests (Amendment), adopted on 31 May 2007:

Article 29. Sexual harassment of women in the form of physical contact, spoken and written language, pictures, images, digital information and other forms which contain sexual contents or is sexually related and against the woman's will is prohibited.

Employers and administrators of public places shall prevent and stop sexual harassment of women through measures such as establishing appropriate environment and putting in place necessary complaint and investigation processes.

Women victims have the right to report such cases to relevant authorities.

Article 44. For any violation of stipulations prescribed in Articles 27, 28, 29, 30, 31, 32 and 33 herein that constitutes violation of the law on public security administration, the public security organs can impose administrative punishment. For any violation that constitutes a crime, criminal responsibility shall be investigated and dealt with in accordance with the law.

Source: Beijing Zhongze Women's Legal Consultation and Service Centre – Women Watch China (previously the Centre for Women's Law Studies and Legal Services, Law School, Peking University): *Guide on the prevention of sexual harassment in the workplace* (Beijing, 2010);

### Example 2. Supporting legislation on the law on the protection of disabled persons in Guangdong Province

Over a period of time, Guangdong Province has drawn up the Methods of Guangdong Province on the Implementation of the Law on the Protection of Disabled Persons; Methods on Proportional Employment Arrangement for Disabled Persons in Guangdong Province, Methods on Supporting the Disabled in Guangdong Province, and Administrative Regulations on Non-Obstacle Facilities in Guangdong Province.

Some cities have drawn up related documents of their own on this basis, including Methods on Supporting Disabled Persons in Shenzhen, Methods on Trial of Social Insurance for Disabled Persons in Shenzhen, Regulations on Preferential Measures for Disabled Persons in Guangzhou, Preferential Methods on Supporting Disabled Persons in Shaoguan, and so on. Moreover, some regions and counties have drawn up regulations according to the local situation, including Methods on the Implementation of Preferential Treatment to Disabled Persons in Gaoming District, Foshan City.

### Regional special legislation

In December 2001, the Standing Committee of the People's Congress in Shanghai passed Regulations on Mental Health in Shanghai as follows:

- Article 6 states: "The citizen rights and human dignity of people with mental diseases are protected by the law. It is forbidden to discriminate against, insult, maltreat, or abandon them".

- Article 41 takes a further step in stating: “After recovery, people with mental diseases are entitled to rights in admittance, attending examinations, employment, and so on. Related employing units shall not cancel their qualifications in admittance, attending examinations, employment or so based on the excuse that they have suffered from mental diseases. After recovery, people with mental diseases have the right to attend various vocational and technical training to improve their employment ability. The labour guarantee department and the federation for the disabled shall promote employment training and arrangements for people with mental diseases. After recovery, the employing units shall arrange appropriate types of work and posts for people who used to have mental diseases during the existing period or the contract term, and no discrimination in payment or welfare is allowed.”

## 2.5 Department rules and regulations

More contents regarding equal employment and anti-discrimination in employment can be found in department rules and regulations as follows.

### Case 1. Regulations on Employment Service and Employment Management

These are the first supporting Regulations for the Employment Promotion Law published by the former Ministry of Labor, and they replace the former Administrative Regulations on the Labour Market. The scope of the Regulations includes recruitment, employment and employment services, and so on. It is a document with integrated contents in terms of anti-discrimination.

#### Box 13. Regulations on Employment Service and Employment Management (2007)

- Article 4. Laborers are entitled to equal employment rights in line with the law. The labourers shall not be discriminated against due to different ethnicity, race, sex, religious belief, and so on, in employment.
- Article 17. The employing units shall give certain help to laborers from the minority groups during recruitment according to the law.
- Article 5. The rural labourers who seek job opportunities in the urban areas shall enjoy equal employment rights with the labourers from the urban area. No discrimination or limitation is allowed against them.
- Article 26. During recruitment, except for posts otherwise regulated by the State...it is not allowed to refuse female employees or raise the recruitment standards for female employees based on the excuse of gender.
- Article 18. During recruitment, the employing units shall not discriminate against the disabled.
- Article 19. During recruitment, the employing units shall not deny the employment of carriers of infectious diseases...  
The employing units shall not impose the HBV indicator as standard in the health examination.
- Article 20. The employing unit shall not include any discriminatory contents in their brief statement of recruitment or in the recruiting advertisement.

### Case 2. Regulations on the Administration of the Personnel Market

In 2005, the former Ministry of Personnel drew up the Regulations on the Administration of the Personnel Market. Article 3 states: “The activities of the personnel market shall be in line with the laws and regulations as well as policies, adhering to the principles of openness, equality, competition, and selecting the most qualified. Realize the freedom of the employer in choosing its employee and vice versa.” It States in Article 26 that “During recruitment, the employing units shall not deny an employment or raise the standards for employment based on nationality or religious beliefs; the employing units shall not deny the employment of women employees or

raise employing standards for them based on gender except for posts regulated by the State as unsuitable for women.”

### **Case 3. Opinions on Protecting the Employment Rights of HBV Carriers**

In 2007, the former Ministry of Labour and Social Security published the Opinions on Protecting the Employment Rights of HBV Carriers to tackle the problem of discrimination against HBV carriers. The Opinions require the promotion of equal employment for HBV carriers and maintaining employment and health benefits of HBV carriers.



For the relevant articles on discrimination in these Opinions, see Box 5.23 in Module 5. Discrimination, health and disability.

## Annex 6. Glossary of terms

### **Affirmative action**

Special - usually temporary - measures to redress the effects of past or continuing discrimination in order to establish equality of opportunity and treatment between population groups in society.

### **AIDS**

Acquired Immune Deficiency Syndrome. AIDS occurs at the late stage of HIV infection when the immune system is unable to function normally.

### **Arbitration**

A method of dispute settlement in which an independent third party (usually an administrative tribunal) considers the arguments of both sides and then takes a decision binding on the parties in the dispute.

### **Bias**

Opinion or feeling that strongly favours one side in an argument or one item in a group or series; predisposition; prejudice. Bias naturally makes up for gaps in information or education in the human mind. Bias is often embedded in the way society organizes social life. However, once bias starts to inform decisions that directly affect people's livelihood – such as whether to find or hold employment for which one is qualified – it produces negative effects that reverberate far beyond the life of an individual.

### **Caste**

Any of the hereditary Hindu social classes.

### **Casual worker**

A worker who works occasionally and intermittently. Such workers are employed for a specific number of hours, days or weeks. They are not normally entitled to the same terms and conditions of employment as ordinary workers (e.g. they would not usually get sick or holiday leave). Whereas temporary workers are employed to replace permanent workers who are, for example, sick or on maternity leave, casual workers have traditionally been employed to cope with a sudden increase in work (e.g. for seasonal reasons) or to undertake a particular (perhaps unforeseen) work task.

### **CEACR (Committee of Experts on the Application of Conventions and Recommendations)**

The ILO committee which examines the performance of countries with regard to the application of ILO conventions and recommendations. It convenes yearly and issues both general observations on trends in the application of Conventions as well as country-specific “observations” and “direct requests” to Governments. See also **Direct Request** and **Observation**. The reports and other documents issued by the CEACR are available online at: <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> (APPLIS database) and <http://www.ilo.org/ilolex/english/> (ILOLEX database)

### **Collective bargaining**

The process by which an employer or a group of employers and one or more workers' organizations or representatives voluntarily discuss and negotiate mutually acceptable terms and conditions of employment which are valid for a given period of time.

**Compensatory justice**, see **Affirmative action**

### **Convention**

International treaty that is legally binding after ratification.

### **Decent work**

Productive work performed in conditions of freedom, equity, security and human dignity to which women and men have access on equal terms.

### **Declaration**

A formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated. In ILO practice, this kind of act appeared, firstly, with the Declaration of Philadelphia, which was incorporated into the Constitution on the occasion of the constitutional amendments of 1946. In 1998 the Declaration on Fundamental Principles and Rights at Work emphasized the renewed relevance and importance, in the context of globalization, of fundamental rights, the principle of which is already enshrined in the Constitution and the Declaration of Philadelphia. The third major statement of principles and policies, the 2008 Declaration on Social Justice for a Fair Globalization, reflects the consensus among ILO constituents for a strong social dimension to globalization in achieving improved and fair outcomes for all.

### **“De facto” discrimination**

A legal expression meaning the existence of discrimination in fact (in reality and in practice). For example, the practice of not hiring women to fill jobs considered to be “men’s jobs” when the law requires equal opportunity between men and women in employment.

### **“De jure” discrimination**

A legal expression meaning the existence of discrimination in laws, regulations and administrative instructions. For example, a Civil Code provision restricting women’s right to enter into legal contracts or a Labour Code regulation providing that a rural migrant worker should receive less pay than a city resident.

**Differential treatment**, see **Affirmative action**

### **Direct request**

Comment made by the Committee of Experts on the Application of Conventions and Recommendations to governments, seeking more information or clarification on specific issues regarding the implementation of a ratified Convention.

### **Disability**

Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder full and effective participation in society on an equal basis with others. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

### **Discrimination**

Defined in ILO Convention No. 111 as “any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin which nullifies or impairs equality of opportunity or treatment in employment or occupation.” Discrimination can be direct or indirect:

- **Direct discrimination** exists when unequal treatment between workers of different race, colour, sex or any other ground covered by the Convention or national laws stems directly from laws, rules or practices making an explicit difference between workers on these grounds. For example, laws which do not allow women to sign contracts; a labour law stipulating that internal rural migrants shall receive less pay in cities than the residents of these cities; or, job advertisements which specify the appearance and sex of the candidates.
- **Indirect discrimination** means rules and practices which appear neutral but are not job related and in practice lead to disadvantages primarily suffered by persons of one sex, race, colour or any other characteristics. For example, setting requirements for managerial or secretarial jobs which are irrelevant to the job such as height or weight levels that typically only people of one sex, race or colour can meet.

### **Employers' organization**

An organization whose membership consists of individual employers, other associations of employers or both, formed primarily to protect and promote the collective interests of members, to present a united front in dealing with organizations and/or representatives of workers, as well as to negotiate for and provide services to members on labour-related matters.

### **Empowerment**

Empowerment implies people taking control over their own lives: Setting their own agendas, gaining skills (or having their own skills and knowledge recognized), increasing self-confidence, solving problems, and developing self-reliance. It is both a process and an outcome. For example, women's empowerment implies an expansion in women's ability to make strategic life choices in a context where this ability was previously denied to them. Women's empowerment has five components: (1) women's sense of self-worth; (2) their right to have and to determine choices; (3) their right to have access to opportunities and resources; (4) their right to have the power to control their own lives, both within and outside the home; (5) their ability to influence the direction of social change nationally and internationally.

### **Equality**

Equality and non-discrimination refer to the enjoyment of equal rights, opportunities and treatment within all spheres of life and work for all people regardless of characteristics such as sex, race, ethnicity, religion, disability or health status. Equality implies that all people are free to develop their personal abilities and make choices without the limitations set by stereotypes, assumptions and prejudices about their sex, colour, race, ethnicity, religion, social or national origin, disability or health condition. It does not mean that all people have the same abilities or have to be treated in the same way. It means that the different behaviour, aspirations and needs of people are equally considered, valued and favoured, regardless of characteristics such as sex, race, ethnicity and health or disability status.

### **Equality at work**

A fundamental value and principle enabling workers to claim a fair share of the wealth which they help generate.

### **Equal Opportunity Policy (EOP) or Equal Employment Opportunity Policy (EEOP)**

Commitment to engage in (employment) procedures and practices which do not discriminate and which provide equality between individuals (employees) with different characteristics, such as sex or ethnicity.

### **Equal opportunity in the world of work**

The principle of equal opportunity aims to ensure that people can develop their economic potential to the fullest, and can allocate their time and energy where reward is the highest. Equal opportunity between men and women at work refers to equal chances to apply for a particular job to be employed, to attend educational or training courses, to be eligible to attain certain qualifications and to be considered as a worker or for a promotion in all occupations or positions, including those dominated by one sex or the other.

### **Equal treatment in the world of work**

The principle of equal treatment intends to ensure that people's work performance is rewarded according to their productivity and merit, taking into account the objective characteristics of a job, such as skills and knowledge, and without interference of considerations unrelated to merit. It refers, for example, to equal entitlements in pay, working conditions, security of employment, reconciliation between work and family life, and social protection.

### **Equal remuneration, see also Remuneration**

- **Equal pay for equal work.** The same pay for performing the same, identical or similar work. Equal pay for equal work is more limited in scope than "equal pay for work of equal value".
- **Equal pay for work of equal value.** The principle of equal pay for work of equal value applies when men and women perform work that is different in content but equal in terms of skill and qualifications, efforts, duties and responsibilities, and working conditions.

### **Equity**

Is about achieving equality of outcomes and results, that is, all persons have an equal chance not only at the starting point but also when reaching the finishing line. Equity is about equal, fair and just chances, opportunities and treatment that takes into account and addresses the different needs and interests of all women and men, cultural or other barriers and (past) discrimination of specific groups.

### **Ethnicity**

A sizable group of people that has a common cultural and livelihood tradition.

### **Ethnic minorities**

Groups of persons who have the right, in community with the other members of their group, to enjoy their own culture and livelihood, to profess and practice their own religion, or to use their own language.

### **Female-to-male earnings or wage ratio**

The ratio of women's to men's earnings or wages. This is calculated by dividing women's earnings or wages by men's earnings or wages, and is often expressed as a percentage (the ratio multiplied by 100). For example, if women's average monthly wage in a country is 3 units, and men's is 5 units, the female-to-male wage ratio is 3 divided by 5, which amounts to 0.6, or 60% when expressed as a percentage. In this example, the **gender pay gap** (see below) would be 100 minus 60 is 40%.

**Femininity and masculinity**

Ideas and expectations about the characteristics, attitudes and likely behaviour of women and men.

**Gender**

Social differences and relations between men and women that are learned, vary widely among societies and cultures, and change over time. The term 'gender' does not replace the term 'sex', which refers exclusively to biological differences between men and women, for example, statistical data are broken down by sex. The term 'gender' is used to analyze the roles, responsibilities, constraints, opportunities and needs of women and men in all areas and in any given social context.

**Gender discrimination**, see **Sex discrimination**

**Gender analysis**

Research examining similarities, differences and relations between women and men, girls and boys in all spheres of life and work. It looks at their specific activities, the division of labour, access to and control over resources, as well as their needs, constraints and opportunities as well as access to development benefits and decision making at the micro, meso and/or macro levels or the larger natural, social, economic and political environment with a view to identify possible gender gaps and means of rectifying these.

**Gender-blind**, see also **Gender neutral**

Describes measures and actions, such as research, analysis, policies, advocacy and training materials, project and programme design and implementation that do not recognize and ignore possible differences between the position, needs, constraints, opportunities and interests of women, men, girls and boys.

**Gender equality or equality between men and women**

Enjoyment of equal rights, opportunities and treatment by men and women of all ages in all spheres of life and work. It implies that all human beings are free to develop their personal abilities and make choices without the limitations set by stereotypes and prejudices about gender roles or the characteristics of men and women. It means that the different behaviour, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men are the same or have to become the same, but that their rights, responsibilities, social status and access to resources do not depend on whether they are born male or female.

**Gender gap or gender imbalance**

Differences in any area between women and men (or girls and boys) in terms of their levels of participation, access to resources, rights, power and influence, remuneration and benefits.

**Gender justice**

The ending of, and if necessary the provision of redress for, inequalities between women and men that result in women's subordination to men. The gender justice approach pursues gender equality with an emphasis on transforming unequal power relations between the sexes. Priorities include advancing women's rights and access to resources on an equal footing with men; creating women's access and influence in policy and decision making institutions and making social, economic and political institutions responsive and accountable to women. The term "gender justice" is increasingly being used because of the growing concern and realization that terms like

“gender equality” and “gender mainstreaming” have failed to communicate, or provide redress for, the ongoing gender-based injustices from which women suffer.

### **Gender mainstreaming**

Main strategy to accelerate progress towards equality between women and men. A two-pronged approach is applied: firstly, through explicitly and systematically addressing the specific and often different needs and concerns of both women and men in all policies, strategies and programmes; secondly, through targeted interventions when analysis shows that one sex – usually women – is socially, politically and/or economically disadvantaged. Empowerment initiatives, such as affirmative action measures, are essential to achieve equality and are an integral component of the gender mainstreaming strategy.

### **Gender-neutral**, see also **Gender blind**

Describes measures and actions, such as research, analysis, policies, advocacy and training materials, project and programme design and implementation that are not affected by and do not affect the different situations, roles, needs, and interests of women, men, girls and boys. In reality, very few policies, measures and actions are gender-neutral, because they have different effects on women and men.

### **Gender pay gap** or **gender wage gap**

The percentage difference between average female and average male pay (or between average female and average male wages). For instance, if women earn 70 percent of what men earn, the gender pay gap is 30 percent. See also **Female-to-male earnings or wage ratio**.

### **Glass ceiling**

Invisible artificial barriers, created by attitudinal and organizational prejudices that block women access to top decision-making and managerial positions.

### **Hepatitis B virus (HBV)**

The HBV is a virus which infects the liver and causes an inflammation called hepatitis. It is transmitted through contact with the blood or other body fluids of an infected person. It is not transmitted through the digestive tract and not through casual contact in the workplace. It also does not spread through contaminated food or water. About 90 per cent of healthy adults who are infected with HBV will recover and be completely rid of the virus within six months.

### **Hepatitis B**

Liver disease that may result from infection with HBV and ranges in severity from a mild illness lasting a few weeks to a serious, lifelong illness. Symptoms include tiredness, yellow eyes, pain around the liver area, dark urine and fever. Hepatitis B can be either acute or chronic. The likelihood of acute or chronic infection depends upon the age at which someone becomes infected. The younger a person is when infected with Hepatitis B virus, the greater his or her chance of developing chronic Hepatitis B. Approximately 90 per cent of infected infants will develop chronic infection. The risk goes down as a child gets older.

### **Harassment**

Unwelcome comments or conduct related to a person’s sex, race, ethnicity, religious belief, or perceived social status, occupational or educational background or family descent, that violate a person’s dignity and/or create an intimidating, hostile, degrading or offensive working environment.

**HIV**

Human Immunodeficiency Virus, a virus that weakens the body's immune system and, if not properly treated, ultimately causes AIDS in most cases.

**Human rights**

Basic and absolute rights agreed and defined at the international level that each person has because he or she is a human being.

**Human rights-based approach to disability**

This approach views disability as the result from the interaction between individuals with an impairment and a non-inclusive society. Disability results from social, cultural, economic and physical environmental barriers, rather than the person's actual impairment. Most contemporary international policy about disability reflects a social model of disability.

**Indigenous peoples**

Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

**Indirect discrimination, see Discrimination****International Labour Organization (ILO)**

The ILO was founded in 1919 to advance social justice and better living conditions throughout the world. In 1946 it became the first specialized agency associated with the United Nations. It is a tripartite organization: Workers' and employers' representatives take part in its work with equal status to that of governments. The number of ILO member States is 183 as of 18 February 2010. The International Labour Office serves as the secretariat to the International Labour Organization.

**International labour standards**

International agreements such as conventions and recommendations adopted by the International Labour Conference which lay down the minimum provisions or guidelines covering a broad range of matters in the field of employment and labour.

**Job evaluation, free from gender bias**

A process which allows different jobs to be compared within an organization in order to determine appropriate wage rates. This is done by breaking down the duties and skills of jobs into different factors of value (usually skill, effort, responsibility, and working conditions). Job evaluation methods which are free from gender bias are designed to assess jobs objectively through criteria which are equally applicable to both female- and male-dominated jobs to ensure that the skills required for jobs typically performed by women, such as manual dexterity or human relations skills, are not undervalued.

**Mediation**

Assistance provided to disputing parties by an independent third party (the mediator). In mediation the third party is more actively involved than in conciliation and attempts to suggest proposals and methods for actual resolution of the problem so that a solution acceptable to both parties can be found.

### **Medical approach to disability**

The medical model of disability views disability as the result of an impairment that is intrinsic to the individual. The medical model defines the problems associated with disability as inherent to the person who has the impairment. It specifies lists of conditions and a classification of disability based on medical understandings of the body and mind and prioritizes curing or controlling these conditions within the individual.

### **Member States (of the ILO)**

Countries that are members of the ILO and are bound by the terms of the ILO Constitution.

### **Migrant worker**

Person who left his/her place of origin and moved to another destination to work. “International” or “external” or “foreign” migrant workers refer to workers who left their country of origin, crossed a national border and work in another country. “Internal” or “domestic” migrant workers are workers who moved from their place of origin to another place within their country to work.

### **National extraction or origin**

Discrimination in employment and occupation based on national extraction covers distinctions made on the basis of a person’s place of birth, ancestry or foreign origin. The ground of national extraction also includes national ethnic or linguistic minority groups. A distinction made between citizens of the same country on the basis of the foreign birth or origins of some of them is one of the most evident examples.

### **Observation**

Comment made by the Committee of Experts on the Application of Conventions and Recommendations. Observations are generally used for serious or long-standing cases of a government’s failure to fulfill its obligations under a Convention it has ratified.

### **Occupational segregation by sex**

Refers to a situation in which women and men are concentrated in different types of jobs and at different levels of activity and employment. Segregation can be either horizontal (when a group is confined to a different, narrower range of occupations than another group) or vertical (when one group works in different, usually lower job grades as compared to another group).

### **Placement**

Refers to any operations for the purpose of ensuring or facilitating the employment of persons. Such services are commonly offered by both public and private employment agencies.

### **Parental leave**

It is leave granted to either parent in order to care for a child. It generally follows a period of maternity leave, to which only the mother is entitled. In some countries, parental leave is granted in the event of adoption as well. Parental leave is different from “paternity leave”, which is leave for the father at the time of the birth (or adoption) of his (a) child.

### **Pay equity, see also Equal pay (remuneration) for work of equal value**

The same as equal remuneration for work of equal value. The term pay equity underlines that something extra needs to be done to redress the gap and enable women to earn the same as men for work of equal value, while equal remuneration has a stronger connotation with the fundamental and inalienable right of women to earn the same as men for work of equal value.

**Positive action, discrimination, or measures** also known as **Preferential policies, or treatment**, see **Affirmative action**

**Prejudice**, see **Bias**

### **Prima facie**

Legal term referring to the reversal of the burden of proof. In several jurisdictions, once the complainant or alleged victim has provided evidence of differential treatment, the employer has the burden of proving that his or her actions are not discriminatory but based on objective reasons.

### **Protective measures**

Measures aiming to protect specific groups such as children or women. In the case of women, protective measures may be broadly categorized as those aimed at protecting women's reproductive and maternal capacity and those aimed at protecting women because of gender perceptions and stereotypes about their capacities and appropriate roles in society.

- The international consensus is that measures which explicitly or implicitly aim at protecting the reproductive capacity of women are necessary for the achievement of true equality, such as maternity protection.
- Protective measures may also include laws which perpetuate a bias against women as the “weaker sex”, and denies them employment opportunities. UN bodies request governments to review such measures regularly to decide whether this protective laws are still necessary.

### **Proxy**

Substitute. In case information on a certain indicator is not available, another variable is selected as alternative measurement. For example, in pay equity studies, age is often a proxy indicator for years of work experience.

### **Public interest litigation**

A case brought before the courts that results in a judgment which may serve the public interest.

### **Race**

Any of several large subdivisions of humankind sharing physical characteristics, e.g. colour of skin, colour and type of hair, shape of eyes and nose.

**Racial harassment**, see **Harassment**

### **Ratification**

An act by which a State formally agrees to be legally bound by a Convention's provisions. It usually requires the approval of the State's legislative body (or bodies, in the case of federal states), which is in many cases the parliament.

### **Reasonable accommodation**

Necessary and appropriate modification and adjustments to a job or to the workplace not imposing a disproportionate or undue burden, where needed in a particular case, to ensure that people with disabilities, health conditions or specific religious requirements have the same fundamental freedoms as other persons and have access to and can participate and advance in employment and occupation.

### **Recommendation**

Guidelines that provide authoritative guidance but are not legally binding and can not be ratified. Recommendations usually supplement Conventions and provide more specific guidelines as to how the Conventions they accompany may be effectively applied. Some Recommendations are not linked to any Convention.

### **Recruitment**

Refers to the engagement of a person by or on behalf of an employer or making a commitment to a person to provide him or her with employment. This includes any related arrangements such as seeking for and selecting an employee (e.g. job advertisements, job interviews and entrance exams or tests).

### **Remuneration**

Wages or earnings payable by an employer to an employed person according to a written or unwritten contract of employment for work or services performed or to be performed. Includes not only the basic wages but any additional benefits or emoluments arising out of the worker's employment paid by the employer to the worker, directly or indirectly, and in cash or in kind.

**Reversal of the burden of proof**, see **Prima facie**

**Reverse discrimination**, see **Affirmative action**

### **Sex discrimination, or Gender discrimination**

Any distinction, exclusion or preference based on sex or gender values, norms or stereotypes, which has the effect of nullifying or impairing equality of opportunity and treatment in life and at work.

**Sexual harassment**, see **Harassment**

### **Sexual blackmail**

Refers to conduct which makes a job benefit – such as a pay rise, a promotion, or continued employment – conditional on sexual favours, known as “quid pro quo” in legal circles.

**Social model of disability**, see **Human rights-based approach to disability**

### **Social origin**

An individual's belonging to a widely recognized “class” in society. This social stratification may take the form of socio-economic status, a socio-occupational category, a caste, social condition or status, criminal conviction and also household registration if privileges are attached to this registration.

### **Special measures of protection or assistance**

Refer to measures which are designed to meet the particular needs of a person or groups of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, require special protection or assistance. These measures are not considered to be discriminatory, they are legitimate, recognized exceptions to the principle of equality of opportunities and treatment as this type of “positive discrimination” is vital to achieve equality in practice. Two main types can be distinguished: protective measures and affirmative action or positive measures.

**Standard**

An international agreement such as a convention or a treaty which lays down the minimum provisions or guidelines on a specific subject.

**Stereotype**

Fixed, standardized and simplified conception or image about specific social groups or types of individuals based on some prior assumptions. For instance, gender stereotypes refer to the ideas that people have on what boys and men, girls and women are capable of doing, for example, women are better housekeepers and men are better leaders. While stereotypes may sometimes be true, they are often proven to be false.

**Trade Union**

An association of workers organized to protect and promote their common interests.

**Tripartite/Tripartism**

Defining characteristic of the ILO structure, referring to three parties, namely governments, representatives of workers' and employers' organizations. The three parties are represented on the ILO's main bodies and participate in the decision making, including the formulation of international labour standards and supervision of their implementation.

**Temporary Special Measures, see Affirmative action****Work of equal value**

Refers to work which may be different in terms of content, but is valued as equal in terms of criteria such as skill, effort, responsibility and working conditions. **Job evaluation** (see above) is commonly used for determining equal value.

**Tripartite consultation**

The ILO is based on the principle of tripartism – dialogue and cooperation between governments, employers, and workers – in the formulation of standards and policies dealing with decent work, that is employment, labour or social protection matters. Through regular tripartite consultations, governments can ensure that ILO standards are formulated, applied and supervised with the participation of employers and workers. ILO standards on tripartite consultation set forth the framework for effective national tripartite consultations. Such consultations can ensure greater cooperation among the social partners and stronger awareness and participation in matters relating to international labour standards, and can lead to better governance and a greater culture of social dialogue on wider social and economic issues.

**Xenophobia**

Unreasonable fear, distrust, or hatred of strangers, foreigners or anything perceived as foreign or different.

## Equality and non-discrimination at work in China: Training manual

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 Training manual 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 manual 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 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
- A handbook for use as a quick reference guide for policymakers, professionals and practitioners including participants of training workshops.

### Contact information:

International Labour Organization  
ILO Country Office for China and Mongolia  
1-10-1 Tayuan Diplomatic Office Building,  
No. 14 Liangmahe Nanlu, Beijing 100600, China  
Tel: (86 10) 6532 5091, Fax: (86 10) 6532 1420  
Email: [Beijing@ilo.org](mailto:Beijing@ilo.org)  
Urls: <http://www.ilo.org/beijing>  
<http://www.equalityatworkinchina.org>

ILO DWT for East and South-East Asia and the Pacific  
United Nations Building, Rajdamnern Nok Avenue,  
P.O. Box 2-349, Bangkok 10200, Thailand  
Tel: (66 2) 288 1234, Fax: (66 2) 288 3062  
Email: [Bangkok@ilo.org](mailto:Bangkok@ilo.org)  
Url: <http://www.ilo.org/asia>

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