



International  
Labour  
Organization

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

### Module 2

## Promoting gender 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 2**

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ILO Country Office for China and Mongolia, Beijing  
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Thomas, Constance; Haspels, Nelien; Meyer, Tim de; Paavilainen, Marja; Zhang, Hongman

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Unit 2.2 Sex discrimination at work in China

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Exercise 3. Protection and equality: Case studies

Exercise 4. Equal pay for work of equal value – Job evaluation: Case study

Exercise 5. Review of good practice examples

Exercise 6. Ms Tang's dismissal: Case study

Exercise 7. Gender equality action planning

### Videos:

*Sexual harassment in the workplace*, All Women's Action Society Malaysia (AWAM)

*Prevention of sexual harassment at work: Preventive measures and countermeasures*, Korean Employers Association (KEA)

*Waging war on the pay gap*, European Commission Directorate General, Brussels

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## Introduction

The principle of equality of opportunity and treatment in employment and occupation set forth in the Discrimination (Employment and Occupation) Convention, 1958 (No.111) applies to all persons regardless of their sex. All women and men have the right to equal opportunity and treatment in accordance with their merit, capacity, skills and ability. The sex of a person should not be a reason for exclusion, distinction or differential treatment in employment or occupation. The Chinese government has committed itself to eliminating discrimination of women in the whole society, including the labour market. Following the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1980 and the ratification of the Equal Remuneration Convention, 1951 (No. 100) in 1990, the Chinese government further emphasized its commitment to promoting gender equality in employment and occupation by ratifying ILO Convention No. 111 in 2006, and by incorporating the equality principle in labour legislation.

This module introduces the concepts of sex discrimination and gender equality. It summarizes international and national legal instruments on gender equality, shares international and Chinese experiences, approaches and strategies and looks into the sex discrimination situation in China. The module provides knowledge and tools to promote gender equality in the world of work. It applies participatory training methods and encourages participants to take practical action to promote equality.

The module includes two units:

- Unit 2.1 Sex discrimination at work: Concepts, standards and strategies
- Unit 2.2 Sex discrimination at work in China

### Objectives

The overall objectives of this module are to raise participants' conceptual understanding on gender equality at work and to familiarize them with the international principles, strategies and practical measures for taking action at government, company and workplace levels to eliminate discrimination and promote equal opportunity and treatment for men and women in employment and occupation.



## Section A. Learning content





## Section A. Learning content

### Unit 2.1 Sex discrimination at work: Concepts, standards and strategies

#### 1. Principle of gender equality

Gender equality, or equality between men and women, refers to the enjoyment of equal rights, opportunities and treatment by men and women of all ages in all spheres of life and work. It implies that men and women are free to develop their personal abilities and make choices without the limitations set by stereotypes and prejudices about gender roles or the characteristics of men and women. It means that the different behavior, 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, or be treated identically at all time. It means that their rights, responsibilities, social status and access to resources do not depend on whether they are born male or female, and that all are treated in a fair and just manner and have equal chances to succeed in work and in life.

#### 2. International standards on gender equality

##### 2.1 ILO standards on gender equality

The **ILO Equal Remuneration Convention, 1951 (No. 100)** and **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** are internationally recognized as the principal labour instruments establishing the fundamental principles on equality in employment and occupation. These Conventions have been ratified by over 9 out of every 10 ILO member States worldwide. ILO standards on equality provide tools to eliminate discrimination in all aspects of the workplace and in the society as a whole.

- **Equal Remuneration Convention, 1951 (No. 100)** addresses the problem of pay differences between women and men. It establishes the principle of equal remuneration for men and women for work of equal value. Rates of remuneration should be established without discrimination based on sex.
- **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** advocates the elimination of all forms of discrimination in the world of work, including elimination of sex discrimination. Convention No. 111 gives a broad definition of discrimination – covering both direct and indirect discrimination as well as discrimination in law and in practice. Convention No. 111 promotes gender equality throughout the work cycle – from equal access to training, employment and specific occupations to equal treatment at work and equal retirement age.



See the full text of Conventions No. 111 and No. 100 in Annexes 1 and 3 of Module 1.

Creating effective equality of opportunity and treatment for all women and men in employment and occupation requires adequate protection of the child bearing and rearing roles of men and women. ILO standards protect women against discrimination during pregnancy and maternity leave and promote full equality of women and men with and without family responsibilities in employment and occupation.

- **Workers with Family Responsibilities Convention, 1981 (No. 156)** aims at creating equality of opportunity and treatment for male and female workers with family responsibilities. It requires States to make it an aim of national policy to enable workers with family responsibilities to engage in employment without being subject to discrimination.
- **Maternity Protection Convention, 2000 (No. 183)** provides for 14 weeks of maternity leave with entitlement to cash benefits and medical care. The Convention prohibits employers from terminating the employment of a woman during pregnancy and maternity leave.

Equality between men and women in the world of work has been an integral part of the work of the ILO since its inception in 1919 and the gender equality principle is included in the **ILO Constitution**. The **Philadelphia Declaration** adopted in 1944, which reaffirms the fundamental principles underlying the ILO, marked a significant milestone in the rights of women by summarizing the key elements of socio-economic development based on personal development. The Declaration states, "all human beings, irrespective of race, creed or **sex**, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity." The **ILO 1998 Declaration on Fundamental Principles and Rights at Work** as well as the **2008 Declaration on Social Justice for a Fair Globalization** reaffirm the importance of equality and non-discrimination between men and women as fundamental principles and rights at work.

## 2.2 International human rights standards on gender equality

The most important international instrument on the rights of women is the **UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**, 1979. Adopted 20 years later than Convention No. 111, the CEDAW follows very closely the discrimination definition applied in the Convention No. 111. CEDAW defines discrimination as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women [-] of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Article 1). CEDAW addresses discrimination of women based on sex and gender and encompasses the full range of women's rights in the political, economic, social, cultural and civil spheres. It broadly addresses discrimination in employment and occupation, whereas Convention No. 111 covers multiple grounds of discrimination in employment and occupation.

The gender equality principle is included also in the **Universal Declaration of Human Rights** 1948, the **International Covenant on Economic, Social and Cultural Rights**, 1966 and the **International Covenant on Civil and Political Rights**, 1966.

### Box 2.1 Ratification of international gender equality standards and treaties by China

International labour standards:

- Equal Remuneration Convention, 1951 (No. 100) - ratified in 1990
- Discrimination (Employment and Occupation) Convention, 1958 (No.111) - ratified in 2006
- Workers with Family Responsibilities Convention, 1981 (No. 156) - not ratified
- Maternity Protection Convention, 2000 (No. 183) - not ratified.

International human rights treaties:

- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979 - ratified in 1980
- International Covenant on Civil and Political Rights, 1966 - signed in 1998, not ratified

- International Covenant on Economic, Social and Cultural Rights, 1966 - signed in 1997 (with reservation), ratified in 2001.

Sources: ILO: *APPLIS database*; OHCHR: *Treaty bodies database*.

### 3. Sex discrimination: Key concepts

People in every society have ideas, expectations and norms about the roles, characteristics, aptitudes and behaviour of men and women in their society. Main root causes of sex discrimination are found in these perceptions on the biological and social - or gender - roles of women and men in society. In the labour market, these perceptions about the abilities and responsibilities of men and women frequently lead to discriminatory employment practices. Incorrect gender perceptions are also often still reflected in public policies, including social security schemes, because women have been excluded from decision-making and governance on such issues.

Sex or gender discrimination<sup>1</sup> at work may take many forms - from direct discrimination in law and in practice to more subtle forms of indirect discrimination. Sex discrimination is often deeply embedded in cultural norms, organizational structures and established practices, and as such may be seen as “natural” and considered difficult to change. However, there is nothing natural about exclusion which limits the potential of people, often women, because of their sex and it does not make good business sense. Convention No. 111, therefore, requires the ratifying states to take active steps to eliminate all forms of discrimination in employment and occupation. It is useful to differentiate among the different forms of discrimination to help identifying the most appropriate and effective countermeasures.



See Unit 1.2 in Module 1 for further information on definitions and requirements of Convention No. 111.

#### 3.1 Sex discrimination in law and in practice

The first distinction to be made is between discrimination that exists in laws or regulations – also known as “**de jure**” – and discrimination that exists in reality and in practice – known as “**de facto**.” A labour code or remuneration orders stipulating that women shall receive less pay than men or which establish lower rates for women than for men is “de jure” discrimination based on sex, while the actual practice of paying women less is “de facto” discrimination.

Cases of “de jure” discrimination have been declining steadily over time, but “de facto” discrimination continues to exist or has emerged in new forms. To identify whether sex discrimination is occurring, it is important to look into the intent or purpose reflected in rules or practices. However, it is even more important to analyze the actual effects of these rules and practices in the labour market, as discrimination may be unintentional and stem from unconscious and culturally accepted practices. This is where it becomes helpful to distinguish between **direct** and **indirect discrimination**.

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

### 3.2 Direct sex discrimination

Direct sex discrimination exists when unequal treatment between workers of different sex is **intentional and stems directly** from laws, rules or practices making an explicit difference between workers on these grounds. For example:

- Laws that do not allow women to sign contracts
- Job advertisements that specify the sex of the candidates without it being a genuine occupational requirement
- Employers and recruitment agencies selecting one sex only for certain jobs, such as young women for service jobs, because of perceptions on women's service mentality and customer preferences for women, or men as drivers – also known as taste-based discrimination.

### 3.3 Indirect sex discrimination

Indirect sex discrimination refers to **rules and practices, which appear neutral but in practice lead to unequal treatment of persons of one sex**. The same rule, practice or criterion is applied to everyone but has a disproportionate impact primarily on persons of one sex, and is not closely related to the inherent requirement of the job. Examples are:

- When requirements are set which are irrelevant to the job, such as height or weight levels for managerial or secretarial jobs, that typically only persons of one sex can meet
- When men and women do the same work but under different job titles. Jobs with job titles commonly used for women usually earn less than those for men. For example, in the UK, salesman, assistant manager, technician and information manager are common job titles for men while their female lower-pay equivalents are: shop assistant, manager's assistant or personal assistant, operator and librarian
- When certain categories of work in which women predominate such as domestic work or agriculture are excluded from labour and/or social protection provisions
- When women as a group predominate in part-time work and lower pay rates have been established for part-time as compared to full-time work
- When women as a group have less access in practice to overtime pay or bonuses in the form of merit payments or seniority pay
- When women as a group have less bargaining power because female-dominated sectors and occupations are often unorganized.<sup>2</sup>

Indirect discrimination is often not evident at first glance, and only emerges after careful analysis of the “de facto” effects of policies, legal provisions or practices. The intention to discriminate is not a determinant of indirect sex discrimination. In other words, even if labour market actors such as employers do not intend to discriminate specifically against women, but women in practice are found to form the majority of a disadvantaged group of workers, such as those in part-time or temporary work, then that is sufficient to conclude that there is indirect discrimination.

### 3.4 Structural sex discrimination

Structural (or systemic) discrimination refers to the **institutionalization** of discrimination in social patterns, organizational structures and legal constructs that reflect and reproduce

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<sup>2</sup> ILO: *Equal pay for work of equal value: An introductory guide* (Geneva, 2007), unpublished document.

discriminatory practices and outcomes. Discrimination is often not an exceptional or aberrant occurrence, resulting from isolated acts of an individual employer or worker but commonly a systematic phenomenon, deeply embedded in the way organizations function, laws and rules are applied and workplaces operate. Women facing discrimination in access to a job tend to continue experiencing discrimination while in the job and after retirement, in a vicious cycle of discrimination.

While labour market institutions, processes and practices often generate and reinforce discrimination they are not set in stone. Like any social construct, the labour market and its institutions are both a cause of and a solution to discrimination. They can be changed to break the cycle of discrimination and promote equality.<sup>3</sup>

Discrimination usually does not come as a stand-alone event and those exposed to it often experience it repeatedly in several spheres of life and work. Girls and boys are socialized to become adults playing different male and female roles respectively in every society, and in many countries these wider societal influences cause women especially to experience discrimination from an early age onwards. These experiences are internalized, shaping women's expectations, aspirations and behaviour.

Gender stereotypes on employment choices and suitable jobs for women and men do not exist only on the sides of employers and customers. Parents, training and career guidance institutions such as employment services stream young women in occupations considered suitable to them and many young women tend to go with the flow. This is interpreted by some as a sign of non-discrimination as if women make individual free choices in accepting second class type of work. Others consider that free choice has little to do with such decisions but that women are obliged to adapt to gender biases in the labour market, a phenomenon known as the feedback effects of discrimination.<sup>4</sup>

### 3.5 Sexual harassment<sup>5</sup>

A serious form of sex discrimination that mostly but not only women face when applying for jobs and at the workplace is **sexual harassment**. Sexual harassment refers to conduct of a sexual nature or other conduct based on sex, affecting the dignity of women and men, which is **unwelcome, unreasonable and offensive to the recipient**. Sexual harassment may take two forms:

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

Sexual harassment can be physical (e.g. sexual assault, rape or other sexual violence and touching), verbal (e.g. comments and questions), or non-verbal (e.g. whistling or sexually suggestive gestures). Most victims are young women but they can also be men or older women. Sexual harassment can also occur between people of the same sex. Perpetrators in workplaces are usually bosses but can also come from colleagues or customers. They are usually but not

<sup>3</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); ILO: *Time for equality at work* (Geneva, 2003).

<sup>4</sup> D. Grimshaw and J. Rubery: *The adjusted gender pay gap: A critical appraisal of standard decomposition techniques*, (Manchester, UK, 2002).

<sup>5</sup> N. Haspels, Z.M. Kasim, C. Thomas and D. McCann: *Action against sexual harassment at work in Asia and the Pacific* (Bangkok, ILO, 2001).

exclusively men with a higher position than their victim. Sexual harassment is not about sexual attraction but about unequal power relations and abuse. It is not related to actual biological characteristics of men and women but relates to the gender roles attributed to men and women in work and in life, and perceptions about male and female sexuality.

The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a serious form of sex discrimination and should be addressed within the requirements of Convention No.111. Sexual harassment undermines equality at work by calling into question integrity, dignity and well-being of workers. The productivity of enterprises is also impaired as sexual harassment weakens the basis upon which work relationships are built.<sup>6</sup>

 See Unit 1.2 and Exercise 8 in Module 1 and Boxes 2.18 and 2.19 further on in this Module for more information on action against discriminatory (sexual) harassment at the workplace.

#### 4. Equal remuneration for work of equal value

**Equal remuneration between men and women for work of equal value** – in brief, **equal pay** or **pay equity**<sup>7</sup> – has been considered an integral part of social justice by the ILO constituents since the start of the organization. The ILO Equal Remuneration Convention, 1951 (No.100) reaffirmed the principle and gave guidance for eliminating pay differences between women and men in law and in practice, while the Discrimination (Employment and Occupation) Convention (No. 111) adopted in 1958 extended the principle prohibiting pay discrimination not only on the ground of sex but on all grounds covered by this Convention.

Over the past decades, the gender pay gap has been decreasing almost everywhere, among others, because significant strides have been made in providing equal access to education at all levels to both sexes and the overall majority of countries have outlawed unequal pay on the ground of sex. However, inequalities in pay continue to be one of the most persistent forms of discrimination against women at work all over the world.

The principle of **equal remuneration for men and women for work of equal value** refers to rates of remuneration established without discrimination based on sex, and solely based on the nature and actual contents of the job. The principle requires equal pay for women and men doing the same, identical or similar work, but also applies in the more common situation when women and men do work that is **different** but nevertheless of **equal value**.

The ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) has noted that in order to establish whether different jobs are of equal value, there has to be an examination of the respective tasks involved.<sup>8</sup> For this reason, it is useful to determine

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<sup>6</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*, Report III (Part 1A), International Labour Conference, 91<sup>st</sup> Session, Geneva, 2003, pp. 463-464.

<sup>7</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.

<sup>8</sup> ILO: “General observation on Convention No. 100: Equal Remuneration, 1951” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 96<sup>th</sup> Session, Geneva, 2007.

the value of work and eliminate gender bias through **job evaluations**. These measure the extent to which different jobs are of equal value by analyzing and comparing the following job characteristics:

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

There is a need to increase recognition that the lower value attributed to “women’s jobs” is often not related to objective job characteristics but to the fact that these jobs are traditionally filled by women. The CEACR has emphasized the importance of job evaluations in promotion of gender equality in pay as follows:

“[c]omparing the value of the work done in such occupations, which may involve different types of qualifications, skills, responsibilities or working conditions but which is nevertheless work of equal value overall, is essential in order to eliminate pay discrimination which results from the failure to recognize the value of work performed by men and women free from gender bias.”<sup>9</sup>

Equal remuneration for work of equal value does not only apply to the **basic or minimum wage**, but also to any **additional benefits** or 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. 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. The scope of Conventions Nos. 100 and 111 extends to “all workers” and is not limited to wage and salary earners in formal employment, including the self-employed, own account workers, agricultural workers, domestic workers, workers in the informal economy and indigenous peoples engaged in traditional livelihoods.

 See Box 1.8 in Module 1 for guidance in Equal Remuneration Recommendation No. 90 on addressing some of the root causes of the gender pay gap and Exercise 4 further in this Module for an illustration of conducting job evaluations for promoting pay equity.

### Box 2.2 Courts addressing pay discrimination – Japan

#### Key facts

X, the mother of one child, worked as a bank clerk for the Iwate Bank (the Bank). Since 1976 she had received both a family allowance and a household allowance on the basis that she was the head of her household. The worker’s wage agreement of the Bank made provision for the allowances to be paid to “a clerk who is a head of household”. This was defined as a clerk who was “supporting the household with his or her income”. However, the agreement also stated that if the clerk was a woman and her husband earned more than the maximum income permitted to qualify for a family support tax deduction the allowances would not be paid. By contrast, for a male employee, the allowances would be paid regardless of the income of his wife. In 1981, when X’s husband received income above the limit for the tax deduction, the Bank stopped paying X the allowances. X began court proceedings claiming that the worker’s wage agreement discriminated against women, and claimed a back payment of the allowances. Her claim in the Morioka District Court was successful. The Iwate Bank appealed to the Sendai High Court.

<sup>9</sup> Ibid.

### Arguments

X argued that the family and household allowances were a “wage” within the meaning of the Labour Standards Law as they were an integral part of the payment for an employee’s work. The allowances should therefore be governed by Article 4 of the Labour Standards Law which provides for the equal treatment of men and women. X argued that the provisions of the worker’s wage agreement were discriminatory on the basis of sex because when a male was head of the household he was entitled to a family allowance regardless of his wife’s earnings. Women however, were only entitled if their husbands earned less than the maximum income permitted to qualify for a family support tax deduction. X also argued that the provision was unlawful because it was contrary to Article 14 of the Constitution, which protects the equal rights of men and women.

The Bank argued that the family and household allowances were not a “wage” because the allowances were not given in exchange for labour, but instead to provide livelihood assistance for families. The allowance was intended for a household’s main income provider and supervisor. The Bank argued that if both the husband and the wife were employed, it was socially accepted to recognize the man as the head of the household and the different conditions for men and women were acceptable because they accorded with social norms. Further, the Bank argued that the provisions of the worker’s wage agreement were not subject to the Constitution because it was a private agreement between the Bank and its employees.

### Decision

The Court held that the worker’s wage agreement discriminated against female employees and declared the relevant provisions unlawful. The Court ordered the Iwate Bank to pay X the family allowances that it had withheld from her.

The Court held that the household and family allowances were a “wage” within the meaning of the Labour Standards Law. The Bank did not therefore have discretion in relation to the allowances. The Court stated that when determining whether the allowances were payable, the main factor should be whether or not that person is the household’s main income provider, rather than whether the person is the “head” of the household. In this case, X was the main income provider for the family and therefore entitled to the allowances.

The Court held that the equality principle between men and women must be implemented, even in private arrangements such as the Bank’s worker’s wage agreement. The Court stated that it is necessary to consider social norms only in terms of their potential for achieving positive changes in society, such as moving towards the equality of men and women.

### Comments

1. This is an example of direct pay discrimination based on sex, because the labour agreement stipulated different rules depending on the sex of the head of the household. In this case the employer also argued that family allowances are not part of the wage. However, the courts confirmed that “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.”

2. Japan adopted the Equal Employment Opportunity Law (EEO) in 1986, banning direct discrimination based on sex but failing to provide any sanctions. Following the adoption of the law, many companies shifted to a “dual-track employment system.” Women were encouraged to slot into the sogoshoku (general track), ostensibly to give them the opportunity to leave the company to take care of family responsibilities and return to work afterwards. Men would typically be recruited into the ippanshoku (managerial track), a kind of fast-track into officer positions. By 2000, the overall ratio of women on the managerial track was still only 3.5 percent, obviously resulting in lower pay for women. In 2006, around 11 percent of companies had a [dual] career tracking system, with few or no signs of a downward trend.

3. In 2006, the Enforcement Ordinance under the EEO was amended to identify indirect discriminatory measures: (1) criteria relating to the worker’s height, weight or physical strength; (2) criteria, in the context

of recruitment and employment of workers under a career tracking system, relating to the worker's availability for reassignment resulting in the worker having to change his or her place of residence; and (3) criteria for promotion relating to the worker's experiences obtained through job rotation and reassignment. A general definition of indirect discrimination has been included in the Guidelines to the EEOL ("EEO Guidelines"). It is claimed, however, that the EEO Guidelines restrict the application of the prohibition of gender discrimination to men and women within each "employment management category", which excludes comparisons between men and women employed in different categories.

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

## 5. Discrimination against women because of pregnancy and family responsibilities

It is sometimes argued that discrimination against women does not exist, because it is thought that differences in labour market outcomes, such as pay inequalities, between women and men result from objective differences between men and women in terms of years of education, training, age and work experience or other human capital related characteristics of individual workers. While differences in education do explain some of the gender differences in labour market outcomes due to women's lower educational and training levels, this difference has been quickly disappearing in many countries worldwide. Indeed, in an increasing number of countries in East Asia, such as Malaysia, the Philippines and Thailand, women's educational levels are the same or even higher than men's, but higher education of women in these countries does not translate into more equal labour market outcomes between men and women, pointing to the effects of employment discrimination.<sup>10</sup>

Women often face considerable employment discrimination on the basis of **(potential) pregnancy, family responsibilities** and sometimes even **marital status**. In many countries, women often just do not get a job if they marry, get pregnant or have family responsibilities. Or they have to promise during recruitment that they will not get married or pregnant or face immediate dismissal as, for example, documented in Viet Nam,<sup>11</sup> where this practice was found to be relatively common even if it has been prohibited by labour legislation. Similar workplace practices are reported from China and Thailand and the practice seems to be widespread in other countries as well, even if hard data are hard to come by. Overall, it is common for women to face dismissal upon pregnancy or marriage, and in fear of losing their job they will forego benefits, even if they are entitled to them.

### Box 2.3 Evidence of discrimination on the basis of pregnancy and marital status – Asia

- In **China**, a recent study by the ACWF shows that discrimination due to pregnancy and family status is common: according to the study, 21 per cent of rural women in cities were fired after becoming pregnant or having a child.
- In the **Republic of Korea**, a poll by the job portal Incruit reveals that one-third of pregnant female workers decided not to take maternity leave for fear of discrimination, and 7% were told to resign after using maternity benefits.
- Similar trends of voluntary or involuntary non-use of benefits and cases of termination of employment due to pregnancy are also reported from **Singapore**, where the Ministry of Manpower

<sup>10</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia*. (Bangkok, ILO, 2008).

<sup>11</sup> Ministry of Labour, Invalids and Social Affairs (MOLISA), Research Center for Female Labour (RCFL) and F. Howell: *Equality, labour and social protection for women and men in the formal and informal economy in Viet Nam* (Hanoi, ILO, 2003).

received 72 maternity and termination-related cases in 2007, occurring mostly in the small and medium enterprise (SME) sector.

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

Women are traditionally assigned the overall majority of family responsibilities in societies, and many employers are reluctant to employ women or pay them less than men because of their perceived higher costs. Women’s family responsibilities are considered to lead to higher absenteeism from work, less ability to work overtime and lower commitment to and interest in work among women. These perceptions are not backed up by hard evidence and have proven to be invalid in many situations but still shape the labour market experiences of many women. For these reasons the Workers with Family Responsibilities Convention, 1981 (No. 156) calls for measures to enable both women and men to better reconcile work and family responsibilities.

#### Box 2.4 Discrimination on the basis of family responsibility – Japan

##### Key facts

A worker refused a transfer order to Osaka because he had to take care of his children (aged three years and one year) who were suffering from serious atopic dermatitis (skin disease). Since his wife was working full-time for another company and their children were receiving special acupunctural treatment in Tokyo, it was difficult for them to accompany him to Osaka. The employer had been prepared to offer considerable economic support if he had accepted the transfer.

##### Court decision

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

##### Comments

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

Source: M. Morozumi: *Special protection, equality, and beyond: Working life and parenthood under Japanese labour law* (2006). See also “Individual Observation on Convention No.156 with respect to Japan” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 90<sup>th</sup> Session 2001; 91<sup>st</sup> Session, 2002; 93<sup>rd</sup> Session, 2004; and 96<sup>th</sup> Session, 2007 (Geneva).

## 6. Gender equality and sex discrimination at different stages of the employment cycle

Steady progress has been made over the last decades towards gender equality in the world of work, but being a woman remains a source of labour market inequalities. Women all over the world face challenges in access to employment and unequal treatment at work. Gender roles and traditional ideas about the role of women and men in the family and society define perceptions about women’s abilities as workers, and this leads to discriminatory practices at all stages of the work cycle:

- During preparation for work when women are channeled into more limited education and training fields considered suitable for them

- At the recruitment stages resulting in more limited access to employment and occupation in terms of fewer job opportunities and lower entry salaries
- At work where women have fewer chances for career development and corresponding pay rises, face higher exposure to sexual harassment at work, and have less secure job tenure
- After retirement when women have access to lower incomes due to discrimination in social security provisions.

### 6.1 Education and training for “women’s jobs” and “men’s jobs”

Gender differences in access to education used to be prominent only a few decades ago when many girls suffered discrimination because parents, institutions and societies provided them with fewer opportunities to education and training. However, direct sex discrimination in education is becoming less common in most countries, although a preference to invest in boys’ education still exists when educational opportunities are scarce. As a result girls’ enrolment rates still lag behind boys’ for example, in isolated rural or more isolated areas, and among vulnerable groups such as indigenous peoples, migrants or other population groups in poverty.

However, as mentioned earlier, worldwide, overall figures on education show significant increases in the educational attainment of women, as reflected in the closing of the gender gap in primary and secondary education in most regions, and by the growing proportions of women in tertiary education, who outnumber men in higher education in all regions except South Asia and Sub-Saharan Africa.<sup>12</sup> Despite these advances, there are still significant differences in the fields of study that men and women choose, with both sexes tending to select training in fields that are traditionally dominated by their own sex. This **sex segregation in training** leads later to sex segregation in occupations, as women and men are concentrated in different jobs in the labour market.

The division in “women’s jobs” and “men’s jobs”<sup>13</sup> or occupational segregation by sex which starts at the pre-employment stage exists in labour markets around the world to varying levels although the types of job which are characterized as female- or male-dominated vary from one country and region to another. For example, trading, accounting or record keeping is done almost exclusively by men in some countries while in other countries it is the domain of women. This shows that what are considered suitable jobs and occupations for women and men respectively are a social, gender construct, although some people still consider that this male-female divide in fields of study is given by nature.

As sex segregation limits women’s choice and occupations before their entry into the labour market, and effective labour markets require the use of all talented human beings, irrespective of the sex they have, the overall majority of progressive and modern educational and vocational training systems and institutions have abandoned discriminatory provisions which limit either sex from access. In addition, many include proactive measures promoting equality of opportunity and treatment between the sexes and encouraging both boys and girls to enroll in training for jobs for which there is a demand in the labour market.

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<sup>12</sup> ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); based on UNESCO: *Education for all: Global monitoring report 2007* (Paris, 2006).

<sup>13</sup> Defined as occupations in which either women or men respectively comprise at least 80 per cent of workers. See R. Anker: *Gender and jobs: Sex segregation of occupations in the world* (Geneva, ILO, 1998).

## 6.2 Access to employment and occupation

Sex segregation in training leads to sex segregation in the labour market as girls and boys are streamed into “women’s and men’s jobs” respectively. While there may be some element of free choice in play when youth select education and training fields, women have much fewer chances than their male equivalents at the job recruitment stage. Women often face direct and indirect discrimination in access to employment and occupation because of traditional ideas on what kind of work is suitable for them as well as prevailing prejudices regarding women’s abilities. Common gender stereotypes center around ideas on men’s and women’s physical characteristics – men are strong and women are weak, men are good with operating equipment and women are good on the assembly line because of their “nimble fingers” – and their social and mental orientation – women are emotional and caring, thus good in service jobs and men are rational, thus good managers and leaders.

As a result, universal characteristics of the male-female job divide are:

- Female jobs are found in the lower levels of the job hierarchy, and female-dominated occupational categories commonly reflect traditional female roles and gender stereotypes in the domestic and sexual spheres. Women are typically found in the care economy and are concentrated in the five C occupations: caring, cashiering, catering, cleaning and clerical.<sup>14</sup>
- Women form the majority of workers on short-term contracts and in part-time work, and in many countries a large share of the female workforce is engaged in irregular and atypical work. Their share in informal employment is also considerable even if reliable and comprehensive data on numbers of men and women in informal employment are not easy to come by.<sup>15</sup>
- The number of occupations available to women is much smaller than those available to men – known as **horizontal job segregation by sex**. There are around seven times as many ‘male’ as ‘female’ occupations. Women also tend to occupy lower ranks than men in the job hierarchy – known as **vertical job segregation by sex** (see also 6.3 below).
- The types and levels of jobs mainly held by men as compared to those mainly held by women usually have more status, and better employment conditions, including substantially higher pay rates. Women predominate in jobs and economic sectors with lower pay than men and at lower levels of the job hierarchy, irrespective of their individual abilities.<sup>16</sup>

“Taste-based” discrimination for either men or women in “men’s” and “women’s” jobs respectively and the streaming of men into good quality jobs in formal employment and women into atypical jobs in informal employment is common not only when employers and companies recruit directly but also when job seekers use employment services. As mentioned in Module 1 this type of direct discrimination in practice needs to be addressed as a matter of urgency.

## 6.3 Conditions of work

A good and supportive working environment for all workers leads to higher productivity and workplaces upholding the equality principle should be free from gender bias. This involves, as discussed above, creating a safe working environment free from sexual harassment, providing

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<sup>14</sup> ILO: *Global employment trends for women brief* (Geneva, 2007).

<sup>15</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

<sup>16</sup> R. Anker: *Gender and jobs: Sex segregation of occupations in the world* (Geneva, ILO, 1998); L. Wirth: *Breaking through the glass ceiling: Women in management* (Geneva, ILO, 2001 and 2004 update).

adequate maternity protection, enabling both male and female workers to balance work and family responsibilities, as well as providing equal pay for work of equal value. Equal conditions of work also include equal chances to career development and job security, as further explained below.

### Promotion and career development

Discrimination in career development, in other words in entry to high-level positions, refers to situations where women do not advance in their careers into senior management or leadership positions. This phenomenon of women remaining in low-level positions not reaching the top is also known as the **glass ceiling** or **the sticky floor**. The career obstacles leading to women's low representation in senior positions are often due to biased gender stereotypes, for example that "men are naturally more suitable to leadership positions than women." These kinds of stereotypes are incorrect, and should not be allowed to form the basis upon which promotions are decided.

Women's access to senior positions is often blocked earlier or during their careers through discrimination in access to **on-the-job training**. Employers are often unwilling to invest in training programmes for women, because they assume that women are less committed to staying in the company and pursuing their career than their male colleagues. Many women also miss career opportunities or access to higher level posts because they interrupted their career due to maternity or family responsibilities. As special training often gives access to increased responsibility and promotion, it is important to ensure that women have equal access to on-the-job training.

### Job security or security of tenure

Women may often have **lower job security** than men. Employment in informal sector and irregular work arrangements such as part-time or other temporary types of work, home-based work or contract labour goes hand in hand with low job security, and women's concentration in these jobs affects them disproportionately. In addition, women's job security in any sector tends to be lower than men's, and in case of retrenchment they are often the first to go. As mentioned in Module 1, discriminatory practices in **dismissal, lay-offs and redundancies** are common, often targeting (married) women of childbearing age and middle-aged women.

## 6.4 Social security after retirement<sup>17</sup>

Overall, women tend to have greater difficulties than men in gaining access to adequate social security and assistance if unemployed or if in economic and social distress due to sickness, maternity, injury, disability or age. This is because the majority of social security systems around the world have originally been designed on the basis of the "male breadwinner model." This model is based on the assumption that a husband earns the living for the family, while his wife is not or only marginally engaged in paid employment and mainly responsible for the unpaid care work at home.

This model has always had drawbacks, firstly because married women's social security protection is linked to the protection earned by their husband and, thus, does not cover unmarried, divorced or widowed women. Secondly, women have always been engaged in paid employment and the number of women entering the labour market has been steadily increasing. However, current social security systems still tend to reflect the "male breadwinner model" and many contain

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<sup>17</sup> Gender inequality in social security, including in retirement age, is one of the issues for review in the General survey on social security instruments which will be discussed at the International Labour Conference in 2011.

direct discriminatory provisions against women and men, for example, with regard to child benefits, exclusion of male spouses where female spouses are covered. Most importantly, inappropriate financing mechanisms for maternity protection in many countries lead to widespread and severe employment discrimination against female job seekers and workers of reproductive age.

With regard to access to old age pension, women in particular need a pension guarantee because they tend to live longer. However, in general, working women's **old age pension** coverage is often lower than that of men, because they may have dropped out of the workforce for a few years and are concentrated in part-time, temporary or other forms of irregular, flexible work without social security benefits.

A form of direct discrimination in laws, regulations and rules relates to obliging women to retire five years earlier than men. This measure was designed in the past to protect women and to acknowledge their contribution to unpaid household and family care. However, it is outdated and leads to unintended negative effects on women's income during and after their working life as follows:

- Pay inequities at the end of women's career, as they need to stop paid work and retire five years earlier than men, and cannot progress into senior, higher-paying jobs
- Fewer social security benefits, as the level of benefits is usually calculated on the basis of the total number of years in employment or on the income earned during the last 3 or 5 years in employment when workers are eligible to enter more senior positions.<sup>18</sup>

### Box 2.5 Addressing unequal retirement age – Indonesia

#### Key facts

On 27 April 1987, the petitioner, Ms Hasibuan, received a notice from her employer Indonesia Toray Synthetics stating that as she would be turning 40 the following month, she would be required to resign from her job. The work agreement under which Ms Hasibuan was employed included a mandatory age for retirement of 55 years for men and 40 years for women. For Ms Hasibuan, this meant that she would not be eligible for the same benefits as her male colleagues, because her age would prevent her from qualifying for the pension. Ms Hasibuan applied to the Court for an order requiring her employer to change the mandatory retirement age so that it would be the same for men and women. She also asked the Court to issue an order requiring her employer to employ her until she reached the age of 55. The lower court decided in favour of Ms Hasibuan and the respondents appealed to the Jakarta High Court.

#### Main arguments

Ms. Hasibuan argued that Article 12, Figure 2 of the Mutual Working Agreement 1954 (the Working Agreement) was discriminatory as it set a lower retirement age for women than for men. She argued that it breached Article 2 of the 1969 Labour Act, which states that employers should not discriminate on the basis of sex. Further, she argued that the Labour Union, by knowingly agreeing to the Working Agreement, had also breached the 1969 Labour Act. Finally, Ms Hasibuan argued that Indonesia had international obligations to promote the equality of women under CEDAW, and should therefore amend the Working Agreement to make equal provisions for men and women.

The respondents argued that the Court did not have jurisdiction to decide this matter and that it should be handled by the administrative bodies responsible for solving labour disputes. These administrative bodies, the respondents argued, included the Head Office of the Labour Ministry, as well as the Director General of Developing Labour Relationships and Job Norm Supervision. As these were the bodies responsible for the Working Agreement any action should be directed at them. The respondents also argued that even if the Court was found to have jurisdiction, the different mandatory retirement age for men and women was part of a labour agreement that was only temporary (for two years) and on this

<sup>18</sup> N. Haspels and E. Majurin: *Work, income and gender equality in East Asia* (Bangkok, ILO, 2008).

basis should not be subjected to a claim of discrimination.

The respondents also argued that even if the Working Agreement was discriminatory, it was acceptable discrimination. They argued that the biological difference between men and women justified a lower age of retirement for women. Women, for example, were more likely to experience work-related stress and illness. The respondents argued that the purpose of the provision was protective, similar to legislation that prohibits women from working in mines, or at night. Further, differences in retirement ages could also be found among other groups of employees in the workforce such as government positions where women were subject to a lower retirement age. This, the respondents argued, was allowed as acceptable discrimination.

Finally, the respondents argued that Ms Hasibuan had not specified which article of CEDAW she wished to rely upon. They also argued that CEDAW must not be applied rigidly but instead interpreted flexibly in light of the local social norms of a given society.

### Decision

The High Court decided in favour of Ms Hasibuan, confirming the decision of the lower Court. The Court rejected the argument that it did not have jurisdiction. If a law is broken, the Court will have the jurisdiction to rule upon it. The Court ordered the company to immediately amend the Working Agreement making the mandatory retirement age the same for men and women and imposed a daily fine for any delay in making the requisite changes. The Court also ordered the company to maintain Ms Hasibuan as an employee until she reached the new retirement age of 55 years.

In its decision, the Court expressly adopted the definition of discrimination used in CEDAW. Further, it noted that “women are the backbone to support the family economy” in the Indonesian community. For this reason, an identical retirement age for men and women was essential.

### Comments

This decision is very progressive for women’s rights in the country. The Court applied CEDAW directly and did not accept the argument that CEDAW must adapt to local social norms. Furthermore, the Court recognized the importance of women’s labour not only to themselves, but also to the family and society. This reasoning could be used by advocates to argue for women’s equality, particularly in employment discrimination cases.

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

Finally, this case is significant because it recognized that labour unions and boards are also responsible for discrimination practices, just like employer companies. This is useful because it defines the responsibilities of labour representatives to actively protect all their workers, including women.

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

## 7. Changing approaches: From protection to gender equality in law and in outcomes<sup>19</sup>

The rights and protection of women workers have received special attention in the ILO since its creation in 1919. During the past 90 years, different strategies have been developed and implemented to eliminate sex discrimination and promote equality between men and women. The decision on which strategy to use depends on the underlying perspectives and assumptions

<sup>19</sup> Based on ILO: *Women workers’ rights: Modular training package* (Geneva, 1995); ILO: *Gender equality mainstreaming strategies in decent work promotion: Programming tools – GEMS Toolkit* (Bangkok, 2010).

as to what causes inequalities and the goals set to achieve. These have evolved over the years at the international and national levels. Overall, three main perspectives to gender equality can be distinguished:

### 7.1 Protection

The first ILO conventions adopted in the early 20<sup>th</sup> century aimed exclusively at protecting women. Women were perceived as more fragile than men, and in need of special protection from work perceived as “unsuitable”, “unsafe” and “inappropriate” for them. Early standards contained provisions on prohibiting the employment of women at night, in underground work and with dangerous substances like lead.<sup>20</sup> These conventions as well as the first Maternity Protection Convention, 1919 (No. 3) were designed to protect women’s health, particularly their reproductive function.

In later years, it was found that the protectionist perspective of barring women from certain types of employment or work processes “for their own good” perpetuated sex discrimination in the guise of protection and reinforced the subordination of women.

### 7.2 Equality in law

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

In hindsight, these Conventions have proven to be ahead of their time as they provide for realizing equality not only in law but also in practice. The approach of these Conventions is promotional, calling for active policy measures to promote equality. They recognize the importance of special support measures - affirmative action or positive measures - in advancing equality of previously disadvantaged groups.

In some countries, including in China, equality in law, or “formal equality” has been understood in legal practice, institutions and the public at large to mean that men and women are considered to be the same and should be treated in the same, identical manner regardless of the biological and social differences between the two. In practice this “sameness” perspective has proven to further burden women as they have to achieve male standards and compete with men not on “equal footing” but on male terms. However, it has by now become evident that male and female realities are not similar if women are disadvantaged due to subordinate gender roles, multiple responsibilities and limited access to resources.

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<sup>20</sup> Night Work (Women) Convention, 1919 (No.4); Lead Poisoning (Women and Children) Recommendation, 1919 (No.4); Underground Work (Women) Convention, 1935 (No.45).

### 7.3 Equality in outcomes

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

The CEDAW and international labour standards have emphasized the need for positive measures to redress the effects of (past) discrimination and to promote equal opportunity and treatment for women in education, training and employment. Since the Fourth World Conference on Women in Beijing in 1995 gender mainstreaming and women's empowerment have been recognized as the main global strategies to achieve gender equality goals.



#### What is gender mainstreaming, women's empowerment and gender justice?

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

**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; and (5) their ability to influence the direction of social change to create a more just social and economic order, nationally and internationally.

The core of empowerment lies in the ability of a woman to control her own destiny. This implies that to be empowered women must not only have equal capabilities (such as education and health) and equal access to resources and opportunities (such as land and employment), but they must also have the agency to use those rights, capabilities, resources and opportunities to make strategic choices and decisions (such as are provided through leadership opportunities and participation in political institutions. And to exercise agency, women must live without the fear of coercion and violence.

Many international and national organizations, including governments, have taken steps to institutionalize gender mainstreaming policies and practices within their organizations, but much more remains to be done. Systematic gender analysis is becoming more common to inform the design of equitable policies and recognize the unique value and constraints of women and men in paid and unpaid work. However, progress has been slow. For this reason, in recent years, women's advocates have started to use the term "**gender justice**" in exploration of new ways to

provide redress for the ongoing gender based injustices from which women suffer.

Gender justice is about the ending of, and the provision of redress for, inequalities between women and men that result in the subordination of women to men. The gender justice approach pursues gender equality with an emphasis on transforming unequal power relations between the sexes. Priorities include advancing women's rights and access to resources on an equal footing with men; building women's voice and 'agency, that is, ability to make choices; creating women's access and influence in policy and decision making institutions and making social, economic and political institutions responsive and accountable to women.

Sources: ECOSOC: *Agreed Conclusions*, e/1997/L.30; UNDP: *Empowered and equal: Gender equality strategy 2008–2011*, 2008; M. Mukhopadhyay and N. Singh (eds.): "Gender justice, citizenship and development" (2007) in ILO: *Women in labour markets: Measuring progress and identifying challenges* (Geneva, 2010). For more information, see also the United Nations International Development Research Institute, Ottawa, Canada; and the Institute for Development Studies and the University of Sussex, UK.



See Unit 2.2 for further information on the evolvement of these discussions in China.

## 8. Protective and affirmative measures to promote gender equality at work

The Discrimination (Employment and Occupation) Convention, 1958 (No.111) requires each ratifying state to declare and pursue a **national policy** to promote equality of opportunity and treatment in employment and occupation with a view to eliminate any discrimination. With the adoption of a policy, member States commit to promote equality in the labour market, outlining the measures that will be put in place and the actions that will be taken to progressively achieve this goal.

Over the years, ILO member States have adopted several resolutions calling for the elimination of all forms of sex and gender discrimination in the labour market and promotion of equality between women and men. These resolutions outline policy areas in which governments and social partners need to take action in order to realize gender equality at work to guide member States. Recent resolutions adopted by ILO member States are:

- Resolution concerning Gender Equality at the Heart of Decent Work, 2009
- Resolution on Gender Equality, Pay Equity and Maternity Protection, 2004.

Most countries have adopted **national policies or action plans for achieving gender equality and advancing the position of women**, prompted by the dual concerns of protecting women workers from arduous conditions and ensuring equality with men in opportunity and treatment at work. Article 5 of Convention No.111 provides for measures of protection and assistance, stating that these measures are not considered discrimination. As mentioned above, initially the emphasis was on protection but attention has subsequently shifted to help achieve equality in outcomes. Two types of special measures are generally needed:

- protective measures to safeguard workers' reproductive functions
- affirmative action, also known as positive measures, to overcome the effects of (past) discrimination.

## 8.1 Protective measures

Measures to protect women may be broadly categorized as (1) those aimed at protecting women's reproductive and maternal capacity and (2) those aimed at protecting women because of gender perceptions and stereotypes about their capacities and appropriate roles in society. The latter category of measures has been a hot issue for debate: defended by some as necessary and criticized by others as contrary to the objective of equality.

With regard to the first category, it is generally recognized that measures which explicitly or implicitly aim at protecting the reproductive capacity of women are necessary for the achievement of true equality and that the reproductive functions of both women and men require protection from hazardous work processes.  See Annex 1. Protection of women during pregnancy and nursing: Guidance from international labour standards.

However while consensus on the provision of maternity protection is nearly universal, and the idea of providing paternity leave for new fathers is gaining ground, effective maternity protection policies and practical measures have not yet been put in place in most countries. In many countries, individual employers have to exclusively bear the costs of maternity benefits for their employees. Evidence abounds that this leads to severe discrimination against women of reproductive age in many countries.<sup>21</sup>

With regard to the second category of protective measures, consensus is growing that outside the period of pregnancy and maternity leave, women should not be considered as “fragile” or “in need of protection”, but be treated fairly in accordance with their abilities, experience and merit.<sup>22</sup> However, diverging views continue to exist among ILO member States on limitations on the employment of women in certain occupations and jobs with a view to “protect them” because of gender considerations – a matter subject to recent debate also in China.<sup>23</sup> The debates have centered on prohibiting or allowing women, for example, in night or underground work, in mining or other occupations or to migrate for work across national borders. Those in favour of prohibition state that the restricted types of work or work processes are not suitable for women. Those against it argue that it limits women's access to work, does not take into account the capacities, preferences and abilities of individual women, and further marginalizes women workers in vulnerable employment, as the jobs go underground.

### Box 2.6 Challenging stereotyped ideas about physical abilities of male and female workers

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

Scientific research on lifting capacity and other physical abilities of women and men workers show that no

<sup>21</sup> For further information, see N. Haspels and E. Majurin: *Work, income and gender equality* (Bangkok, ILO 2008).

<sup>22</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 1 A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009).

<sup>23</sup> Refer for example to the 1994 Labour Law in China: It is forbidden to engage women workers in work high above the ground, under low temperatures, or in cold water during their menstrual period or in labour of 3<sup>rd</sup> grade physical labour intensity as stipulated by the state (Article 60). The CEACR has asked the Chinese Government to explain the rationale of these restrictions on women's employment in its Direct Request on Convention No. 111 with respect to China in 2010.

assumptions on these abilities can reasonably be made on the basis of a person's sex. For example, studies done in the US and Europe based on anthropometric data of white Anglo-Saxon workers show that the capacity range for both female and male worker groups were very similar. Also other gender-oriented research on health aspects has demonstrated that differences among working populations are mainly based on individual human variability rather than on biological differences between the sexes.

In the 1960s many countries set limits on the maximum permissible load to be carried by a woman. The limits were fixed between 15 and 20 kilograms, which was approximately half of the recommended limit for male workers. These specifications were based on perceived "weakness" of women at that time. The scientific assumptions on which these restrictions were decided is not clear, but the legal limitations are still used in the legislation of a number of countries.

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

Within the international community, the trend is to extend equality through better labour protection, and ensure decent jobs and working conditions for all workers rather than making certain jobs illegal for women only as this may increase risks of labour exploitation of women. The UN General Assembly, in its follow-up to CEDAW, requests governments to periodically review existing laws to protect women in the light of scientific and technological knowledge to decide whether such laws should be revised or extended. Similar advice has been provided by the ILO since the International Labour Conference in 1975, as reconfirmed in its equality resolution since 1985, and by the Committee of Experts on the Application of Conventions and Recommendations in its advice to individual member States to date.

For example, the 2000 General survey on night work of women in industry among ILO member States noted that the current trend is to move away from a blanket ban on night work for women in industry and to regulate night work for both women and men, among others, with the following arguments:

1. The harmful effects of, for example, night work on women are no worse than the effects of such work on men. Furthermore, in many parts of the world, hazardous work and work processes which prompted original protective approaches at the start of the 20<sup>th</sup> century have been eliminated in many parts of the world due to technological advances.
2. Blanket prohibitions restricting women's access to specific jobs and certain occupations are seen as contravening the principle of equality. It has also been contended that in practice, even in the face of legal prohibitions, women do work at night but without any protection.
3. At the macro level, repealing restrictions on night work of women could have positive impacts on job creation, productivity and economic growth.
4. Repealing regulations on night work of women should not result in a legal vacuum depriving night workers of any regulatory safeguards. Night work is generally considered to have harmful effects for all workers, and should thus be regulated for men and women alike. Blanket prohibitions and restrictions should be replaced with necessary and proportionate protective measures such as those on maternity, health, adequate security, transportation and other social services.<sup>24</sup>

Many countries have followed this advice and progressively eliminated provisions which ban women from certain occupations or work processes. Many courts have also indicated that such

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<sup>24</sup> ILO: "Night work of women in industry, General survey" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, Part 1B, 2001, International Labour Conference, 89<sup>th</sup> Session (Geneva).

regulations are incompatible with gender equality legislation. In other countries such prohibitive laws and regulations still exist. In such cases, it remains important to regularly review such provisions, carefully weigh all relevant factors, take into account the specific context, and ensure that the views of women workers are heard and reflected in decisions. In conclusion, the overall recommendation is generally to try to limit restrictions and favour job opportunities for all workers irrespective of their sex.

## 8.2 Affirmative action

Affirmative action – also known as positive measures – are special, usually temporary, measures designed to redress the effects of past or continuing discrimination. Affirmative action measures are needed to put everybody on an equal footing, especially where ingrained social, political and economic inequalities are rooted in tradition and arise out of a history of oppression of one group by another.

Affirmative action does not imply that its beneficiaries have something wrong with them or need to change. Affirmative action is based on the recognition that inequalities have become entrenched in institutions and societies. In such cases positive action aims to address the failure of labour market institutions to provide equal opportunities to all. The most common example of affirmative action measures consist of setting targets, goals or quota for the participation of the disadvantaged, underrepresented group.



The principle of special positive measures is reflected in Article 5(2) of Convention No. 111 and has been reconfirmed regularly over the past decades in international conventions, resolutions and declarations as a necessary measure to achieve equality between men and women.<sup>25</sup> Attitudes towards this type of measures differ across member States and continue to be controversial and subject of public debate. However, countries and public and private sector organizations have increasingly started to adopt such measures because of evidence that the legal banning of sex discrimination in itself has not proved sufficient to create gender equity and achieve equality in outcomes for women and men in the world of work.

Well-known examples of affirmative action in the gender equality field are the legal requirements in Norway to have a gender balance of at least 40 per cent of women in the boards of public and publicly traded private companies which entered into force in 2004 and 2006 respectively.<sup>26</sup> Similarly, Finland's new Corporate Governance Code which came into effect in January 2010 requires all companies listed in Finland to have at least one woman on the board, or explain why they do not have any female board members.<sup>27</sup> In Australia, by mid 2010, the Australian

<sup>25</sup> ILO: "Resolution concerning gender equality at the heart of decent work" in *Provisional Record*, International Labour Conference, 98<sup>th</sup> Session, Geneva, 2009.

<sup>26</sup> Ministry of Children, Equality and Social Inclusion, Norway: *Rules on gender representation on company boards*.

<sup>27</sup> Securities Market Association: *Corporate Governance Code 2010* (Helsinki).

Securities Exchange (ASX) has introduced a requirement for each entity listed on the ASX to adopt a diversity policy that includes self-imposed targets for staff diversity, and to publicize the proportion of women on staff, in senior ranks and on the board. Initially, the guideline will be voluntary. However, the ASX could consider making the guideline a formal listing rule if objectives are not being met. This means that ASX companies could be suspended from trade if they fail to disclose their gender policies or meet the objectives set by the board. At present, only 8.3 per cent of ASX 200 board members are women and almost 50 per cent of the top 200 companies have no women at all on their boards.<sup>28</sup>

## 9. Laws, policies and practical measures

Convention No. 111 is a promotional convention, calling for a national policy to apply equality and non-discrimination principles through advocacy and education, and the development and implementation of legal measures and their enforcement. Achieving equality between men and women requires concerted action by all labour market actors, governments at national and local levels, employers and workers and their organizations as well as other agencies, such as women's federations.

Main methods for application of the national policy outlined under Convention No. 111 include:

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

Convention No. 111 requires the governments of ratifying member States to report to the ILO on the action taken to pursue the national equality policy and the results achieved through such action. The CEACR regularly requests information about the measures taken, as well as facts and figures on their effects in the labour market to identify the measures' effectiveness in promoting equality in the specific circumstances of each country.<sup>29</sup>

### 9.1 Legal action and enforcement

#### Legislation

Following ratification, member States should bring their legislation in line with the requirements in Convention No. 111 and enact legislation to secure the acceptance and observance of the national equality policy. In addition, any statutory provisions or administrative instructions or practices that are inconsistent with the policy should be repealed or modified. Clear provisions in law, accessible avenues for legal redress and clearly defined liabilities and sanctions make the principle of gender equality at work enforceable, and enable victims of discrimination to seek legal recourse.

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<sup>28</sup> Australian Securities Exchange (ASX) Corporate Governance Council: *Corporate Governance Principles and Recommendations with 2010 Amendments*.

<sup>29</sup> ILO: "Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No.111)" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009).

Depending on national conditions and practice, legislation may also provide for special protection and temporary support measures (e.g. quotas, subsidies or tax incentives). Measures geared at promoting women's employment, such as special vocational guidance or training services or specific prohibitions against discrimination of women in employment may be included in laws providing for employment promotion or active labour market policies.

**Box 2.7 Development of Regulations on the Promotion of Gender Equality in Shenzhen Special Economic Zone (draft for discussion) – China**

Shenzhen Special Economic Zone in Guangdong Province is in a leading position in terms of local legislation on gender equality. In January 2010, the city drafted Regulations for the promotion of gender equality, the first of its kind in China. Highlights of the provisions are:

Sex discrimination is defined as: Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the exercise by persons of a particular sex, on a basis of equality, of rights and freedoms in the political, economic, cultural, social, family or any other field (Article 4).

The following situations shall not be deemed to be discrimination:

- 1) Special measures for the protection of women adopted on the basis of physiological reasons or due to pregnancy or childbirth
- 2) Temporary measures adopted to accelerate the realization of substantive equality between men and women
- 3) Other situations stipulated in laws and administrative regulations (Article 5).

A Shenzhen Equal Opportunities Commission will be set up and be responsible for the implementation of the Regulations (Article 7).

The responsibilities of the Shenzhen Equal Opportunities Commission include:

- 1) Develop the city's development plan for gender equality and monitor its implementation after approval by the city government
- 2) Conduct or guide competent agencies to conduct gender analysis of laws, regulations and policies concerning employment, social security, health, culture and education, planning and construction, civil affairs and welfare, organization and personnel, marriage and family, etc.
- 3) Coordinate and guide relevant departments to carry out gender budget, gender audit and gender statistics
- 4) Conduct regular and random study and evaluation of gender equality work in the city, prepare annual report to the People's Congress of the city and publicize the evaluation report
- 5) Develop and disseminate policies and action guide on anti-discrimination on the basis of sex
- 6) Handle complaints related to sex discrimination
- 7) Other matters stipulated in laws and regulations (Article 9).

Regarding equality in employment, the Regulations provide:

- With the exception of the special types of work or posts that have a particular requirement on sex according to the national occupational standards, state organs, mass organizations, enterprises and other employing units shall not set a requirement on sex in job advertisements or in the recruitment process and shall not refuse to employ or raise the employment standards for the reason of sex.
- Employing units shall not apply differential treatment toward male and female workers in areas of labour remuneration, working hours, rest and leave, occupational safety and health, insurance and welfare, retirement, etc. When there are other provisions in laws and regulations for the protection of women workers, such provisions shall be applied (Article 21).
- Gradually implement the system of equal retirement age for men and women. When a female

labourer reaches the current retirement age, if she is willing to continue to work, she can request to extend the retirement age until she reaches the retirement age for male workers (Article 23).

- Employing units have the obligation to take measures to prevent sexual harassment in the workplace. Employing units shall adopt rules on the prevention of sexual harassment and carry out education programs among the employees. Sexual harassment is defined as ... (Article 25).
- Implement the parental leave policy. During the maternity leave period of a woman, her spouse is entitled to parental leave of no less than 30 days (Article 28).

In the case of a sex discrimination dispute, the employing unit shall bear the burden of proof should the evidence for the matters under dispute is under the control or management of the employing unit. The employing unit shall bear the adverse consequences should it fail to provide such evidence (Article 31).

The Regulations are currently being reviewed through wide consultations.

Source: Consultation Meeting on the Regulations on the Promotion of Gender Equality in Shenzhen Special Economic Zone: *Draft Regulations for discussion* (Shenzhen, February 2010).

### Labour inspection

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

- **Advice and information.** Provision of practical advice to employers on good human resources management practices and the most effective means of complying with the law; training of employers, workers and other stakeholders; and awareness raising on law and international standards
- **Monitoring and enforcement.** Inspection of premises and records to verify that employers subject to their control comply with the requirements of the law; keeping track of compliance levels in enterprises; hearing complaints by employees; and (as a last resort) imposing sanctions to enforce compliance
- **Feedback.** Informing the competent authorities of gaps in domestic labour law and regulations.

Labour inspection can play a key role in enforcing anti-discrimination provisions because of their regular contacts with employers and workers, their access to relevant files, and because they can investigate cases without the need to wait for an individual victim to bring a case to court. However, the capacity of the labour inspectorate to promote equality and enforce anti-discrimination is underutilized in many countries. The CEACR has noted that the capacity of labour inspectors to detect and address discrimination in the workplace needs to be strengthened and the labour inspectorate's mandate to enforce non-discrimination needs to be clearly set in law.<sup>30</sup>

#### Box 2.8 Inspections on wages and contracts to fight discrimination – Spain

##### *Protocol signed by the Ministers of Equality and Labour Corbacho to eliminate labour discrimination against women in Spain, 22 September 2009*

In September 2002, the Minister of Equality, Bibiana Aido, and the Minister of Labour and Immigration, Celestino Corbacho, signed two protocols whereby both ministries will cooperate to eradicate discrimination against women in the labour market. More specifically, these protocols contain actions

<sup>30</sup> ILO: "Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No.111)" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1 A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009).

concerning discrimination at the level of wages and a greater control of hiring in sectors with a higher rate of female workers:

- Aído: “Equality of opportunities for female workers is a factor of progress and development, and it brings about undeniable benefits at the level of competitiveness and guarantees the welfare society”
- Celestino Corbacho said that the incorporation of women in the labour market over the last few years has been a “positive factor.” Yet, he stressed that “one of the main problems they must face is temporary work.” He added “in periods of crisis such as the one we are going through, the incorporation of women brings about greater social cohesion.”

As stated in the first cooperation protocol, the Ministry of Labour will carry out inspections through the Labour Inspection Department, in order to check whether there is direct or indirect wage discrimination. This type of discrimination usually has to do with the recognition of the work of male workers through voluntary fringe benefits which are not paid to women in the same professional category. Thus, nearly 260 companies will undergo an inspection and the payments concerning wages and social taxes carried out over the last two years will be analysed. The results of this analysis and the measures following the inspections will be reported to the Ministry of Equality.

The second protocol focuses on the fight against the anomalies in contracts subscribed in sectors with a higher rate of female workers. Thus, from now on, the authorities will pay more attention to the fraudulent use of part-time contracts or the failure to pay female workers’ social security taxes in these sectors.

These protocols will be in force for one year and can be extended. Both ministries will create a mixed commission to follow the development of both agreements.

Source: “Protocol to fight employment discrimination against women in Spain,” [http://www.la-moncloa.es/IDIOMAS/9/ActualidadHome/2009-2/22092009\\_FightVsLabourDiscrimWomen.htm](http://www.la-moncloa.es/IDIOMAS/9/ActualidadHome/2009-2/22092009_FightVsLabourDiscrimWomen.htm) (accessed 24 Mar. 2010).

### Independent equality commissions

Many countries have established specialized agencies to support the application of legislation against discrimination by promoting equality through practical, institutional measures. These agencies give policy directions, guide, monitor and enforce implementation of anti-discrimination measures and examine complaints of discrimination. Established usually within the framework of a national machinery set up to promote human rights and/or improve the status of women, these agencies can facilitate the filing of cases and informal or formal resolution of individual complaints. In many jurisdictions, they can initiate action on their own to support individual victims. The specialized expertise of equal opportunities commissions has proven to be crucial, particularly for solving pay equity, sexual harassment and other serious discrimination cases.

#### Box 2.9 The Equal Opportunities Commission – Hong Kong, China

Established in 1996, the Equal Opportunities Commission of Hong Kong, China, works against discrimination on the grounds of sex, marital status, pregnancy, disability and family status. It has investigation and conciliation powers; issues codes of practice and guidelines on equal opportunities; produces research on discrimination; and builds partnerships with enterprises and governmental and non-governmental organizations alike. A major achievement of the Commission has been the reform of the Secondary School Places Allocation (SSPA) system that for a quarter of a century had led to the systematic lowering of the best girls’ scores and scaling up of the best boys’ scores, and gender quotas that restricted girls’ access to the best schools arbitrarily.

The Equal Opportunities Commission (EOC) is an independent body, funded by the Government to implement anti-discrimination legislation in Hong Kong, including the Sex Discrimination Ordinance

(SDO), the Family Discrimination Ordinance (FSDO), the Disability Discrimination Ordinance (DDO) and the Race Discrimination Ordinance (RDO). 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 work for 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. Challenges in promoting equal pay for work of equal value include the lack of definitions of value and of legislation on specific job evaluation methods. Especially small and medium-size enterprises find implementation difficult.

Source: ILO: *Report of policy seminar on work, income and gender equality in China* (Bangkok and Beijing, 2008); ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

### Legal recourse

Legal recourse through individual action has proven to be a significant avenue through which changes in legal provisions and their interpretations can be accomplished. The use of enforcement machinery has a substantial positive impact in reducing discriminatory employment practices and unveiling broader-based structural discrimination. In areas where cases have been successful, changes have been visible. Women have, for example, gained entry to occupations from which they were previously excluded by using legal recourse to show that recruitment criteria such as height and weight requirements discriminate against them, because they are not related to the job.

In most countries, however, a relatively low number of employment discrimination cases has been initiated, investigated or resolved in favour of the claimant. This attests to problems in the relevant legislation and/or in the enforcement machinery, including for example the inflexibility of procedures, the difficulty in assembling evidence and the burden of proof. The CEACR has also noted that the low number of discrimination-related complaints points to a lack of awareness of the principles of Convention No. 111, lack of confidence in or absence of access to procedures in practice, and/or fear of reprisal.<sup>31</sup> In several countries, the use of legal recourse has been made more accessible to all workers through simplification of procedures, lower costs and increased legal aid services.



See Unit 1.4 in Module 1 for further information on access to justice and legal protection.

## 9.2 Practical measures

### Research and gender analysis

Further **research** is needed to document the effects of direct and indirect discrimination in the labour market and measure the effectiveness of policies and measures in terms of benefiting

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<sup>31</sup> ILO: “Fiftieth anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No.111)” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1 A), International Labour Conference, 98<sup>th</sup> Session (Geneva, 2009).

men and women equitably. Further studies on the gender pay gap are also needed, especially among population groups in poverty. Gender analysis of employment and enterprise promotion, poverty alleviation and social protection policies, programmes and concomitant services provided by labour market institutions, such as employment service centres and business development service providers, is also needed to identify whether they reach out equally to both women and men.

### **Equality and protection for occupations dominated by women in poverty**

Due to discrimination in the labour market and society at large many women end up in informal employment in female-dominated occupations not covered by employment, labour and social protection. Rather than providing preferential policies for vulnerable groups of women in informal and sometimes hazardous employment, it is more effective to bring these occupations under the purview of protective labour legislation for all workers.

### **Equality promotion in education, training, public employment and employment services**

Remedial measures may be needed in many fields, ranging from increasing girls' and women's access to education and training, and encouraging young men to complete higher education, to streaming both sexes into education and training for gainful and decent jobs that are in demand. Combating gender bias in job selection and recruitment, and improving career promotion for women with government setting an example as "good practice employer" in the public sector and providing guidance to the private sector is needed in virtually all countries. Employment services centres also require guidance and regulations to provide vocational training and career guidance to men and women without gender bias.

### **Equality promotion in social protection and insurance**

Discrimination of women because of child bearing and rearing needs to be eliminated as a matter of urgency. This will require the design of better functioning financing mechanisms for maternity protection and developing practical and innovative means of enabling both men and women to better reconcile work and family responsibilities.

### **Promotion of pay equity**

In recent years, the development of **job evaluation methods** (JEMs) free from gender bias has come to be regarded as a key step in promoting pay equity and ensuring that men and women performing jobs of equal value receive equal remuneration. Job evaluation processes generally consist of analyzing and comparing the contents of different jobs within an organization or industry by breaking down the duties and skills of jobs into different factors of value with a view to determine appropriate wage rates. JEMs 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.<sup>32</sup>

#### **Box 2.10 Guidelines for employers to eliminate the gender pay gap – Japan**

In 2003, the Government of Japan issued a "**Guideline concerning the measures for improving wage and employment management for eliminating wage disparity between men and women**" a set of voluntary guidelines for employers recommending that enterprises analyze the wages of female and male employees and improve their employment and wage management. The guidelines encourage employers to:

- enhance the objectivity and transparency in wage decisions and personnel appraisals; review family

<sup>32</sup> For further guidance, see M. T. Chicha: *Promoting equity: Gender-neutral job evaluation for equal pay: A step-by-step guide* (Geneva, ILO, 2008).

- allowances schemes and career tracking systems as well as their implementation
- promote non-discriminatory job allocation and posting
- allow mobility between tracks where a two-track career system has been introduced (see Box 2.1)
- use positive action measures to overcome limited access of women to certain positions due to length of service requirements
- promote family-friendly workplaces.

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

### Education and awareness raising on rights, non-discrimination and equality

Training workers about their right to equal opportunity and treatment can enable them to exercise their rights (where to go, what to do) and can reduce their vulnerability to exploitation.

**Legal literacy programmes** have been identified as an important way to promote gender equality. They can be implemented by governments, trade unions, women's rights or women entrepreneurs' organizations and other groups. Strategies include popularizing gender equality concepts by using booklets, pictures and posters written in easily understandable language, or working with mass media (television and radio) on rights education programmes. This type of training needs to be combined with financial education when women are illiterate or semi-literate.

Extensive awareness raising and capacity building on gender equality and non-discrimination at work is also needed among labour and women's leaders, labour officials, employers and managers, in the trade unions, among the judiciary and enforcement agencies, as well as the public at large.

## 9.3 Role of social partners and strategic alliances

Convention No.111 singles out cooperation between government, employers' and workers' organizations and other appropriate bodies as a key measure for the development, promotion, adoption and implementation of the national equality policy.

### Employers' and workers' organizations

Employers' organizations are in a key position to promote gender equality in their member companies by providing information and advice to their members on non-discriminatory human resources management practices, and developing guidelines and codes of practice on equal opportunity in employment for use by their members. Employers' organizations can also deliver training and other services to build capacity among their members and help them to comply with equality laws.

The responsibility of individual **employers** is to apply non-discriminatory practices in human resources management and other operations. For example, all recruitment and employment policies and practices (including job advertisements, job descriptions, and performance and job evaluation policies and practices, etc.) must be free from discrimination. It is a good practice to adopt and implement an equal opportunities policy at company level. Companies should 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.

### Box 2.11 Women's empowerment principles: Equality means business

Principles in brief:

1. Establish high-level corporate leadership for gender equality
2. Treat all women and men fairly at work – respect and support human rights and non-discrimination
3. Ensure the health, safety and well-being of all female and male workers
4. Promote education, training and professional development for women
5. Implement enterprise development, supply chain and marketing practices that empower women
6. Promote equality through community initiatives and advocacy
7. Measure and publicly report on progress to achieve gender equality.

Source: United Nations Global Compact (UNGC) and UNIFEM: *Women's empowerment principles: Equality means business* (New York, 2009).

Trade unions and other representative associations of workers or employees play an important role in raising awareness and training their members about their right to equality. They can signal possible discriminatory rules or practices and monitor implementation of equality policies in workplaces. Individual members also often require support in resolving discrimination-related problems with their employers. Trade unions also have an important role to play in undertaking advocacy campaigns to increase awareness among the general public and lobby for policy change.

### Box 2.12 Pay equity campaign by Public Services International

Public Services International (PSI), a global union federation of public sector trade unions, launched a Pay Equity Campaign in 2002 to promote equal pay between men and women among PSI affiliates. The Pay Equity Campaign provided support in the form of resource packs, training, expert guidance, the facilitation of local pay equity campaigns and a specialized newsletter on the matter. The recommendations of a recent evaluation of the Campaign are as follows:

- continue **training and capacity building** for national affiliates, strengthening the “train-the-trainer” component
- strengthen capacity on **job evaluation** by preparing a database of materials, developing materials to help unions in screening consultants hired to assist job-evaluation programmes and provide a recommended list of consultants with expertise in a variety of languages
- broaden the pay equity agenda to focus on **performance-related pay and appraisal**, skill development and monitoring of recruitment, selection and promotion decisions and provide support for the establishment of bipartite and tripartite committees
- increase awareness of the gender pay gap through **educational campaigns, negotiating guidelines regarding collection and sharing of information**, continued cooperation with the ILO and support of research initiatives with external bodies
- continued emphasis on **knowledge sharing**, for example through newsletters, online discussion forums and strategic discussions at global and regional levels
- sharing of expertise through **twinning arrangements** between developing countries and experienced PSI affiliates with pay equity experience (for example in Australia, Canada, New Zealand, Sweden and the United Kingdom)
- continued cooperation with the ILO to **increase mechanisms for cooperation at the national level**, support technical consultation on job evaluation methods free from gender bias, in order to assist unions wanting to submit comments under ILO monitoring arrangements, and increase training opportunities supported by the ILO
- demonstrate the **link between pay equity and the anti-poverty agenda**, particularly in regard to the MDGs, by developing guidelines, campaigning and encouraging affiliates to campaign based on countries' MDGs.

Source: Adapted from: A. Hegewisch, S. Hammond and K. Valladares: “Report of the Evaluation of the PSI Pay Equity Campaign, 2006” in ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

Workers' and employers' organizations should include gender equality in their **collective bargaining** agendas at different levels. Special clauses on gender equality and reconciling work and family in collective employment contracts or collective bargaining agreements are effective ways for promoting and securing equality in workplaces.  See Box 2.15 further in this Module.

### Women and their organizations

The women's movement, be it in the form of a mass organization, a government women's machinery, gender networks in universities, the trade unions or women's professional, entrepreneurs' or other associations and community groups have been the motor for positive changes in the gender equality field. They need to participate in decision making which relate to equality in employment and occupation and be represented in all social dialogue and industrial relations mechanisms responsible for handling employment, social protection and labour matters.

### National tripartite labour and gender mechanisms

All relevant actors should be mobilized to promote gender equality at work. A consultation mechanism often paves the way for setting in motion new research and trying out innovative practices. Government, employers', workers' and women's organizations should engage in social dialogue in each country to adopt and implement a national equal employment opportunity policy and identify further measures to realize substantive equality for women and men in employment and occupation.

#### Box 2.13 Tripartite cooperation mechanism to promote equality – Singapore

In Singapore, the government, the employers' organization and the trade unions have established a national tripartite cooperation mechanism which plays a major role in guiding the labour market. The tripartite cooperation mechanism, since 2006 known as the Tripartite Alliance for Fair Employment Practices (TAFEP), has taken the lead in promoting equality in employment and occupation. The guiding documents on equality adopted by the tripartite mechanism include:

- Tripartite Guidelines on Non-discriminatory Job Advertisements (1999)
- Tripartite Declaration on Equal Remuneration for Men and Women Performing Work of Equal Value (2002)
- Tripartite Guidelines on Best Work-Life Practices (2003)
- Guidelines on Fair Employment Practices (2007)

In 2007, TAFEP launched a one-stop centre, the Tripartite Center for Fair Employment, to support its promotional and outreach work and enable workers and employers to seek advice and provide feedback on employment practices.

 See Box 1.32 for more information on the tripartite mechanism, and Section E of Module 1 for a summary of the TAFEP Tripartite guidelines on non-discriminatory job advertisements.

Source: Ministry of Manpower Singapore: *Tripartite Alliance for Fair Employment Practices* (Singapore, 2007), [http://www.mom.gov.sg/publish/etc/medialib/mom\\_library/corporate/sg](http://www.mom.gov.sg/publish/etc/medialib/mom_library/corporate/sg) (accessed 30 Nov. 2010).

## 10. Good practice examples

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.

## Promoting gender equality in employment or active labour market policies

### Box 2.14 Good practice – Gender mainstreaming and the European Employment Strategy (EES)

The EES has been a major catalyst for the integration of equal opportunity issues into the employment framework in Europe. An assessment of the first phase of the EES concluded that progress has been most notable in narrowing the **gender employment gaps** and the **expansion of leave entitlements and childcare facilities**, even in countries that already had relatively good coverage, such as France. The initiatives aimed at narrowing the **gender pay gap** have been inadequate, however, while available evidence is still insufficient to assess the impact of measures addressing gender occupational segregation. Outcomes vary significantly from one member State to another, as their starting points also differed considerably, but progress was more apparent in countries with no tradition of taking a gender perspective into account. Political changes at the national level, for example in Italy and Portugal, also contributed to slowing down gender mainstreaming efforts.

The guidelines on gender mainstreaming relating to the “pillar on equal opportunities” between men and women in the first phase of the EES called upon governments to **develop and reinforce consultative systems with gender equality bodies, develop indicators to measure progress in gender equality**, and apply procedures for gender impact assessment of policies. Efforts to promote gender mainstreaming by **training equality actors** were deployed, including in Greece, where concerned officials were made more gender-conscious in the use of the European Social Fund (ESF). There has been continued improvement in the quality and range of indicators to measure gender equality, although the poor quality and lack of data disaggregated by sex in some cases mean that information on the gender equality indicators are not available for all countries.

Most countries failed to mainstream gender issues into the “entrepreneurship, employability and adaptability pillars” of the EES, but a few managed to do so in relation to **active labour market policies**. These include Austria, which required all **public employment services (PES) to spend up to 50 per cent of their budgetary resources on women**, and Denmark, which introduced a **gender mainstreaming strategy in the PES**, as well as **pilot projects to break down gender segregation and raise women’s presence in key sectors** to overcome labour supply and skill bottlenecks. In Austria, Belgium, France and Germany, access to labour market policies has been opened up to jobseekers of both sexes, regardless of whether or not they are eligible for unemployment benefits. **Entrepreneurship development** has been the area where most countries either set gender targets within existing programmes or developed targeted schemes. Conversely, lifelong learning policies and measures aimed at addressing skill shortages have paid little, if any, attention to gender issues.

Source: Adapted from ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); J. Rubery: *Gender mainstreaming and gender equality in the EU: The impact of the EU employment strategy* (2002); J. Rubery, D. Grimshaw, C. Fagan, H. Figueiredo and M. Smith: *Gender equality still on the European agenda – but for how long?* (2003).

## Gender equality and family responsibilities in collective agreements

### Box 2.15 Good practice – Work-family reconciliation measures in collective agreements – Latin America

#### *Examples from selected Latin American countries, 1996–2001*

#### Pregnancy

- Extension of the time during which pregnant women are protected from dismissal (Brazil)
- Reduction in hours of work for pregnant women (Brazil)
- Leave for prenatal checkups (Brazil)
- Leave and protection against dismissal in the event of spontaneous abortion (Brazil)

#### Maternity leave

- Payment of a wage supplement (Paraguay) and guarantee of full wages during maternity leave (Uruguay)

- Extension of maternity leave by up to 36 days beyond the statutory entitlement (Paraguay)
- Maternity leave in cases of “unborn children” (Argentina)
- Extension of leave in the event of multiple births and children with disabilities (Argentina)

#### Breastfeeding

- Extension of daily breaks for breastfeeding (Argentina, Paraguay, Uruguay)
- Extension of the period during which daily breastfeeding breaks are allowed (Brazil, Uruguay)

#### Childcare

- Leave to accompany children for health or educational reasons (Brazil)
- Up to four hours per day of leave in the event of illness of a child aged under one year (Chile)
- Extension of the period of entitlement to childcare (Brazil and Paraguay)

#### Paternity leave

- Introduction of paternity leave (Uruguay and the Bolivarian Republic of Venezuela)
- Extension of the length of paternity leave (Brazil, Chile, Paraguay)
- Protection of the father against dismissal in the event of birth of a child (Brazil)
- Extension of childcare entitlement to the father (Brazil)

#### Adoption

- Extension of entitlements for adoptive fathers and mothers (Brazil, Paraguay)
- Care-giving leave
- Leave in the event of serious illness of a close relative (Chile, Paraguay)

Source: Adapted from L. Abramo and M. Rangel: “Negociação coletiva a igualdade de gênero na América Latina” (Brasília, ILO, 2005) in ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

### Company policy to promote better work-family balance

#### Box 2.16 Good practice – Flexible work arrangements at Citigroup Singapore

Citigroup is committed to a holistic and comprehensive work-life benefits programme that is targeted at all staff. This practice stems from the belief that “employee satisfaction drives customer satisfaction.”

Citigroup offers a wide range of flexible work arrangements including **flexi-hours, telecommuting, compressed work weeks and permanent part-time positions**. One programme that reflects Citigroup’s commitment to the staff is called Excellence in Teamwork and Efficiency (EXCITE). Under the programme, staff is encouraged to work more efficiently and leave the workplace earlier to ensure a better work-life balance.

Regular feedback from staff indicates that mostly female staff make use of the flexi-measures, so that they can spend more time with their family. Other staff members are also supportive of the company’s wide choice of flexible work arrangements, which they believe, allows them to adjust their lifestyles better. With work-life initiatives, Citigroup has benefited from lower attrition rates, a better working environment and greater productivity.

The company’s wide range of flexible work arrangements was made known and available to all staff and allowed them to adjust their lifestyles better.

Source: Singapore Tripartite Committee on Work-life Strategy (TriCom), *Tripartite Guidelines on Best Work-Life Practices*, Singapore, 2003.

## Code of practice on action against sexual harassment at work

### Box 2.17 Good practice – Malaysia Code of practice on the prevention and eradication of sexual harassment in the workplace, Ministry of Human Resources, 1999

#### Aim

1. The aim of this Code of Practice is to provide guidelines to employers on the establishment of in-house mechanisms at the enterprise level to prevent and eradicate sexual harassment in the workplace.

#### Rationale

2. [The] Sexual harassment problem arises out of general workplace relationships involving personal behaviour of people within the enterprise. Therefore, the most effective way of dealing with the problem is to tackle it at workplace itself so that it can be confronted on the spot and nipped in the bud.
3. The best approach to combat sexual harassment in the workplace is through the establishment of preventive and redress mechanisms at the enterprise level. A decision has been made that this approach will form the basis of our national policy and practice in dealing with sexual harassment in the workplace.

#### Meaning of sexual harassment

4. For the purpose of this Code, sexual harassment means: Any unwanted conduct of a sexual nature having the effect of verbal, non-verbal, visual, psychological or physical harassment:
  - that might, on reasonable grounds, be perceived by the recipient as placing a condition of a sexual nature on her/his employment; or
  - that might, on reasonable grounds, be perceived by the recipient as an offence or humiliation, or a threat to his/her well-being, but has no direct link to her/his employment.
5. Based on the definition in article 4 above, sexual harassment may be divided into two categories, namely sexual coercion and sexual annoyance.
  - **Sexual coercion** is sexual harassment that results in some direct consequence to the victim's employment. An example of sexual harassment of this coercive kind is where a superior, who has the power over salary and promotion, attempts to coerce a subordinate to grant sexual favours. If the subordinate accedes to the superior's sexual solicitation, job benefits will follow. Conversely, if the subordinate refuses, job benefits are denied.
  - **Sexual annoyance**, the second type of sexual harassment, is sexually-related conduct that is offensive, hostile or intimidating to the recipient, but nonetheless has no direct link to any job benefit. However, the annoying conduct creates a bothersome working environment which the recipient has to tolerate in order to continue working. Sexual harassment by an employee against a co-employee falls into this category. Similarly, harassment by a company's client against an employee also falls into this category.
6. Within the context of this Code, sexual harassment in the workplace includes any employment-related sexual harassment occurring outside the workplace as a result of employment responsibilities or employment relationships. Situations under which such employment-related sexual harassment may take place includes, but is not limited to:
  - at work-related social functions
  - in the course of work assignments outside the workplace
  - at work-related conferences or training sessions
  - during work-related travel
  - over the phone
  - through electronic media.
7. It is essential to emphasize that sexual harassment refers to sexual conduct which is unwanted and unwelcome to the recipient. It is also a sexual conduct which is imposed on and unsolicited or unreciprocated by the recipient.

### Forms of sexual harassment

8. Sexual harassment encompasses various conducts of a sexual nature which can manifest themselves in five possible forms, namely:
- verbal harassment, e.g. offensive or suggestive remarks, comments, jokes, jesting, kidding, sounds, questioning
  - non-verbal/gestural harassment, e.g. leering or ogling with suggestive overtones, licking lips or holding or eating food provocatively, hand signal or sign language denoting sexual activity, persistent flirting
  - visual harassment, e.g. showing pornographic materials, drawing sex-based sketches or writing sex-based letters, sexual exposure
  - psychological harassment, e.g. repeated unwanted social invitations, relentless proposals for dates or physical intimacy
  - physical harassment, e.g. inappropriate touching, patting, pinching, stroking, brushing up against the body, hugging, kissing, fondling, sexual assault.

### Outline of in-house mechanism to combat sexual harassment in the workplace

9. A comprehensive in-house mechanism that employers are encouraged to establish at the enterprise level to prevent, handle and eradicate sexual harassment in the workplace should include at least the following elements:
- a policy statement prohibiting sexual harassment in the organization
  - a clear definition of sexual harassment
  - a complaints/grievance procedure
  - disciplinary rules and penalties against the harasser and against those who make a false accusation
  - protective and remedial measures for the victim
  - promotional and educational programmes to explain the company's policy on sexual harassment and to raise awareness of sexual harassment and its adverse consequences among the company's employees, supervisors and managers.

### Policy statement prohibiting sexual harassment

10. A policy statement on sexual harassment is a documented message from the management to the employees expressing the company's policy, philosophy and commitment to prevent and eradicate sexual harassment in order to create a positive and conducive working environment in the organization.
11. The policy statement should come from the top management to ensure its acceptance and compliance by the shop-floor employees, supervisors and managers throughout the organization.
12. The policy statement should contain at least the following matters:
- a declaration prohibiting sexual harassment in the organization
  - a caution stating that sexual harassment constitutes a breach of the company's policy and will incur disciplinary actions up to and including dismissal
  - a directive stating that supervisors and managers have a positive duty to implement the policy and to demonstrate leadership by example.

### A clear definition of sexual harassment

13. A clear definition of sexual harassment constitutes a vital component of an in-house mechanism for dealing with the problem. A detailed definition is necessary to ensure that employees as well as the management have a clear idea of conducts that constitute sexual harassment.
14. The main objective of the definition is to make individuals in the organization fully aware of certain conducts and attitudes that can be regarded as unwelcome and offensive to others, and therefore prohibit such conducts in the organization.

### Complaint/grievance procedure

15. Although an effective preventive action and programme may be successful in deterring sexual harassment, but problems are bound to arise. Therefore, there is a necessity for the establishment of a

complaint or grievance procedure to deal with each problem as and when it arises.

16. Due to the sensitive and personal nature of sexual harassment complaints, employers should develop a separate complaint procedure to deal specifically with such complaints. The normal complaint procedure is often unsuitable for sexual harassment complaint.
17. A complaint procedure should provide for measures to protect victims from further embarrassment in the course of reporting and investigation into the complaint.
18. A complaint procedure should contain at least the following elements:
  - a step-by-step procedure for reporting and processing of a complaint with a suitable time-limit for each steps
  - an investigation procedure
  - an appeal procedure to enable dissatisfied party to appeal against the outcome of an investigation to a higher authority.

#### **Disciplinary rules and penalties**

19. To ensure that a policy and a mechanism to prevent sexual harassment are effective, it is essential that offenders be disciplined.
20. The disciplinary rules should set out the penalties to which the harasser will be liable if the offence is committed. The nature and type of penalty should depend upon the severity of the offence.
21. Since sexual harassment is a form of misconduct, any disciplinary action against the accused employee should be preceded by a proper domestic inquiry.
22. To deter false and fabricated accusation against any person, the rule should also set out disciplinary penalties against those who make such accusations.

#### **Protective and remedial measures for the victim**

23. To encourage victims to report sexual harassment, there should be adequate measures to ensure maximum confidentiality so as to minimize embarrassment to the victim especially at the time of reporting and in the course of investigation into the complaint.
24. In a case where the victim of sexual harassment has suffered a loss, such as a demotion or a denial of a promotion, it is appropriate to restore such person to his or her proper position on the job.
25. The victim should also be compensated for any monetary loss arising out of a denial of employment-related benefits which were rightfully due to him or her.
26. Where the complaint is found to be unjustified and baseless, appropriate remedy should be granted to the accused person if there has been any loss suffered by such person.

#### **Promotional and educational programmes**

27. Prevention is the most effective tool an employer can use to eradicate sexual harassment in the workplace. Preventive action includes:
  - communication
  - education
  - training.
28. Merely developing a corporate policy and preventive mechanism on sexual harassment is not sufficient. It is the dissemination of the policy and mechanism among the employees in the organization that is of paramount importance.
29. In addition to the need for communication, the employer should provide a programme by which employees and supervisors could be educated in the area of sexual harassment.
30. The employer should also provide special training sessions for supervisory and managerial staff to train them to recognize potential problems and learn how to deal with them as and when they arise. The necessity to provide training is much greater for those who are assigned to function as investigators and counselors.

#### **The involvement and role of the trade union**

31. Sexual harassment can be prevented, handled and eradicated most effectively if there is a joint employer/trade union action.
32. In the formulation and establishment of an in-house mechanism to prevent, handle and eradicate sexual harassment, the employer should adopt a consultative approach by involving the trade union.

The involvement of trade union can pave the way for a stronger commitment by the employees to accept and comply with the in-house mechanism.

33. Trade unions have a clear role to play in helping to create a climate at work which is free from sexual harassment. Trade unions can contribute to the prevention of sexual harassment through awareness and sensitivity towards the issues among the members and by ensuring that the standards of conduct of their members do not cause offence.
34. Trade unions should also co-operate with employers in carrying out promotional and educational programmes towards creating a work culture that will ensure a safe and healthy working environment where individual employees, irrespective of status or position, are treated with dignity and free from any form of harassment, humiliation and intimidation of a sexual nature.

Source: Ministry of Human Resources of Malaysia, *Code of practice on the prevention and eradication of sexual harassment in the workplace* (Kuala Lumpur, 1999).

## Unit 2.2 Sex discrimination at work in China

While substantive achievements have been made in the promotion of gender equality in China during the past three decades, research shows that the transition from a planned economy to a market economy has brought along new challenges that require further targeted action by the government, trade unions, enterprises and other stakeholders such as the Women's Federations in China.

The common forms of sex discrimination in the Chinese labour market include, for example, unequal access to employment and re-employment and unequal pay for work of equal value. Distinctions between men and women prevail at all stages of the employment cycle from recruitment, employment and working conditions to retirement after employment. Pregnancy and marital status are obstacles for equal opportunity and treatment for young women. Real or perceived family responsibilities have negative effects on women's employment opportunities and it is difficult for both female and male workers to combine work and family responsibilities.

Research shows that sex discrimination often appears together with discrimination on other grounds, such as ethnicity, disability or rural migrant worker status. Due to this "double or triple discrimination" ethnic minority women, disabled women and rural migrant women are particularly disadvantaged in the labour market. Further pro-active efforts need to be taken to ensure that all women and men enjoy equal opportunity and treatment at work in China.

### 1. Chinese legal framework on sex discrimination

Since the beginning of its reform and opening-up policy, the Chinese government has ratified a number of important conventions in respect of human rights. For the promotion of gender equality, the most important was the ratification of the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** in 1980. Subsequent ratifications of the **ILO Equal Remuneration Convention, 1951 (No. 100)** in 1990 and the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** in 2006 showed the government's commitment to address discrimination and promote equality in the labour market.

In order to keep its international commitments and to promote non-discrimination and equality in employment, Chinese legislators have adopted and amended a series of laws and regulations on gender equality. An important milestone was the inclusion of the statement "the nation respects and protects human rights" in the Chinese Constitution, which was adopted by the People's Congress in March 2004.

The Labour Law (1994) stipulates "women shall enjoy equal rights with men in employment". Achievements in the field of labour legislation include passing the **Employment Promotion Law** and the **Labour Contract Law** in 2007 and amending the 1992 **Law on the Protection of Rights and Interests of Women** in 2005. The amount of legislative work done by the People's Congress in the past few years reflects the commitment of the Chinese Government in guaranteeing equal opportunity and treatment at work to all women and men in the Chinese labour market.<sup>33</sup>

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<sup>33</sup> In areas other than labour law, recent legislative efforts to advance gender equality in China include amendment of Marriage Law (2001) adding provisions in a number of areas, including on domestic violence, property of couples and relations among family members; the promulgation of the Law on Contracting of Rural Land (2002), with provisions on the allocation of land to married, divorced and widowed women; the amendment to the Law on Compulsory Education (2006). CEDAW: *Concluding Comments of the Committee on the Elimination of Discrimination against*

The principle of “equal pay for equal work” has been included in the **Labour Law** (1994), the **Employment Promotion Law** (2007) as well as in the **Law on the Protection of Rights and Interests of Women** (2005). It is important to note, however, that national legislation guarantees equal pay for women and men only for “equal work” or the “same work”, but not for work that is different but “of equal value.” The CEDAW as well as Conventions No. 100 and No. 111 require all ratifying member States to ensure equal remuneration for men and women for work of equal value. Both the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR) and the UN Committee on the Elimination of Discrimination against Women have repeatedly emphasized the importance of revising the national legislation on this issue.<sup>34</sup>

The Standing Committee of the People’s Congress passed the revised **Law on the Protection of the Rights and Interests of Women** on the same day that it approved the ratification of Convention No. 111. The amended content of Chapter IV on workers’ rights and social protection emphasize anti-discrimination and reflect the nation’s responsibility to promote equal opportunity and treatment at work. The provisions on women’s equal employment rights cover the following five areas:

1. The principle of gender equality at work: Women enjoy equal rights with men at work and in social security
2. Explicit protection against sex discrimination in recruitment, compensation, performance evaluation and promotion
3. Special protection against dismissal or reduction of wages on the basis of marriage, pregnancy, maternity and nursing: prohibition of dismissal or reduction of salary for reasons including marriage, pregnancy, maternity leave, and nursing
4. Special protection against work “unsuitable for women” (see the 1988 Regulations below)
5. Prohibition of sexual harassment of women.

The **Regulations on the Labour Protection of Women Workers** (1988) include supplementary provisions on the accommodation of female workers during and after pregnancy, such as maternity leave and nursing breaks, and support facilities in employment units employing mainly women. The Regulations also specify what jobs are “unsuitable for women” by prohibiting employment of women at high heights, at low temperatures, in cold water or in other 3<sup>rd</sup> level labour intensity jobs as specified by the State. The Regulations are currently under revision.

Alongside the development of the national legal framework on gender equality at work, a large body of local supporting legislation has been adopted by local People’s Congresses. These local laws put forward detailed regulations on the implementation of national laws, adapted to local situations.

Women who have been discriminated against have multiple avenues for seeking redress and assistance. In all discrimination cases, including discriminatory dismissal, women workers may bring their complaints to the **local labour authorities**, and ask for investigation and rectification

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*Women: China* (2006).

<sup>34</sup> CEDAW: *Concluding Comments of the Committee on the Elimination of Discrimination against Women: China*, CEDAW/C/CHN/CO/6 (2006); “Direct Requests on Convention No.100 with respect to China” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, International Labour Conferences, 95<sup>th</sup> Session, 2006: 91<sup>st</sup> Session, 2003; 89<sup>th</sup> Session, 2001; 86<sup>th</sup> Session, 1998; 84<sup>th</sup> Session, 1996; 83<sup>rd</sup> Session, 1995 (Geneva).

through labour inspection and supervision systems. Women can also apply for **labour dispute arbitration** and start **legal proceedings** in court to seek protection of their lawful rights and interests. In addition, women's federations and trade unions can support women in defending their interests.

 See Annex 2 at the end of this Module for the national legal provisions on gender equality in employment and occupation.



### The different approaches to gender equality in China

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

- **Formal equality:** Equality before the law in China was interpreted for many years as the removal of discriminatory rules and regulations as this was deemed sufficient to realize equality between women and men. Women and men are treated the same, and women are expected to fulfill the same roles in society as men. Typical examples of this kind of approach to equality are the “**iron girls combat team**” and “**women electrician workforce**” during the Cultural Revolution. This “sameness” approach to equality ignores biological, social and cultural differences between women and men.
- **Protection:** Several measures have been designed and put in place that reflect the belief that women are weak and “unsuitable” for certain work. A good example of this approach is the **list of prohibited occupations** in the 1988 Regulations on the Labour Protection of Female Staff and Workers. While protection of women from hazardous work originated from good intention, it has led to excluding women from certain opportunities or restricting their ability to freely choose their occupation in practice. In addition to imposing discriminatory restrictions on women, this protectionist approach also fails to recognize that not just women but also men need to be protected from occupational hazards and unhealthy working conditions.
- **Substantive equality:** Substantive equality focuses on realizing equality in law and in practice and achieving equal, fair and just labour market outcomes for women and men. The approach recognizes different biological, social and cultural roles of men and women, and protects them in adequate ways (e.g. maternity protection). This approach recognizes that achievement of substantive equality requires supportive policies and affirmative action to overcome the impacts of past discrimination.

 See Section 7 in Unit 2.1 of this Module for more information.

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

## 2. Policy measures taken to promote gender equality

Special efforts to promote equal opportunities for women in the Chinese labour market include the adoption of the **Programme for the Development of Chinese Women**. The first programme was implemented during 1995-2000, followed by a second one for 2001-2010 with the third one in preparation. Through these development programmes the government aims to a) promote employment, self-employment and re-employment of women; b) improve education and vocational training for women to strengthen their competitiveness; c) improve social protection for urban women employees; d) best utilize the capacity of women labourers in rural areas; and e) safeguard rural migrant workers' equal rights.

The Chinese Government is making continuous efforts to provide women with more job opportunities. The types of activities undertaken at different levels of government include:

- **Vocational skills training** for women to improve their competence and employability
- **Special windows at local public job centres** to provide employment information, advice on labour protection policies and occupational briefings to female job seekers
- **Special vocational guidance and in-focus job fairs** to facilitate women's choice of jobs and occupations. Women are encouraged to choose new types of jobs in novel sectors and venture into the areas traditionally dominated by men, including high-tech occupations
- **Business start-up education** to enhance the capabilities of women to start their own businesses
- **Promotional activities** to raise awareness, build capacity and advocate women's labour rights and gender equality in employment and occupation
- Further legislative and policy research and advocacy to streamline **maternity protection** and **special protection** during menstruation, pregnancy, childbirth and nursing to boost women's employment.

**Re-employment training activities** provided by the government benefited 6.46 million laid-off workers in 2006, out of which 3.12 million were women (48.3 per cent). In 2007 re-employment training was provided for 6.43 million laid-off workers, including 3.12 million women (48.5 per cent).

**Business start-up training** organized by the government reached out to 630,000 people in 2006, out of which 270,000 were female trainees (42.9 per cent). In 2007, business start-up training were attended by 640,000 people, including 290,000 women (45.3 per cent).

## 3. Sex discrimination in China – Current situation

### 3.1 Access to education

Raising the level and quality of education is one of the priorities in the Chinese government's development strategy. Acknowledging the importance of raising girls' education levels as a precondition for equality in the labour market, the Chinese government has directed increasing public funds for educating both boys and girls. However, as shown in Table 1, the school enrollment rates of girls remain still lower than boys at all levels of education – from pre-school to higher education. In 2005, the average length of education was 8.4 years for male Chinese and 7.3 years for female Chinese. Women also account for nearly 75 per cent of the illiterate

population in China.<sup>35</sup> Women's lower educational levels lead to disadvantages in employment opportunities and treatment in the labour market.

**Table 1. school enrolment and sex composition, 2005 and 2006**

| Schools            | 2005                           |         |      | 2006                           |         |      |
|--------------------|--------------------------------|---------|------|--------------------------------|---------|------|
|                    | Number of students<br>(10 000) | sex (%) |      | Number of students<br>(10 000) | sex (%) |      |
|                    |                                | Female  | Male |                                | Female  | Male |
| College            | 1 561.8                        | 47.1    | 52.9 | 1 738.8                        | 48.1    | 51.9 |
| Senior high school | 2 409.1                        | 46.4    | 53.6 | 2 514.5                        | 46.8    | 53.2 |
| Junior high school | 6 171.8                        | 47.3    | 52.7 | 5 937.4                        | 47.3    | 52.7 |
| Primary school     | 10 864.1                       | 54.7    | 45.3 | 1 0711.5                       | 46.7    | 53.3 |
| Special education  | 36.4                           | 35.5    | 64.5 | 36.3                           | 35.5    | 64.5 |
| Pre-school         | 2 179.0                        | 45.1    | 54.9 | 2 263.9                        | 44.8    | 55.2 |

Source: NBS: "China education development statistical report 2005 and 2006" in *Men and women in China – Facts and figures* (Beijing 2007).

### 3.2 Access to employment and occupation

Female applicants face discrimination in access to employment in China. Most notable forms are discriminatory job advertisements and discrimination of female graduates in recruitment and of women in re-employment.

#### Discriminatory job advertisements

Selecting applicants for certain jobs on the basis of their sex and their assumed gender-related abilities, that is, taste-based discrimination resulting in "men's" and "women's" jobs, and channeling women into a limited range of occupations is very common in China. Job advertisements regularly indicate the sex required for a job, together with age and often require "good looks" as well, even if such criteria are clearly not job-related, for example for a position as business assistant or general sales person. Besides such direct forms of sex discrimination, more hidden ways of excluding women from jobs are found in advertisements which require a minimum height for company managers or civil service staff.

#### The plight of female university graduates

A study conducted in 2002 shows that female college graduates face discrimination in employment both in terms of access to employment and remuneration.<sup>36</sup> In a survey of more than 1,000 college graduates from Xiamen University, 87.8 per cent of female respondents reported that they had experienced discrimination when seeking employment, while only 67.3 per cent of male respondents felt they had been discriminated (see Table 2). The male applicants were also more often successful with their first job application than female job seekers (see Table 3). Generally women were asked about their marital status, their family responsibilities and other personal characteristics which are not an occupational requirement. The gap between expected and agreed wages is bigger for female graduates than for male graduates, and that female graduates are likely to prevail in the lower income groups, whereas men form the majority in the higher income groups (See Table 4).

**Table 2. Whether female graduates experienced sex discrimination in seeking employment (%)**

| Answer                                     | Overall | Female | Male |
|--------------------------------------------|---------|--------|------|
| Yes                                        | 77.2    | 87.8   | 67.3 |
| No                                         | 22.8    | 12.2   | 32.7 |
| Number                                     | 1 038   | 499    | 539  |
| Gender difference by X <sup>2</sup> factor | 61.4**  |        |      |

\*\* reflects 0.01 statistical level.

Source: W. Ye, Y. Liu, Y. Xia, and J. Du: *Study on employment of female college graduates* (Beijing, 2003).

<sup>35</sup> National Bureau of Statistics (NBS) China: "National 1% Sample Survey Data, 2005" in *Men and women in China - Facts and figures 2007* (Beijing, 2007).

<sup>36</sup> W. Ye, Y. Liu, Y. Xia, and J. Du: *Study on employment of female college graduates* (Beijing, 2003).

**Table 3. Employment of college graduates by sex (%)**

| Employment                                 | Overall | Female | Male |
|--------------------------------------------|---------|--------|------|
| Yes                                        | 67.9    | 63.4   | 72.1 |
| No                                         | 32.1    | 36.6   | 27.9 |
| Number                                     | 1 067   | 511    | 556  |
| Gender difference by X <sup>2</sup> factor | 9.3**   |        |      |

\*\* reflects 0.01 statistical level.

Source: W. Ye, Y. Liu, Y. Xia, and J. Du: *Study on employment of female college graduates* (Beijing, 2003).

**Table 4. Comparison of gap between agreed wages and expected wages (%)**

|                                                      | Agreed Wages |         |         | Expected Wages |        |      |
|------------------------------------------------------|--------------|---------|---------|----------------|--------|------|
|                                                      | Overall      | Female  | Male    | Overall        | Female | Male |
| Below 1 000 yuan                                     | 6.3          | 5.6     | 6.8     | 0.6            | 0.6    | 0.6  |
| 1 000-1 500 yuan                                     | 26.1         | 29.9    | 23.0    | 3.4            | 3.8    | 3.0  |
| 1 500-2 000 yuan                                     | 24.7         | 29.3    | 21.0    | 14.7           | 17.8   | 11.8 |
| 2 000-3 000 yuan                                     | 15.5         | 14.0    | 16.7    | 30.8           | 34.2   | 27.6 |
| 3 000-4 000 yuan                                     | 6.0          | 2.8     | 8.6     | 19.4           | 18.2   | 20.5 |
| Above 4 000 yuan                                     | 2.5          | 1.6     | 3.3     | 25.4           | 22.7   | 28.0 |
| Not clear                                            | 18.9         | 16.8    | 20.5    | 5.7            | 2.6    | 8.6  |
| Number                                               | 716          | 321     | 395     | 1027           | 494    | 533  |
| Gender difference by X <sup>2</sup> factor           | 22.7**       |         |         | 30.0**         |        |      |
| Gap b/w Agreed and Expected by X <sup>2</sup> factor | 538.0**      | 300.3** | 253.6** |                |        |      |

\*\* reflects 0.01 statistical level.

Source: W. Ye, Y. Liu, Y. Xia, and J. Du: *Study on employment of female college graduates* (Beijing, 2003).

## Re-employment

Women face more difficulties in finding new employment after retrenchment than male applicants. Survey data show that women workers that were laid off from state owned enterprises faced more difficulties in finding re-employment than laid-off men. About 49.7 per cent of surveyed female workers felt they had experienced age and sex discrimination in the process of seeking re-employment, whereas only 30.8 per cent of men reported discrimination. Similarly, the data from the 2nd National Survey on the Social Status of Chinese Women show that, compared to 1990, the total employment rate of urban women dropped more than that of men. The male rate decreased from 90 to 81.5 per cent, a drop of 8.5 per cent, whereas the female rate decreased from 86.3 to 63.7 per cent, a drop of 12.6 per cent.<sup>37</sup>

### 3.3 “Women’s jobs” and “men’s jobs” – Occupational segregation

Occupational segregation by sex refers to a situation where women and men are concentrated in different types and at different levels of activity and employment. Gender segregation is common in many countries, including China. Elimination of sex discrimination in employment and occupation requires doing away with traditional ideas on “men’s jobs” and “women’s jobs”, and giving everybody equal opportunity in recruitment and in promotion.

As mentioned in Unit 2.1 job segregation by sex can take two forms:

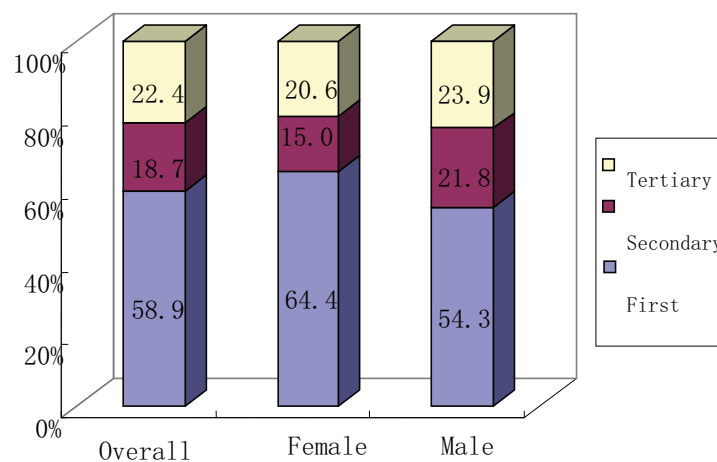
1. **Horizontal job segregation by sex** refers to the situation where men and women are concentrated in different economic sectors and occupations. Internationally, there is a clear tendency of women predominating in the “five C” jobs: caring, cashiering, catering, cleaning and clerical, often in informal employment.
2. **Vertical job segregation by sex** refers to a situation where men and women are concentrated at different levels in the job hierarchy. In many countries few women are found in higher positions both in public and private sectors. This phenomenon, known as the “glass ceiling” or the “sticky floor”, can be attributed to discrimination that blocks women’s advancement in organizations and companies.

<sup>37</sup> NBS and ACWF: *2<sup>nd</sup> National survey on the social status of Chinese women* (Beijing, 2005).

### Horizontal job segregation

In China, women are more numerous in the primary industry (agriculture), whereas more men than women work in both the secondary (industry) and tertiary sectors (services). National survey data show that **the percentage of women working in agriculture is 10.1 per cent higher than that of men** – 64.4 per cent and 54.3 per cent respectively (see Figure 1). The agricultural sector offers very low income, limited social security, a low reputation and very few opportunities. Whereas the need for physical labour in urban areas has offered many rural men chances to labour migration, non-skilled women have not gained as many opportunities but have often been left behind in the rural areas to farm the land and to take care of the old and young.

**Figure 1. Composition of employees in 2005 by sex**



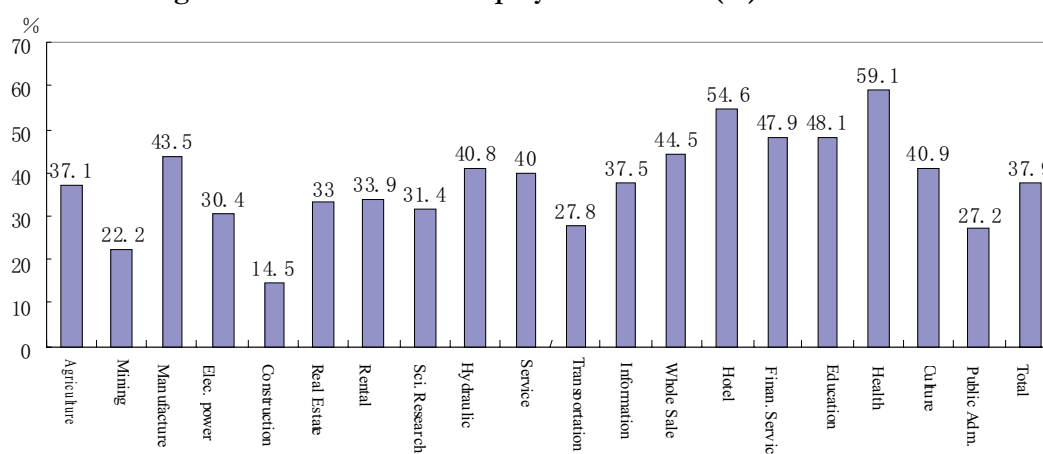
Source: NBS: "National 1% sample survey data, 2005" in *Men and women in China – Facts and figures 2007* (Beijing, 2007).

The data on urban employment of women and men also show strong concentration of women in sectors that are seen as "suitable" for them. National statistical data on women's and men's employment in 19 urban sectors show that the number of women working in social security and welfare services (59.1 per cent women) and in the hotel and catering sector (54.6 per cent women) is higher than the number of men (see Figure 2). Proportionately speaking, a larger percentage of the total female workforce is engaged in manufacturing, wholesale and retail, finance, community services and other services, and in education, as compared to the male workforce. Sectors that employ more men than women include mining, electric power, gas and water supply, construction, transportation, storage and postal service, information and IT service and software, real estate, rental service and commercial service, scientific research, technical extension and geological exploration, public administration and social organization (see Table 5).

### Vertical job segregation or the glass ceiling

In addition to the concentration of women in specific sectors, the data on vertical job segregation show that women tend to be employed in jobs that give lower income and lower prestige than men in the same sector. For example, in the education sector which is generally dominated by women, men occupy positions of college professors, while women are concentrated in lower level teaching positions, such as kindergarten teachers. Similarly, a comparative look at the qualifications of women and men occupied in specific sectors shows that the qualifications of female staff tend to be lower. For example, 61.2 per cent female professionals and technicians have junior level qualifications, whereas the proportion of men holding only junior level qualifications amounts to only 50.1 per cent.

**Figure 2. Percentage of women in urban employment in 2005 (%)**



Source: NBS and MOLSS: *China labour statistical yearbook* (Beijing, 2006).

**Table 5. Composition of urban employment by sectors and sex (%)**

| Sector                                                           | Male | Female |
|------------------------------------------------------------------|------|--------|
| Agriculture, forestry, animal husbandry, fishery                 | 21.6 | 28.6   |
| Mining                                                           | 2.4  | 0.8    |
| Manufacture                                                      | 21.6 | 23.0   |
| Electric power, gas and water supply                             | 1.8  | 1.1    |
| Construction                                                     | 7.8  | 1.5    |
| Transportation, storage and postal service                       | 8.6  | 2.3    |
| Information and IT service and software                          | 0.9  | 0.8    |
| Whole sale and retail                                            | 11.5 | 15.9   |
| Hotel and restaurant                                             | 3.1  | 4.7    |
| Financial service                                                | 1.2  | 1.5    |
| Real estate                                                      | 0.9  | 0.7    |
| Rental and commercial services                                   | 1.1  | 0.9    |
| Scientific research, technical extension, geological exploration | 0.7  | 0.5    |
| Hydraulic engineering, environment and infrastructure management | 0.7  | 0.7    |
| Community service and other services                             | 3.4  | 3.7    |
| Education                                                        | 3.4  | 5.5    |
| Public health, social security, welfare                          | 1.6  | 3.1    |
| Cultural/sports/entertainment                                    | 0.9  | 0.9    |
| Public administration and social organization                    | 6.6  | 3.8    |

Source: NBS and MOLSS: *China labour statistical yearbook* (Beijing, 2006).

The lower representation of women in high-level positions in the labour market reflects their similar lower representation in political bodies. Even in rural areas where women make up the majority of the labor force, women comprise a disproportionately low number of village committee members, let alone village heads (see Table 6).

**Table 6. Composition of village committee members by sex (%)**

|        | 2003 | 2005 | 2006 |
|--------|------|------|------|
| Female | 16.1 | 15.5 | 23.2 |
| Male   | 83.9 | 84.5 | 76.8 |

Source: NBS: *Men and women in China – Facts and figures 2007* (Beijing, 2007).

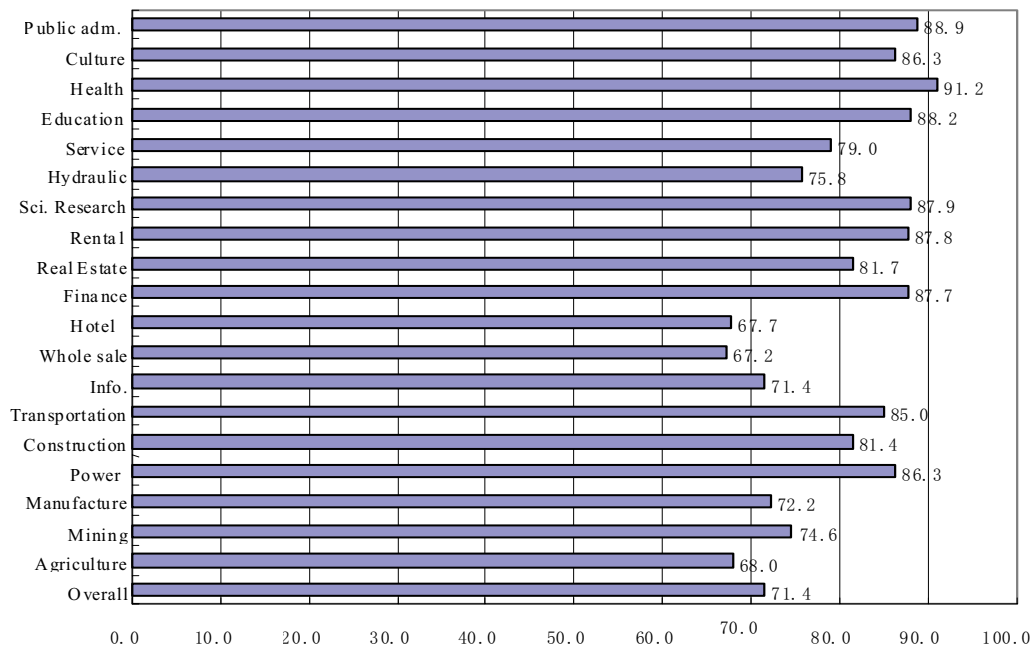
### 3.4 Gender pay gap

Both men's and women's income has increased in China alongside the country's remarkable economic development. However, economic development has also brought along increasing income inequalities – including a widening of the gender income gap in both urban and rural areas. According to the 2nd National survey on women's social status in China jointly carried out by the National Bureau of Statistics (NBS) and the All China Women's Federation (ACWF), the income gap between women and men increased considerably in the decade between 1990 and 1999. In urban employment, women's average annual income (including all sources) amounted to

7,409.7 Yuan in 1999, constituting 70.1 per cent of men's average annual income. Compared to income levels in 1990, the gender gap in urban employment had widened by 7.4 per cent. In rural occupations (agriculture, forestry, animal husbandry and fishery) women's average annual income amounted to 2,368.7 Yuan in 1999, comprising 59.6 per cent of the average annual income of men. The gender gap in rural income had widened 19.4 per cent in comparison to 1990.<sup>38</sup>

The data from the 1 per cent sample survey conducted by the NBS and ACWF in 2005 show significant gender inequalities in different sectors and occupational groups. Analysis of the income levels in different sectors shows that women's income is less than 70 per cent of men's income in the wholesale and retail sector, the hotel and restaurant industry and in rural occupations in agriculture, forestry, animal husbandry and fishery. In sectors requiring higher levels of education, such as public health, education, culture, scientific research, financial service and public administration, the pay gap was relatively smaller. In these sectors women's average income amounts to 80-90 per cent of that of men (see Figure 3).

**Figure 3. Comparison of average income of urban employees by sex, 2005**  
(Income of men set at 100)

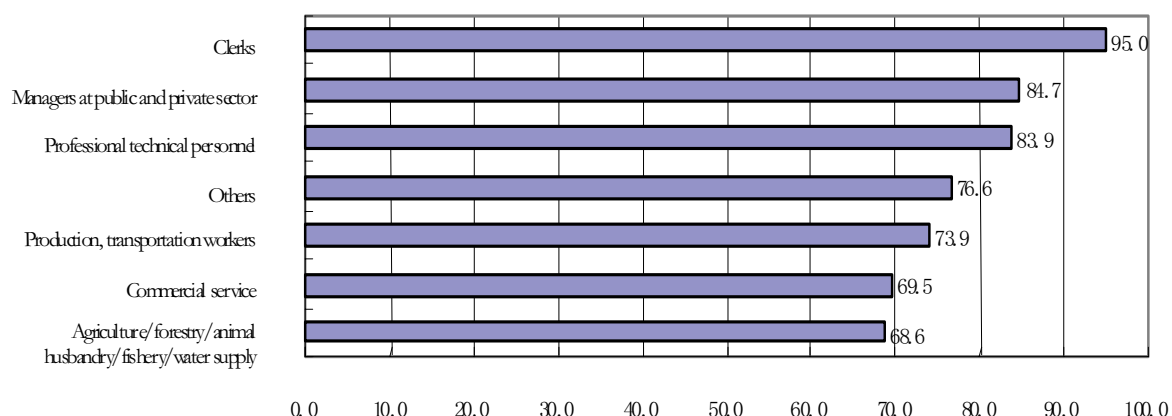


Source: NBS: *Men and women in China – Facts and figures 2007* (Beijing, 2007).

Analysis of the 1 per cent sample survey data on income in different occupations shows that the gender income gap is smallest among clerks (around 5 per cent), managers (around 15 per cent) as well as professional technical personnel (around 16 per cent) in the public and private sectors. The largest gender pay gaps are found in commercial service occupations and in rural occupations (over 30 per cent) (see Figure 4).

<sup>38</sup> NBS and ACWF: *2<sup>nd</sup> National survey on women's social status in China* (Beijing, 2005).

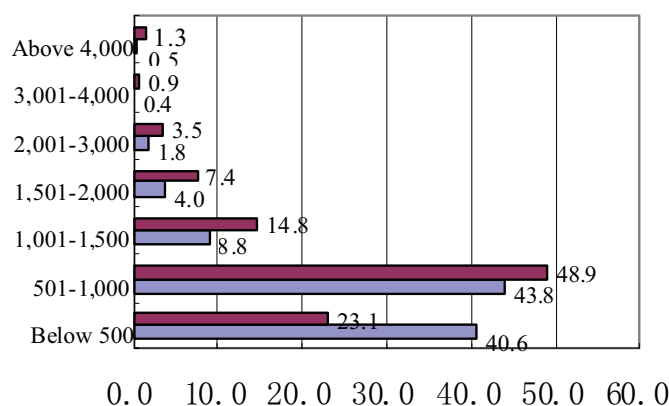
**Figure 4. Income comparison by sex for urban employees, 2005**  
(Income of men set at 100)



Source: NBS: *Men and women in China – Facts and figures 2007* (Beijing, 2007).

The 1 per cent sample survey data show also that women are overrepresented in low income groups. In 2005, 40.6 per cent of all female workers earned an average monthly salary of less than 500 Yuan, whereas only 23.1 per cent of all male workers belonged to this group. Men, however, dominate all the middle and high-income categories. Among middle level income employees (501-2,000 Yuan), women's proportion is 14.5 per cent lower than men's, and among high-income employees (2,001-4,000 Yuan), women's income is 3 per cent lower than men's (see Figure 5).

**Figure 5. Composition of urban employees grouped by income level (%)**



Source: NBS: *Men and women in China – Facts and figures 2007* (Beijing, 2007).

### 3.5 Sexual harassment at work

In the past sexual harassment was not publicly acknowledged and many victims choose to stay silent and tolerate the harassment as they were afraid of additional damage. Generally there was also little awareness in workplaces and society with gender stereotypes abounding, such as “women ask for it,” or “like it deep in their heart” or “it is just some workplace fun.” However, while comprehensive statistics are lacking in the country, instances of sexual harassment have emerged over the last decade. Starting with a few cases that were widely published in the media at the start of the millennium, many women who were subjected to sexual harassment for years have begun to come forward.

This has resulted in legal action and the revised Law on the Protection of Women's Rights and Interests, which came into force in December 2005, explicitly prohibits sexual harassment of women and entitles women to file their complaints with the employers or the competent authorities. This is the first ever clause prohibiting sexual harassment of women in national law in China. It represents clear progress and has enabled women to seek redress, even if the legislation does not protect male victims against sexual harassment in China.

To put the law into practice, provincial level governments have adopted regulations for local implementation (see Box 2.18). The judicial practice on addressing sexual harassment is evolving, and the first successful case applying criminal sanctions was decided in Chengdu in 2008 (see Box 2.19). The victims seeking redress, however, still face various challenges, related, among others, to the complicated procedures for filing a case, challenges in acquiring evidence, and problems in securing compensation.

#### Box 2.18 Action against sexual harassment in national and local laws – China

The Law on the Protection of Rights and Interests of Women (2005) states:

- “Sexual harassment of women is prohibited. The female victims thereof are entitled to file their complaints to the employers or the competent authorities.” (Article 40)
- “If anyone commits sexual harassment or domestic violence against a woman in violation of 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.” (Article 58)

To implement the national law, supporting legislation or regulations have been adopted in different provinces. The local standards elaborate issues not defined in the national high-level legislation, for example the **definition** of sexual harassment, the **measures** to prevent it and the **responsibilities** of different authorities and other parties in addressing it.

##### 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 sexual harassment purposely against the will of the women in forms including body contact, language, text, picture (video) and electronic information with sexual contents or related to sex.” (Article 34) This provision **defines** sexual harassment as an intentional act, unwanted by the woman, and lists the types of acts that may constitute sexual harassment. The authorities responsible for investigating cases of sexual harassment in Anhui are the **public security departments** (the police) and the **civil courts**, who can try cases of sexual harassment using the civil process, in the same way as they try other cases of violating the security administration. (Article 42)

##### Guangdong province

In Guangdong, the provincial regulation on implementation of the Law on the Protection of Rights and Interests of Women defines sexual harassment in the same way as in Anhui. In addition, employing units in Guangdong are required to ensure a good working environment and to establish adequate 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. (Article 29) 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)

##### Sichuan province

Sichuan's provincial methods on implementation of the Law on the Protection of Rights and Interests of Women prohibit sexual harassment 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)

Sources: 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); W. Wang: *Unpublished materials* (2008).

### Box 2.19 Sexual harassment leads to a penalty of detention – Sichuan, China

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

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

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

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

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

## 3.6 Dismissal on the basis of pregnancy

The Labour Law (1994), the Labour Contract Law (2008), the Law on Protection of Rights and Interests of Women (2005) all prohibit reducing women's wages or dismissing women on the grounds of marriage, pregnancy, maternity leave or nursing. However, in reality, pregnant women face serious pressures in the Chinese labour market, and dismissal cases are common. To circumvent the law, the employers often fabricate artificial reasons for dismissing pregnant women or forcing them to resign.

### Box 2.20 Deputy manager dismissed due to pregnancy – Beijing, China

In 2006, dispatched by the Human Resource Company, Ms Wang Lu began to work for the Beijing Office of ECI Telecommunication Company of Israel. Ms Wang was quickly promoted to the post of Deputy Manager because of her outstanding performance. However, to the surprise of Ms Wang, during her pregnancy she received three written notices from the company within half a month stating that her employment contract would end. She was also informed that she must complete hand-over procedures by 18 April 2007. Meanwhile, the office took the initiative to reduce her salary. Ms Wang tried to negotiate with her office and the Human Resource Company to continue her labour contract many times, but was refused.

Ms Wang decided to resort to arbitration and submitted her proposal to the Labour Dispute Arbitration Commission of Chaoyang District of Beijing. She requested both the Human Resource Company and the ECI Beijing Office continue her employment contract, and make payment to cover her salary, bonus and compensation, amounting to 1.9 million Yuan. However, the Arbitration Commission did not support Ms Wang's request for continuing her employment contract with ECI, but it decided that ECI office must pay her salary and bonus, and that the Human Resource Company must pay her salary during the period of

her unemployment. Ms Wang did not accept the arbitration result, and filed a lawsuit with the People's Court of Chaoyang District. On 11 June 2008, the Court reached a verdict that did not support Ms Wang's request for the continuation of the contract and it ruled that the ECI office pay her salary in arrears, bonus and compensation and the Human Resource Company pay her salary during unemployment.

Source: "Deputy manager dismissed due to pregnancy" in *China Women's News* (7 July 2008).

### 3.7 Social security

#### Social security during employment

Overall, social insurance laws in China provide women and men with equal standards of social security. However, of the five existing types of social security benefits in China, maternity protection is the only one which is not compulsory. In addition, while steady progress is being made with extending coverage of maternity protection, social pooling mechanisms are very limited in the majority of provinces, counties and municipalities and employers remain liable to fully cover maternity benefits and women workers' replacement costs for individual employees. This is one of the root causes for the discrimination of women of reproductive age who seek to secure a job.

In addition, however, women do not fully enjoy equal protection in the other fields of social security available in the country. Data from the 2nd National Survey on Women's Social Status in China<sup>39</sup> show that, whereas urban social insurance coverage is low among both women and men, women's coverage is considerably lower than that of men. (See table 7). Most alarming is the gender gap in work-related injury insurance coverage. While 40.7 per cent of men have work-related injury insurance, only 29.7 per cent of women are covered. Lower social security coverage of women is mostly related to their concentration in sectors and occupations that offer no or low social protection, such as in the informal economy and in small and medium enterprises.

The current drafting of revisions to the social protection laws could form an excellent opportunity for carrying out more detailed gender analysis with a view to solve some of these problems.

**Table 7. Insurance coverage of medical, pension and work-related injury (%)**

|           | Medical |      | Pension |      | Unemployment |      | Work related Injury |      |
|-----------|---------|------|---------|------|--------------|------|---------------------|------|
|           | Female  | Male | Female  | Male | Female       | Male | Female              | Male |
| Yes       | 45.6    | 54.5 | 57.1    | 62.1 | 22.4         | 26.3 | 29.7                | 40.7 |
| No        | 52.6    | 43.6 | 40.7    | 35.3 | 70.3         | 66.3 | 62.8                | 52.6 |
| Not clear | 1.8     | 1.9  | 2.2     | 2.6  | 7.3          | 7.4  | 7.5                 | 6.7  |
| Total     | 100     | 100  | 100     | 100  | 100          | 100  | 100                 | 100  |

Source: NBS: *Men and women in China – Facts and figures 2004* (Beijing, 2004).

#### Retirement age

In China, the retirement age stipulated in national regulations is 60 for men, whereas women workers have to retire at 50 and women civil servants and professionals at 55 years. These retirement ages were set in the "Regulation on Labour Insurance" adopted in 1951, which originally set the retirement age of all women at 50. This rule was later modified in the "Provisional Regulation on Retirement Treatment of Workers and Management Personnel" (1958), "Provisional Measures on Settlement for Aged and Disabled Cadres" (1978) and the "Provisional Measures on Retirement of Workers" (1978) issued by the State Council, which

<sup>39</sup> NBS and ACWF: *2nd National survey on women's social status in China* (Beijing, 2005).

established and confirmed a retirement age of 55 years for female civil servants and professionals.

In the early 1950s when the “Regulation on Labour Insurance” was adopted, the average life expectancy for women in China was only 35 years. Considering the economic productivity levels of that time, the employment opportunities available to women and their heavy domestic burden, the adoption of different retirement ages for women and men was a “reasonable special protection measure” for women. However, the socio-economic circumstances in China have changed dramatically since the early 1950s, and today many women - especially female professionals and civil servants, and women workers in the science and technical sectors - would like to retire at the same age as their male colleagues.

In 1992, the Ministry of Central Organization and the Ministry of Personnel undertook a joint initiative to revise and adapt the retirement system to changed circumstances. They issued Document No. 22 (1992) which stipulates that female civil servants and professionals may negotiate and agree with their employers to postpone their retirement age to later than 55 years. However, employers are often reluctant to agree upon postponed retirement, which has led to forced early retirement of many female professionals and civil servants.

As mentioned in Unit 2.1, the lower retirement age discriminates against women in many ways. Firstly, due to early retirement, women have less time for career advancement and have fewer chances to reach top management positions in enterprises or the highest-level political positions. Secondly, the lower retirement age leads to lower pension rates for women. In the current system in China, pension rates are based on the years of contribution. As women have 5-10 years less time to accumulate their individual contributions than their male colleagues, women’s pension rate will be substantively lower by the time of their retirement.

During the past 20 years, the China People’s Political Consultative Conference (CPPCC) and the National People’s Congress (NPC) have discussed several proposals on repealing the discrimination in the national regulatory framework on the retirement age. This issue has been discussed annually in each session of the CPPCC since 1989 and the NPC since 1990, but so far the bodies have not been able to reach a comprehensive solution to the issue.

The debate between the protectionist and equality approaches to the retirement age among experts and officials is far from over, also because women in low-paying and low-ranking occupational categories consider that they are better off by retiring 5 years earlier, obtaining the pension benefits and starting a new career in informal employment. For this reason, some advocate for staged approaches and policies, tailor made for different groups of working women.

#### **Box 2.21 Forced early retirement of Ms Xu – Huzhou, China**

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

supported her. Unable to accept the decision by Huzhou TV that she must retire at the age of 50, Xu suffered from both physical and emotional stress and was hospitalized for 53 days.

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

Xu then sought support from local government. She contacted the Huzhou mayor, the Huzhou Bureau of Communication, and the supervision group to Huzhou Broadcasting and Television dispatched by the Huzhou Bureau of Personnel. She also consulted relevant legal departments. Some of these departments showed sympathy and attempted to consult with Huzhou Broadcasting and TV General Station for a settlement. But this did not resolve the issue. The Huzhou Bureau of Communication suggested retirement and a re-employment approach, but Xu refused to compromise. The Huzhou Arbitration Commission on Personnel accepted Xu’s case, but after eight months of process due to the “complexity of the case” still endorsed the retirement decision. Xu filed a lawsuit in June 2007 with the local court. However, the court still has not yet conducted one hearing. The judge responsible for the case expressed his hopelessness, stating that his power is too small to make any difference, and that he could not support her.

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

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

#### 4. Underlying causes for sex discrimination in China and steps for further action

Reasons behind discrimination against women are various and often deeply embedded in the culture and social-economic context of each country. In China, many reasons for discrimination can be identified, ranging from over-supply of labour in the market to the incomplete adaptation of the social security system to the needs of a market economy. However, the underlying reasons for these constraints which put disproportionate pressures on women’s employment can be found in traditional ideas about the role of women and men in the family and society, and a lack of understanding among lawyers, policy-makers and labour market actors on substantive equality.

##### 4.1 Economic causes for sex discrimination in employment

Limited resources and **oversupply of labour** in China cause discrimination of women in the labour market. In the Chinese labour market, labour supply is greater than demand. Employers are in an advantaged position, while female job seekers are placed at a disadvantage and lack confidence in requesting their equal rights.

With reference to these challenges, underlying questions are: Why are women more vulnerable to these adverse effects than men? Why are women more likely to be laid-off than men when companies face economic difficulties? Why do employers tend to choose a male applicant when they have multiple applicants to choose from?

## 4.2 Causes linked to gender roles and maternity

### Traditional ideas about the roles of women and men in the society and family

Traditional ideas about the roles of women and men in the family and society, such as “men take care of business, while women take care of home”, affect Chinese people’s attitudes to women’s work. Even if great achievements have been made in increasing the education levels of women in China, they still face challenges in access to equal employment opportunities and treatment at work. Due to traditional ideas on women’s role and nature, the majority of women is employed in sectors traditionally perceived as “suitable” for women (**occupational segregation**), and women may not be able to advance in their careers in accordance to their actual capacities, abilities and potential (**glass ceiling**). The traditional ideas on women’s and men’s roles in the family put a disproportionate burden of caring for the young, the sick, the disabled and the old on women’s shoulders.

The persistence of traditional ideas regarding the roles and responsibilities of women and men has been identified as the major underlying barrier to women’s full enjoyment of equal rights in China by the UN Committee on the Elimination of Discrimination against Women (2006). The Committee has called for legal, policy and awareness raising measures to overcome these stereotypes, and has suggested using media campaigns to change the attitudes of the general public throughout the country.<sup>40</sup>

### Maternity

Discrimination of women of childbearing age is often related to their biological reproductive role. Employers are reluctant to employ women who could become pregnant and need to be absent from work for maternity leave as they are responsible for shouldering the replacement cost and the cost of the maternity benefits. In order to ensure equal opportunity and treatment for women in childbearing age, the burden of maternity costs on employers needs to be reduced through further development of the maternity insurance system. The coverage of maternity protection also needs to be expanded to cover all women workers. Practical ways to facilitate reconciling work and family responsibilities after return to work also need to be further developed. Guidance for these efforts can be sought from the ILO **Maternity Protection Convention, 2000 (No.183)**.

### Unequal sharing of family responsibilities between women and men

Currently in China, women bear the main responsibility for caring for the family. In order to reduce discrimination of women on the basis of family responsibilities, family responsibilities need to be shared more equally between women and men in the family. Employers should also take the needs of workers with family responsibilities into account in enterprises and the government should develop and promote community services, such as child and elderly care and family services and facilities. Guidance can be sought from the ILO **Workers with Family Responsibilities Convention, 1981 (No. 156)**.

## 4.3 Causes linked to overcoming structural discrimination in institutions

### Lack of awareness on discrimination

Due to government legal literacy campaigns and initiatives by other players, rights’ awareness has improved considerably over the past few years in China. However, in general, the understanding of equality is still low in China, both among workers and employers. The inability to recognize

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<sup>40</sup> CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: China*, CEDAW/C/CHN/CO/6 (2006).

discrimination and the lack of awareness on the right to equality make it difficult for women to seek redress. Ensuring non-discrimination in all workplaces in China also requires building employers' capacity to apply non-discrimination principles in their human resources management policies and practices. The capacity of trade unions and women's federations also needs to be further strengthened to ensure their full involvement in equality promotion.

### Lack of focus on substantive equality

Chinese legislation on women workers' rights is geared towards **protecting** women, while special measures for promoting **substantive equality** are lacking. Special protective measures are needed during pregnancy, maternity and nursing, but outside these special periods there should be no restrictions on women's equal access to different occupations and their equal participation in the labour market. To realize equality in labour market outcomes for all women in China, discriminatory laws should be repealed and affirmative action measures should be adopted to help women catch up with men in the labour market. The CEDAW has also noted that developing capacity to understand the meaning of substantive equality is key to eliminating sex discrimination in China (2006).<sup>41</sup>

### Problems in access to effective legal remedies

The adoption of the revised Law on the Protection of Rights and Interests of Women (2005) has greatly improved the legal environment for tackling sex discrimination in China. The passing of the Employment Promotion Law and the Labour Contract Law in 2007 form two other milestones in securing equality between men and women in employment. The chapter dedicated to equal employment in the Employment Promotion law, for example, prohibits not only discrimination at recruitment but also in the overall use of employment services. This provides an opportunity to tackle sex discrimination in the use of these services. Provisions in the Labour Contract law covering labour contracts and conditions at work are also expected to protect women workers from discrimination.

Recent case law shows, however, that challenges related to access to effective legal remedies remain. Issues, such as establishing a clear-cut definition of discrimination in the law, reversing the burden of proof in discrimination cases (See Unit 1.4 in Module 1), simplifying the legal procedures, and clarifying the roles of the different authorities could all make it easier for women workers to seek legal redress. In relation hereto, it is noted that labour contract conflicts go to labour mediation and arbitration bodies while violations against the Employment Promotion Law are handled by the civil courts. Time will tell which will provide the most effective remedies against sex discrimination in employment in practice.

To reduce court backlog and pressures on the authorities, preventive and promotional approaches will continue to be emphasized, such as advising employers on non-discriminatory employment practices and strengthening trade union involvement in addressing non-discrimination in workplaces.

## 4.4 Further action to promote gender equality at work in China – Next steps

Future priorities are:

1. Repeal or **amend** any discriminatory **laws, regulations and practices**
2. Ensure easy access to **legal remedies and enforceability** of laws
3. Adopt comprehensive **policies and programmes** to advance gender equality at work.

<sup>41</sup> CEDAW: *Concluding comments of the Committee on the Elimination of Discrimination against Women: China*, CEDAW/C/CHN/CO/6 (2006).

- Adopt special support measures to help women access traditionally “male” occupations and senior management positions in both private and public sectors.
  - Adopt measures to support rural women, ethnic women, migrant women, women with disabilities and any other special groups in need of special attention.
  - Set numeric goals and timetables, and establish monitoring mechanisms.
4. Strengthen the **maternity protection system**, and extend its coverage to all mothers
  5. Adopt measures to guarantee **equal opportunity and treatment at work for women and men with and without family responsibilities**
  6. Promote female **entrepreneurship**
  7. **Build capacity of employers and trade union leaders** at all levels to take action
    - Promote gender equality bargaining and inclusion of special measures in collective agreements
    - Promote equality action at workplace level
  8. **Build capacity of judicial and enforcement authorities** to identify discrimination and to take action (judges, prosecutors, lawyers, labour inspectors etc.)
  9. **Build capacity of women’s federations** to take equality actions in the employment and labour fields
  10. Consider establishing an **Equal Opportunities Commission**
  11. Implement **training, advocacy and awareness raising campaigns**.

## Section B. Session guide





## Section B. Session guide

### Training map for Module 2

| Unit 2.1 Sex discrimination at work: Concepts, standards and strategies |                                                                                                                                                                                                                                                                                                                                                                                                                                    | 4-4.5 hours   |
|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Learning objectives                                                     | <ul style="list-style-type: none"> <li>Describe the concepts and international standards on gender equality at work and identify common forms of sex discrimination.</li> <li>Analyse the concept of equal pay for work of equal value and why it is vital for eliminating the gender pay gap.</li> <li>Identify policy and practical measures to promote and enforce substantive equality among men and women at work.</li> </ul> |               |
| Training aids                                                           | Section A. Unit 2.1 Sex discrimination at work: Concepts, standards and strategies<br>Section C. Exercise 1. Gender stereotypes: Debate<br>Section C. Exercise 2. What type of discrimination is it? Case studies<br>Section C. Exercise 3. Protection and equality: Case studies<br>Section C. Exercise 4. Equal pay for work of equal value – Job evaluation<br>Section C. Exercise 5. Review of good practice examples          |               |
| Unit 2.2 Sex discrimination at work in China                            |                                                                                                                                                                                                                                                                                                                                                                                                                                    | 1.5-2 hours   |
| Learning objectives                                                     | <ul style="list-style-type: none"> <li>Recognize the common forms of sex discrimination at work in the Chinese labour market and explain their underlying causes</li> <li>Describe the Chinese legal and policy framework on gender equality and consider practical measures to promote gender equality at work</li> </ul>                                                                                                         |               |
| Training aids                                                           | Section A. Unit 2.2 Sex discrimination at work in China<br>Section C. Exercise 6. Ms Tang's dismissal<br>Section C. Exercise 7. Gender equality action planning                                                                                                                                                                                                                                                                    |               |
| Total Module 2                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                    | 5.5-6.5 hours |

## Session plan for Unit 2.1 Sex discrimination at work: Concepts, standards and strategies

### Overview

This unit outlines the basic concepts related to gender equality at work and the international instruments in which the principle is established. The unit gives an overview of the main areas in which obstacles to gender equality remain in the world of work. The concepts of equal remuneration and discrimination on the basis of family responsibilities are also introduced. The unit concludes by outlining the policy approaches, strategies and practical measures that can be taken at national, local and company level to promote and enforce gender equality in employment and occupation.



### Learning objectives

At the end of unit 2.1 the participants will be able to:

- Describe the concepts and international standards on gender equality at work and identify common forms of sex discrimination
- Analyse the concept of equal pay for work of equal value and why it is vital for eliminating the gender pay gap
- Identify policy and practical measures to promote and enforce substantive equality among men and women 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. Gender stereotypes: Debate</b>                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>20 min.</b> |
| Aim                                                                                                            | To reflect on the difference between opinions/stereotypes and facts about gender equality and non-discrimination                                                                                                                                                                                                                                                                                                                                                                                |                |
| Training aids                                                                                                  | Section C. Exercise 1. Gender stereotypes: Debate                                                                                                                                                                                                                                                                                                                                                                                                                                               |                |
| <b>Step 3. Presentation and discussion: Sex discrimination at work: Concepts, standards and strategies - 1</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>20 min.</b> |
| Aim                                                                                                            | To discuss the meaning of gender equality in employment and occupation, and to review the key concepts and international legal instruments which promote gender equality and eliminate sex discrimination at work and in society                                                                                                                                                                                                                                                                |                |
| Training aids                                                                                                  | Section A. Unit 2.1 - 1 Principle of gender equality<br>Section A. Unit 2.1 - 2 International standards on gender equality<br>Section A. Unit 2.1 - 3 Sex discrimination: key concepts<br>Section A. Unit 2.1 - 4 Equal remuneration for work of equal value                                                                                                                                                                                                                                    |                |
| Tips                                                                                                           | Make the presentation as interactive as possible. Start by asking participants to suggest definitions of gender equality. After a few responses, give the definition and briefly present the main international standards on gender equality. Introduce the definitions of sex discrimination under Convention No. 111 and equal remuneration under Convention No. 100, and ask participants to provide examples of direct, indirect and structural sex discrimination and wage discrimination. |                |

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|----------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Step 4. Exercise 2: What type of discrimination it is? Case studies</b>                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>40 min.</b>    |
| Aim                                                                                                            | To identify various forms of indirect sex discrimination in recruitment and remuneration.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                   |
| Training aids                                                                                                  | Section C. Exercise 2. What type of discrimination is it? Case studies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |
| <b>Step 5. Presentation and discussion: Sex discrimination at work: Concepts, standards and strategies - 2</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>20 min.</b>    |
| Aim                                                                                                            | To review forms of sex-based discrimination at different stages of the work cycle, and to distinguish between formal and substantive equality, protection and affirmative action measures.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                   |
| Training aids                                                                                                  | Section A. Unit 2.1 - 5 Discrimination against women because of pregnancy and family responsibilities<br>Section A. Unit 2.1 - 6 Gender equality and sex discrimination at different stages of the employment cycle<br>Section A. Unit 2.1 - 7 Changing approaches: From protection to equality in law and in outcomes<br>Section A. Unit 2.1 - 8 Protective and affirmative measures and strategies to promote gender equality at work.                                                                                                                                                                                                                                                                                                 |                   |
| Tips                                                                                                           | Make the presentation as participatory as possible. Briefly discuss discrimination on the grounds of pregnancy and family responsibilities, horizontal and vertical occupational segregation by sex, equal remuneration, sexual harassment at work, and discrimination in social security. Involve participants by asking them to give examples of discrimination against women drawn from their own work experience. Explain the main approaches to gender equality, highlighting the disadvantages of protective and formal equality and the international goal of reaching substantive equality. Briefly introduce the scope of protective and affirmative action measures.                                                           |                   |
| <b>Step 6. Exercise 3. Protection and equality: Case studies</b>                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>30-40 min.</b> |
| Aim                                                                                                            | To distinguish between protective equality and substantive equality, and assess how they impact employment outcomes for women.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                   |
| Training aids                                                                                                  | Section C. Exercise 3. Protection and equality. Case studies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                   |
| <b>Step 7. Presentation and discussion: Sex discrimination at work: Concepts, standards and strategies - 3</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>20 min.</b>    |
| Aim                                                                                                            | To review a range of practical measures to promote and enforce gender equality in employment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                   |
| Training aids                                                                                                  | Section A. Unit 2.1 - 9 Policies, strategies and practical measures<br>Section A. Unit 2.1 - 10 Good practice examples                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                   |
| Tips                                                                                                           | Make the presentation as interactive as possible. Ask participants to give examples from their own work experience on what kind of practical action different stakeholders (government, trade unions, employers' organizations, women's groups, etc.) can take to promote gender equality at work. Briefly present the role of government, employers' organizations and trade unions in promoting equality. Highlight the importance of awareness raising, effective enforcement and access to legal remedies in fighting discrimination. Emphasize that practical gender equality measures are key for making progress towards achieving equality principles. Give a few good practice examples of both promotion and enforcement work. |                   |
| <b>Step 8. Exercise 4. Equal pay for work of equal value – Job evaluation: Case study</b>                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>60 min.</b>    |
| Aim                                                                                                            | To discuss the concept of equal pay for work of equal value and to test the use of                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                   |

|                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                    |
|--------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
|                                                              | objective job evaluation criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                    |
| Training aids                                                | Section C. Exercise 4. Equal pay for work of equal value – Job evaluation: Case study                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    |
| <b>Step 9. Exercises 5. Review of good practice examples</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>20-40 min.</b>  |
| Aim                                                          | To assess good practice examples and consider possible actions that different stakeholders can take to promote gender equality in China.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                    |
| Training aids                                                | Section C. Exercise 5. Review of good practice examples                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                    |
| <b>Step 10. Round-up: Key learning points</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>10 min.</b>     |
|                                                              | <p>Conclude the session by highlighting some of the main points raised during the session, especially points that created discussion or controversy, using 3 to 5 of the key learning points given below:</p> <ul style="list-style-type: none"> <li>• Both men and women in families, workplaces and societies are expected to adhere to roles, norms and values, but women usually face many more restrictions than men. These restrictions hamper equal opportunity and treatment of women and men in the labour market.</li> <li>• Equal remuneration and equality of opportunity and treatment in employment and occupation between men and women is not a luxury for those women, men, companies or countries who can afford it. It is a necessity, especially for groups of population who live in poverty and are in vulnerable forms of employment. The majority of these are women.</li> <li>• Good progress is being made with prohibiting direct sex discrimination in laws and regulations but there is still some way to go. Challenges remain in combating direct ‘taste-based’ discrimination and preferences for one sex only in certain jobs.</li> <li>• Many forms of indirect discrimination are becoming more visible thanks to better statistics which show that women are over-represented in vulnerable jobs and economic sectors (part-time work, unregulated work, domestic work or community service, home work, agriculture)</li> <li>• Gender equality benefits all. It is vital for women and men both of whom have a right to employment and decent work, as well as a right to enjoy and take responsibility for taking care of their family members. Companies and countries benefit from reaping the talents of all.</li> <li>• Equality of opportunity and treatment does not mean sameness, it means fair and just. If one group has been disadvantaged and suffers from a lower status, special measures are needed to advance their position. For this reason, all international gender equality standards, objectives and benchmarks pursue the dual track of integrating gender into mainstream development and empowering women.</li> <li>• Legal measures for the promotion of non-discrimination in employment are a necessary step for achieving equality. This step needs to be followed by practical measures to apply legal goals in practice. Convention No. 111 therefore calls on countries to develop a national policy to promote and enforce equality principles in workplaces.</li> <li>• China has ratified the key international standards to safeguard the rights of women workers and steps are being taken to promote equality between women and men in national legislation in the employment, labour and gender equality fields.</li> <li>• Further practical measures are needed in China to realize substantive equality and adequate legal and policy measures need to be put in place to combat sex discrimination.</li> </ul> |                    |
| <b>Total Unit 2.1</b>                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>4-4.5 hours</b> |

## Session plan for Unit 2.2 Sex discrimination at work in China

### Overview

This module outlines the Chinese legal and policy framework on gender equality at work and the common forms of sex discrimination that prevail in the Chinese labour market. The unit discusses underlying reasons for sex discrimination at work in China and introduces practical examples of equality measures that can be used to promote gender equality in employment and occupation in the country.



### Learning objectives

At the end of unit 2.2 the participants will be able to:

- Recognize the common forms of sex discrimination at work in the Chinese labour market and explain their underlying causes
- Describe the Chinese legal and policy framework on gender equality and consider practical measures to promote gender equality at work.



### Step-by-step session plan

|                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                         |
|-------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| <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: Sex discrimination at work in China - 1</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>20 min.</b><br> |
| Aim                                                                                 | To recall the Chinese legal and policy framework and the current situation in relation to sex discrimination in employment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                         |
| Training aids                                                                       | Section A. Unit 2.2 - 1 Chinese legal framework on sex discrimination<br>Section A. Unit 2.2 - 2 Policy measures to promote gender equality<br>Section A. Unit 2.2 - 3 Sex discrimination in China – Current situation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                         |
| Tips                                                                                | Make the presentation as participatory and vivid as possible. Give a short overview of the Chinese legal and policy framework on gender equality. Recall the three main approaches to gender equality discussed in Unit 2.1 – formal, protective and substantive equality – and ask the participants to give examples on each of them. Highlight the importance of shifting attention from the sameness approach and protective equality towards promoting substantive gender equality in China. Provide a few statistics on horizontal and vertical job segregation and the gender pay gap, and discuss sex discrimination in retirement age. Discuss also the local implementation of the 2005 national legal provisions on sexual harassment. |                                                                                                         |
| <b>Step 3. Exercise 6. Ms Tang's dismissal: Case study</b>                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>20 min.</b>                                                                                          |
| Aim                                                                                 | To discuss pregnancy discrimination as one of the most persistent forms of discrimination against women in China and abroad                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                         |
| Training aids                                                                       | Section C. Exercise 6. Ms Tang's dismissal: Case study                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                         |

|                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                    |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| <b>Step 4. Presentation and discussion: Sex discrimination at work in China - 2</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>20 min.</b>     |
| Aim                                                                                 | To define the underlying causes of sex discrimination and to assess possible ways to strengthen measures to promote gender equality and address sex discrimination in China.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                    |
| Training aids                                                                       | Section A. Unit 2.2 - 4 Underlying causes for sex discrimination in China and steps for further action                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                    |
| Tips                                                                                | Ask participants to share their views on what the underlying causes for sex discrimination are in China, and list them on a flipchart or board. Discuss what kind of action would be needed to address these causes and what each stakeholder should do. Give a short presentation to round-up the discussion highlight the importance of awareness raising on employment discrimination, shifting the legal focus from protective equality to achieving substantive equality in the law, and providing adequate remedies.                                                                                                                                                                                                                                                                                                                                                                                                |                    |
| <b>Step 5. Exercise 7. Gender equality action plan</b>                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>20-40 min.</b>  |
| Aim                                                                                 | To help participants put what they have learned during the course in practice and plan concrete steps for action.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                    |
| Training aids                                                                       | Section C. Exercise 7. Gender equality action planning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                    |
| <b>Step 6. Round-up: Key learning points</b>                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>10 min.</b>     |
|                                                                                     | <ul style="list-style-type: none"> <li>China has ratified the key international standards to safeguard the rights of women workers, and substantial steps have also been taken in national legislation. An important step forward has also been made with starting to outlaw sexual harassment at work.</li> <li>Substantive equality is a relatively new concept in China and adequate legal and policy measures to realize more equal labour market outcomes for women have not yet been put in place. Statistics clearly show extensive gender gaps in horizontal and vertical divides between “men’s and women’s jobs and levels” and substantial pay inequalities.</li> <li>More policy advocacy is called for to prevent abusive employment practices against women and promote substantive equality. As public sector employer the Chinese government should take the lead as gender equality employer.</li> </ul> |                    |
| <b>Total Unit 2.2</b>                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>1.5-2 hours</b> |

## Section C. Exercises





## Section C. Exercises

### Unit 2.1 Sex discrimination at work: Concepts, standards and strategies

#### Exercise 1. Gender stereotypes: Debate

##### Instructions for trainers



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



**Time** – 20 minutes



##### Steps:

- Share the aims of the exercise with the participants. Explain that the exercise helps in reflecting on different ideas and views about the roles, characteristics, capacities and likely behaviour of women and men. Tell participants that you will read out a few statements and ask you whether these are right or wrong in your view.
- Read out the first statement in plenary and ask who thinks this is right and who thinks this is wrong, and why they have the view that they have. After a few responses, provide the right answer, as given in the **Responses**. Do the same for the other 3 statements.
- After going through all the questions round up the discussion as follows:
  - Everybody has the right to their own opinion. However, there is a difference between opinions and facts. Opinions and prejudices about the roles of men and women and what they can and cannot do are common in all societies, but they are often not based on facts. Common examples are: “Women are weak and not very good workers and men are better leaders.” While such stereotypes may sometimes be true they are often proven false. They are harmful because they help to create and perpetuate gender inequalities and discrimination.
  - Promotion of equality and combating discrimination requires legislation and effective policies. We need to find out what are the facts, what are harmful opinions and what aspirations have been set by law to promote a fair, just and equal workplace for all workers.

## Exercise 1. Gender stereotypes: Debate



### Handout

### Questions

Are the following statements right or wrong?

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

## Exercise 1. Gender stereotypes: Debate



### Responses

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

## Exercise 2. What type of discrimination is it? Case studies

### Instructions for trainers



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



**Time** – 40 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows participants to work in groups of 3-6 persons.



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



### Steps:

- Share the aims of the exercise with the participants.
- Divide participants into groups of 3-6 persons. Give each group a different case study, and ask them to read and discuss the questions provided. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of 3 minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. After each presentation, invite other participants to ask questions or comment on the presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using the **Case responses** as needed.
- Round-up the discussion as follows:
  - Discrimination is not always visible and many forms of sex discrimination are hidden. It is therefore, important to seek more information about the characteristics of the disadvantaged target groups.
  - Sometimes there is obvious differential treatment between different groups of workers, for example full-time and part-time workers, but not all forms of differential treatment are discrimination prohibited by (international and/or national) law. However, if the great majority of workers of the disadvantaged group share a personal characteristic, such as the same sex, ethnicity, migrant or health status, it is likely that indirect discrimination against the disadvantaged group is taking place based on these characteristics.
  - Indirect discrimination is often invisible when looking at individual cases as these may appear to be isolated cases. However, statistics can help identify forms of indirect discrimination.

**Exercise 2. What type of discrimination is it? Case studies****Handout****CASES**

Discuss the following cases in small groups and answer the questions

- A. A Canadian school required applicants for a part-time cleaner position to meet a set of detailed physical criteria. The physical criteria include fifty-pound floor-to-shoulder lifting. A female applicant claimed that this lifting requirement constitutes discrimination of female candidates. The school responded that the work of cleaners in the school premises requires lifting and stacking heavy boxes of photocopy paper and big bottles of floor cleanser and wax, and for this reason the lifting requirement can be justified. How would you decide this case if you were the judge hearing it? Is this discrimination? If so, what type of discrimination? What information would you collect to establish whether the criterion set by the school was discriminatory or not?
- B. A trade union from the local branch of a multinational supermarket chain comes and complains about discrimination. The company pays contributions to a private health-care scheme, but only for staff members from the upper-middle management upwards. Is this discrimination? If so, what type of discrimination? What information would you collect to establish whether there is discrimination? Would the current law in China permit a staff member of the lower-middle management to file a lawsuit for discrimination? What remedial options does the staff member have?
- C. A group of workers from a local IT service provider comes and complains to you about discrimination. They are all part-time workers. The collective agreement within the company provides that overtime on normal days is paid at 150 per cent. However, overtime is defined as working time performed over and above the full-time schedule. Is this discrimination? What information would you collect to establish whether there is discrimination?
- D. The staff of educational institutions for children with disabilities is represented by a national association. One day, the association finds out that workers taking care of wild animals in local zoos earn on average 25 – 50 per cent more than their own workers. Does the association have a case for discrimination? What information would you collect to establish whether there is a case of discrimination? What remedial options would the association currently have in China?

## Exercise 2. What type of discrimination is it? Case studies



### Case responses and references

#### A. Response: Physical recruitment criteria

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

First, the arbitrator did empirical tests on the lifting capacity of men and women. The test found that 100 per cent of the 258 tested 18-30 year old men could lift fifty-pound floor-to-waist and floor-to-shoulder. Among the 315 tested 18-30 year old women 98 per cent could lift fifty-pound floor-to-waist and only 27 per cent could lift fifty-pound floor-to-shoulder. The test thus showed that women's pass ratio was 80 per cent less than men's pass ratio. Based on this evidence the arbitrator concluded that the claimants had established a (*prima facie*<sup>42</sup>) case of indirect sex discrimination.

Second, the arbitrator analyzed whether the 50-pound lifting requirement was an inherent requirement of the job. The arbitrator noticed that the lifting requirement derived from the employer's observation of how a male cleaner performed the job. When a male cleaner performed the job, he stacked 22kg-pails containing 5 gallon floor cleanser and wax containers up to three pails height, and stacked 22kg-boxes with photocopy paper into storeroom up to five boxes height. The employer therefore considered lifting to a specific height as an occasional demand of this job.

The arbitrator indicated that to prove that the lifting requirement is reasonable and necessary, the employer must show that the work of the cleaners could not be reasonably rearranged so that also women with less lifting capacity could undertake the key tasks. The tests conducted by the arbitrator showed that the work could be completed safely and efficiently by splitting boxes of photocopy paper before transporting them. Furthermore, the lifting requirement could be reduced to 25 pounds or less by taking the following measures: (1) ordering supplies in smaller containers; (2) changing the pile pattern in storeroom, (3) ordering fewer supplies to decrease the stack height; or (4) arrange for heavier supplies to be lifted or lowered by other staff members.

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

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

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<sup>42</sup> *Prima facie* is a legal term referring to the reversal of the burden of proof. In several jurisdictions, once the complainant or alleged victim has provided evidence of differential treatment, the employer has the burden of proving that his or her actions are not discriminatory but based on objective reasons. See Unit 1.4 in Module 1 for more information.

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

### B. Response: Health insurance

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

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

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

It may be stressed, however, that allowances made under a **public** system of social security are not considered as a form of remuneration as they are not “payable directly or indirectly by the employer”. Any difference in contribution paid by the employer or received in the form of benefits by the employee may still be discriminatory, but is not a form of discrimination for which the employer should be held accountable in the case at hand.<sup>43</sup>

### C. Response: Part-time work

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

<sup>43</sup> ILO: “Equal Remuneration, General survey,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, International Labour Conference, 72<sup>nd</sup> Session (Geneva, 1986), paras. 17 and 88.

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

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

#### **D. Response: Children and animals**

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

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

This case study is based on a real-life job evaluation conducted in the state of Minnesota in the United States in early 1980's. In the actual case, the overall majority of the carers of disabled children were women and most of the zoo keepers were men. The job evaluation revealed a clear case of wage discrimination, as the women who cared for disabled children were being paid less than male zoo keepers – even if on the job evaluation scale caring for disabled children received higher points. Following a series of similar evaluations of pay levels in female and male dominated public sector jobs the legislature of the State of Minnesota enacted the State Employees Pay Equity Act (1982) and made adjustments to the public sector remuneration practices. The measures taken by the state government made a significant contribution to gender equality.<sup>44</sup>

This case is a classical example of wage discrimination that resurfaces every now and then in different contexts. Just recently, similar situations were discussed in a very interesting testimony on equal pay.<sup>45</sup>

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<sup>44</sup> C. Petersen: *Implementing equal pay for work of equal value in Hong Kong: A feminist analysis* (Hong Kong, 2000).

<sup>45</sup> H. Boushey: *Strengthening the middle class: Ensuring equal pay for women*, Testimony before the U.S. Senate Committee on Health, Education, Labour and Pensions (Washington, 11 March 2010).

### Exercise 3. Protection and equality: Case studies

#### Instructions for trainers



**Aim** – To distinguish between protective equality and substantive equality, and assess how they impact employment outcomes for women.



**Time** – 30-40 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows participants to work in groups of 3-6 persons.



#### Steps:

- Share the aims of the exercise with the participants. Divide participants into small groups. Provide the **Handouts** to all participants. Ask half of the groups discuss case A and the others to discuss case B.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation on their case. After each presentation, invite other participants to ask questions or comment on the presentation. Facilitate discussion, add points not mentioned by the groups and correct any misunderstandings using the **Case Responses**.
- Round-up the discussion as follows:
  - Blanket protection measures are defended by some as necessary for women workers, and criticized by others because they are contrary to gender equality goals and disadvantageous to women's employment and promotion prospects.
  - The need for blanket protection measures is a topic of heated debate also in China. In China the discussion centers around the need for prohibition of women's employment in mining pits, at high heights and in physically strenuous work.
  - Women and men have an equal right to employment and to safe and healthy working conditions. For this reason, it is better to safeguard access to equal job opportunities for women and men, and at the same time enforce (minimum) decent work standards for both sexes.
  - While the need for blanket protection measures is widely debated, there is consensus about the need to protect the reproductive functions of women and men, most importantly the health of the woman and her child during pregnancy and breastfeeding.

### Exercise 3. Protection and equality: Case studies



#### Handout

#### A. Night work by women in France

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

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

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

1. How would you decide this case if you were the judge in the European Court of Justice hearing it? Do you think that the ban on night work by women is against the principle of equal treatment of women and men in employment, and that the French law is thus inconsistent with the EC law?
2. Discuss the arguments in favour and against for both “protective equality” and “substantive equality” in your group.

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

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

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

The mining industry is also South Africa's biggest employer, with around 460 000 employees and another 400 000 employed by the suppliers of goods and services to the industry. However, until very recently mining was a male-dominated industry that was hostile to women's participation in work. Employment of women underground was prohibited in law and

women were considered unfit for the hard labour of working in the mines and heavy industries. Most of the jobs in mining that were available for women were either administrative or menial low-skill activities like sweepers, cleaners or attendants in the offices.

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

1. How would you assess the pre-1996 situation in the South African mining industry from a gender equality point of view? Do you think exclusion of women from the mining industry (the country's largest employer) was reasonable and necessary?
2. Brainstorm and make a list of different risks and health hazards related to mining work. Assess each of the risks in terms of how they affect women and men. Are the health impacts the same? Or are some hazards more harmful to one sex than the other?
3. After opening women the access to employment in the mining sector, do you think any special measures are needed to protect women working in the sector? What kind of measures should be adopted?

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

### Exercise 3. Protection and equality: Case studies



#### Case response

#### A. Night work by women in France

This case is a real life case from France (1991). It illustrates the conflict of interests between “protective equality” and “substantive equality”. While women’s health needs to be protected during special conditions such as pregnancy and breastfeeding, blanket protection measures banning women’s employment in certain occupations or types of work remain to be a hot issue for debate. They are defended by some as necessary for women workers, and criticized by others because they are disadvantageous to women’s employment and promotion prospects. The debated measures include blanket bans on employment of women in physically strenuous work, at heights, underground in mines – and as in this case during the night. While there is no ban on night work by women in China, the same arguments **for** and **against** the blanket protection measures have been used in China in the debate around the revision of the Regulations on Labour Protection of Women Workers.

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

In its reasoning, the European Court of Justice (ECJ) stressed that the EC directive requires the abolition or revision of national provisions that are contrary to the principle of equal treatment of women and men in employment. Exceptions are valid only if there is a justified need for a difference of treatment between women and men. The ECJ noted that with regard to the case at hand, the risks to which women are exposed when working at night, on the whole, do not seem significantly different from those to which men are exposed. On these grounds the ECJ judged that prohibition in the French law banning the night work by women was not justified, and was in breach with the EC law. The ECJ noted however that special measures protecting the health of women during pregnancy and maternity are necessary and justified.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has noted in its General Survey on night work of women in 2001 that there is a clear tendency among ILO member States to move away from a blanket ban on night work of women in industry, and to regulating night work for both men and women. 📖 See section 8 in Unit 2.1 for details.

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

In China, night work for women is not prohibited by law, except for women workers who are at least seven months pregnant, or nursing mothers. The main value of the reasoning outlined above is that it may and should also be gradually applied to other types of work. In practice, women who are at least seven months pregnant are still found working night shifts, in denial of national protective regulations that are entirely legitimate under international law.

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

## **B. Employment of women in the South African mining industry**

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

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

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

After opening women the access to mining sector employment in South Africa practical approaches were developed to make mining workplaces more inclusive towards women. Casper J. Badenhurst, Occupational Hygiene Specialist for Anglo Platinum Ltd. (a major South African platinum producing company) outlined the key principles for employment of women in underground mining at a recent conference presentation as follows:

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

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

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

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

Underground work for women remains prohibited in China, which has ratified the ILO Underground Work (Women) Convention, 1935 (No. 45). The ILO Governing Body is recommending China to consider ratifying the Safety and Health in Mines Convention, 1995 (No. 176) instead – considering that a blanket ban on employment of women in underground mines is discriminatory in principle. Yet, women are occasionally found to be engaged in underground work in contravention of the Labour Law.

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

## Exercise 4. Equal pay for work of equal value – Job evaluation: Case study

### Instructions for trainers



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



**Time** – 60 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows participants to work in groups of 3-6 persons.



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



### Steps

- Share the aims of the exercise with the participants.
- Introduce the exercise by explaining that equal remuneration for work of equal value is a concept that is not always easy to understand. There is broad agreement that pay equity between men and women is fair and just, and that equal pay must be provided to men and women who do exactly the same or very similar work. However, more understanding is needed on fairness in pay in the more usual labour market situations where women and men are found in jobs that are different but of equal value. This exercise introduces the concept of equal pay for work of equal value and demonstrates what kind of evaluation criteria can be used for an objective job evaluation of two jobs.
- Divide participants into small groups of 3-6 participants. Provide **Handout 1** of the case study to all groups and ask them to read it. You may also ask a volunteer to read the case aloud to all participants.
- After reading the case explain that in this exercise the groups are requested to assess the value of the two jobs, the librarian and the refuse collector, in the case study: Explain that job evaluation means rating various job elements of two or more jobs based on objective criteria to assess the value of the jobs. The evaluation criteria are usually related to skills and abilities, responsibility, effort and working conditions of the jobs in question.
- Give **Handout 2** to the participants and ask every group to:
  - Conduct an evaluation of the two jobs by filling in the job evaluation sheet on the flipchart.
  - Discuss whether or not they think the two jobs should be paid the same wage.
  - Select a spokesperson who will present the outcomes of their job evaluation to the plenary.

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

## Exercise 4. Equal remuneration for work of equal value – Job evaluation: Case study



### Handouts

#### Handout 1. Case study

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

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

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

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

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

In Lucy's situation, the city has written job evaluations that give points on a scale of 1 to 5 for the different job elements criteria such as skills, effort, responsibility and working conditions. Five points means working conditions are very bad or a high level of education is needed, while one point means good working conditions or very little education needed.

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

## Exercise 4. Equal remuneration for work of equal value – Job evaluation: Case study



### Handouts

#### Handout 2. Job evaluation sheet

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

#### Instructions:

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

#### Sample Job evaluation comparison sheet

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

**Exercise 4. Equal remuneration for work of equal value – Job evaluation: Case study****Handouts****Handout 3. Job evaluation results**

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

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

**Results: Job evaluation comparison sheet**

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

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

## Exercise 5. Review of good practice examples

### Instructions for trainers



**Aim** – To assess good practice examples and consider possible actions that different stakeholders can take to promote gender equality in China.



**Time** – 20-40 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows participants to work in groups of 3-6 persons.



**Training materials and preparation** – Select a few examples of practical measures from Section A. Unit 2.1 for discussion based on participants' interest:

- Mechanism to promote and enforce equality legislation –  Box 2.9 The Equal Opportunities Commission – Hong Kong, China
- Gender equality advocacy campaign –  Box 2.12 Pay Equity Campaign by Public Services International
- National tripartite mechanism to promote equality –  Box 2.13 Tripartite mechanism to promote equality – Singapore
- Gender mainstreaming and the European Employment Strategy –  Box 2.14 Good practice – Gender mainstreaming and the European Employment Strategy
- Gender and family responsibilities in collective agreements –  Box 2.15 Good practice – Work-family reconciliation measures in collective agreements – Latin America
- Company policy on flexible work arrangements in Singapore –  Box 2.16 Good practice – Flexible work arrangements at Citigroup Singapore
- Malaysia Code of practice on the prevention and eradication of sexual harassment in the workplace –  Box 2.17 Good practice – Malaysia Code of practice on the prevention and eradication of sexual harassment in the workplace

Choose examples that reflect different types of sex discrimination (e.g. equality in recruitment, action against sexual harassment and reconciling work and family responsibilities) and action taken by different stakeholders. **Photocopy** the selected examples to be given out handouts to participants. Prepare also one sheet of flipchart paper and one marker pen for each group.



### Steps

- Share the aim of the exercise with the participants, and divide the participants into groups. Distribute the handouts and flipchart papers, and allocate one or a few of the selected good practices to each group for discussion.
- Ask the groups to read the good practice(s) allocated to them and discuss the following questions:

- What are the key characteristics of the good practice example(s)? Who is taking action, what are the objectives of the measure, and who are the beneficiaries of the measure?
  - Have similar practical measures or action been taken in China? Does your organization have experience with implementing such practical measures? If yes, what have been the strong and weak points? If no, go to the next question.
  - Is there a need for such practical equality measures in China? If yes, who should take action? Could your organization take the initiative? If yes, go to the next question. If no, why not?
  - Which practical actions from the case study would be applicable within your organization? What would be priority actions and how would you implement them.
- After the groups have finished discussion, ask each group to hang the flipcharts on the wall and briefly present the outcomes of their discussion. Allow the groups to comment each others' presentations, and facilitate further discussion and sharing of good practices among participants.
- Collect suggestions for action by different stakeholders from all presentations and list them on a flipchart. Try to identify some suggestions for the following groups of stakeholders.
- Enterprises: Company managers, workplace trade unions
  - Employers' organizations
  - Workers' organizations
  - Labour officials
  - Judicial officials
  - Policy makers and legislators
  - Women's Federations, Youth Federations etc.
- Invite participants to comment on the suggestions given, asking e.g. the employers representatives whether the suggestions made for their action were feasible and whether the women's federation representatives think the action proposed for them is feasible.
- Round up the discussion as follows:
- Promoting equality and fighting discrimination require practical action by many stakeholders in the labour market and the society. Adoption of laws prohibiting discrimination is vital, but it is as important to put the equality principle into practice.
  - One important way to promote equality is to share good practices. Alongside good international practices, there are already many good practices of equality promotion in China. Employers' organizations, workers' organizations, government agencies, mass organizations and other stakeholders can play an important role in collecting good practice on equality promotion among their constituency and distributing them to raise awareness on practical measures to promote equality.

## Unit 2.2 Sex discrimination at work in China

### Exercise 6. Ms Tang's dismissal: Case study

#### Instructions for trainers



**Aim** – To discuss pregnancy discrimination as one of the most persistent forms of discrimination against women in China and abroad.



**Time** – 20 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows participants to work in groups of 3-6 persons.



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



#### Steps:

- Share the aims of the exercise with the participants. Provide the case study to participants and ask them to read and discuss it in small groups of 3-6 persons each.
- Reconvene in plenary when the groups are ready. Ask groups to give their presentations. After the presentations facilitate further discussion on the case and ensure that the various perspectives on the case are highlighted:
  - Some will consider that the dishonesty of Ms. Tang regarding her married status and subsequent pregnancy means that the dismissal is justified.
  - Others will consider that this is a clear case of discrimination on the grounds of pregnancy.
- Lead the discussion also to questioning whether marital status can be a recruitment criterion for civil servants. Ask the participants whether being married or single, and having a child or not is related to one's working capacity. Facilitate the discussion.
- If necessary, add points not mentioned by the groups or correct misunderstandings using the **Case response** as needed.
- Round-up the discussion as follows:
  - This case illustrates very well the types of discrimination that women in marriage and child bearing age face in the labour market. While the law in China and in most other countries prohibits dismissal of pregnant women, in practice many problems remain. It is very common that employers try to use an excuse – such as “dishonesty” in Ms. Tang's case – to justify the dismissal of the pregnant woman.
  - To ensure that pregnant women can be protected against dismissal on the grounds of vague excuses presented by employers, many countries apply the reversal of the

burden of proof in the hearing of pregnancy discrimination cases. This means that dismissing a pregnant woman creates a **prima facie** presumption of pregnancy discrimination. To rebut the presumption, the employer needs to produce the evidence that the dismissal was not due to pregnancy, but due to some other reasons. In many countries the legal practice in courts is very strict, and it is very difficult for the employer to justify the dismissal of a pregnant woman.

## Exercise 6. Ms Tang's dismissal: Case study



### Handout

#### Case

Aug. 2004, Ms Tang, a new university graduate was recruited by a Ministry to work in the General Office of the Personnel & Labour Department, under one-year probation. In a health check in Nov. 2004, she was found to be pregnant. She decided to have the child, and reported the situation to her supervisor. Director Li of the General Office talked to her, giving her two options: having an abortion or leaving the Ministry. Later investigation found that in Ms. Tang's Household Registration (Hukou) Transfer Card and the Personal History Form she filled out at the time of recruitment, her marriage status was 'single', and the marriage certificate she provided later was not hers. Based on these facts, the Personnel & Labour Department of the Ministry charged that Ms Tang has 'practiced fraud and deceived leaders and colleagues', which is an act against the principle of sincerity and honesty required for civil servants. According to provisions on probation in the Temporary Regulations on Civil Service, agreement signed at the time of recruitment and Ms Tang's act, the Ministry decided to revoke the recruitment of Ms Tang. On 21 Dec., Ms Tang left the Ministry with the dismissal documents.

Is there discrimination in this case?

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

## Exercise 6. Ms Tang's dismissal: Case study



### Case responses

The dismissal of Ms Tang is a clear case of sex discrimination on the grounds of pregnancy. The two options – abortion or dismissal – presented by the General Office Director's clearly violate the principle of protecting pregnant women in Chinese legislation.

The argument about 'sincerity and honesty' in relation to civil service positions can be questioned given the prejudices faced by women workers of reproductive age in finding employment. Increasingly young women in the Chinese labour market choose to hide their marriage status, because of the widespread discrimination of women on the ground of married status and pregnancy. This is known as the feedback effects of discrimination.

Factors such as being single or married, being pregnant and/or having children or not are not inherent requirements of a job in the civil service. In many countries it is unlawful to ask job candidates questions that are not related to the inherent requirements of a job during recruitment. However, in China, private and public sector employers frequently ask such non-job related questions and chances are high that honesty will lead to non-recruitment and will be used against the female job applicants because gender discrimination is still common in the Chinese labour market.

 For more information on the feedback effects of sex discrimination see Section A. Unit 2.1 - 3 discussing direct, indirect and structural sex discrimination.

## Exercise 7. Gender equality action planning

### Instructions for trainers



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



**Time** – 20-40 minutes



**Seating arrangements** – Small group seating in round tables or other arrangement that allows 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). Instruct each group to work on a gender equality action plan for their province (or organization). The action plans should include the following elements:
  - Review of the local sex 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
  - Resources required.
- Guide the groups by encouraging the groups 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 some good examples of action measures in the prepared action plans. Give each participant a copy of their own action plan and keep one copy for follow-up purposes.

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## Annexes

### Annex 1. Protection of women during pregnancy and nursing: Guidance from international labour standards

#### **Maternity Protection Convention, 2000 (No. 183)**

Article 3. Each Member shall, after consulting the representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother's health or that of her child.

#### **Maternity Protection Recommendation, 2000 (No. 191)**

Para. 6. (1) Members should take measures to ensure assessment of any workplace risks related to the safety and health of the pregnant or nursing woman and her child. The results of the assessment should be made available to the woman concerned.

(2) In any of the situations referred to in Article 3 of the Convention or where a significant risk has been identified under subparagraph (1) above, measures should be taken to provide, on the basis of a medical certificate as appropriate, an alternative to such work in the form of:

- (a) elimination of risk;
- (b) an adaptation of her conditions of work;
- (c) a transfer to another post, without loss of pay, when such an adaptation is not feasible; or
- (d) paid leave, in accordance with national laws, regulations or practice, when such a transfer is not feasible.

(3) Measures referred to in subparagraph (2) should in particular be taken in respect of:

- (a) arduous work involving the manual lifting, carrying, pushing or pulling of loads;
- (b) work involving exposure to biological, chemical or physical agents which represent a reproductive health hazard;
- (c) work requiring special equilibrium;
- (d) work involving physical strain due to prolonged periods of sitting or standing, to extreme temperatures, or to vibration.

(4) A pregnant or nursing woman should not be obliged to do night work if a medical certificate declares such work to be incompatible with her pregnancy or nursing.

(5) The woman should retain the right to return to her job or an equivalent job as soon as it is safe for her to do so.

(6) A woman should be allowed to leave her workplace, if necessary, after notifying her employer, for the purpose of undergoing medical examinations relating to her pregnancy.

#### **Chemicals Recommendation, 1990 (No. 177), para. 25 (d)**

(4) Women workers should have the right, in the case of pregnancy or lactation, to alternative work not involving the use of, or exposure to, chemicals hazardous to the health of the unborn or nursing child, where such work is available, and the right to return to their previous jobs at the appropriate time.

#### **Night Work Convention, 1991 (No. 171)**

Article 7. 1. Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

- (a) before and after childbirth, for a period of at least 16 weeks of which at least eight weeks shall be before the expected date of childbirth;
- (b) for additional periods in respect of which a medical certificate is produced stating that it is necessary for the health of the mother or child:

- (i) during pregnancy;
  - (ii) during a specified time beyond the period after childbirth fixed pursuant to subparagraph (a) above, the length of which shall be determined by the competent authority after consulting the most representative organizations of employers and workers.
2. The measures referred to in paragraph 1 of this Article may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.
3. During the periods referred to in paragraph 1 of this Article:
- (a) a woman worker shall not be dismissed or given notice of dismissal, except for justifiable reasons not connected with pregnancy or childbirth;
  - (b) the income of the woman worker shall be maintained at a level sufficient for the upkeep of herself and her child in accordance with a suitable standard of living. This income maintenance may be ensured by any of the measures listed in paragraph 2 of this Article, by other appropriate measures or by a combination of these measures;
  - (c) a woman worker shall not lose the benefits regarding status, seniority and access to promotion which may attach to her regular night work position.
4. The provisions of this Article shall not have the effect of reducing the protection and benefits connected with maternity leave.

**Safety and Health in Agriculture Convention, 2001 (No. 184)**

Article 18. Measures shall be taken to ensure that the special needs of women agricultural workers are taken into account in relation to pregnancy, breastfeeding and reproductive health.

**Safety and Health in Agriculture Recommendation, 2001 (No. 192)**

Para. 4 (3). (3) Health surveillance measures for young workers, pregnant and nursing women and aged workers should be taken, where appropriate.

Para. 11. In order to give effect to Article 18 of the Convention, measures should be taken to ensure assessment of any workplace risks related to the safety and health of pregnant or nursing women, and women's reproductive health.

Source: ILOLEX database

## Annex 2. Provisions on gender equality in employment and occupation in Chinese laws and regulations

**Constitution** - adopted for enforcement at the 5th Session of the Fifth National People's Congress on 4 December 1982

- 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.

**Labour Law** - adopted by the Standing Committee of the National People's Congress in July 1994, and came into force on 1 January 1995

- Article 12. Labourers shall not be discriminated against in employment on the ground of differences in ethnic community, race, sex, or religious belief.
- Article 13. Females shall enjoy equal rights as males in employment. It shall not be allowed, in the recruitment of staff and workers, to use sex as a pretext for excluding females from employment or to raise recruitment standards for the females, except for the types of work or posts that are not suitable for females as stipulated by the State.
- Article 29. The employing unit shall not revoke its labor contract with a female worker or staff member during her pregnant, puerperal, or breast-feeding periods.
- Article 46. The distribution of wages shall follow the principle of distribution according to work and equal pay for equal work.

**Employment Promotion Law** - adopted by the Standing Committee of the National People's Congress in August 2007, and came into force on 1 January 2008

For the first time, legal remedies against employment discrimination have been made available: the provision of a civil procedure for seeking a remedy is a significant legislative breakthrough in China, which has crucial positive implications for eliminating job discrimination, streamlining the order of human resource markets and safeguarding the rights of workers in equal employment.

- Article 3. 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, gender, religious belief, etc.
- Article 27. The state shall ensure that women enjoy labour rights equal to those of men. When an employer recruits employees, it shall not use sex as a pretext for excluding women from recruitment in employment or increase the thresholds of recruitment for women on gender ground, except for the types of work or posts that are not suitable for women as stipulated by the State. When an employer recruits female employees, it shall not stipulate in the employment contract any content which restricts female employees from getting married or bearing child."
- Article 62. Workers are entitled to start legal proceedings at people's courts against those

who are suspected of committing employment discrimination in violation of the provisions of this law.

**The Labour Contract Law** – promulgated in 2007

- Article 13. Women shall enjoy equal rights as 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.
- Article 42. The employing unit shall not terminate the labour contract .... If the labourer fulfils the following conditions ... (iv) The female employee is pregnant, or in prenatal or lactation period

**The Labour Dispute Mediation and Arbitration Law** - adopted by the Standing Committee of the National People's Congress on 29 December 2007, and came into force on 1 May 2008:

- Provides an important legal basis for timely and fair settlement of labour disputes in China today.
- The scope of labour dispute covers: disputes arising from confirmation of labour relations; those arising from establishment, execution, change and termination of employment contracts; disputes arising from expulsion, resignation, dismissal and leave; those arising from work time, rest and holidays, social security, welfare, training and labour protection; those arising from labour remuneration, medical costs of occupational injuries, economic compensation or amount of remedies; other disputes stipulated in the laws and regulations concerned.

**Vocational Education Law** - adopted by the Standing Committee of the National People's Congress on 15 May 1996, and came into force on 1 September 1996

- No specific provision on gender equality.

**Civil Servant Law** - adopted by the Standing Committee of the National People's Congress on 27 April 2005, and came into force on 1 January 2006

- No specific provision on gender equality.

**Law on the Protection of Rights and Interests of Women** - adopted by the Standing Committee of the National People's Congress in August 2005, and came into force on 1 December 2005:

- Article 2. Women shall enjoy equal rights with men in all aspects of political, economic, cultural, social and family life. Equality between women and men is a basic state policy of China. The state shall adopt necessary measures to gradually perfect the system of safeguarding the rights and interests of women and eliminate all forms of discrimination against women.

- Article 22. The state ensures that women shall enjoy equal rights of work and social security with men.
- Article 23. With the exception of the special types of work or post unsuitable to women, no unit may, in employing staff and workers, refuse to employ women by reason of sex or raise the employment thresholds for women.
- Article 24. Equal pay for equal work shall be applied to men and women alike. Women shall be equal with men in enjoyment of welfare benefits.
- Article 25. In such aspects as promotion in post or in rank, evaluation and determination of professional and technological titles, the principle of equality between men and women shall be upheld and discrimination against women shall not be allowed.
- Article 27. No unit may reduce the wages of woman staff and workers, dismiss them or unilaterally terminate their labour (employment) contracts or service agreements on the grounds of marriage, pregnancy, maternity leave or baby-nursing, except for those female employees who require the termination of the labour (employment) contracts or service agreements. When implementing the national scheme of retirement, no unit shall discriminate against women on a gender basis.
- Article 28. The state shall develop social insurance, social relief, social welfare, medical and health services, and shall ensure the right of women to enjoy all such services.
- Article 29. the state shall promote the system of maternity insurance, and establish or improve other maternity-related regimes. Local government at various levels and competent departments shall provide necessary maternity relief to impoverished women in accordance with relevant regulations.
- Article 40. Sexual harassment of women is prohibited. The female victims thereof are entitled to file their complaints to the employers or competent authorities.
- 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.

**Regulations on Labour Protection of Women Workers** - promulgated by Decree No. 8 of the State Council in July 1988, came into force on 1 September 1988, and currently under revision

- Article 3. Any Unit which is suitable for women to engage in labour shall not refuse to employ female staff and workers.
- 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 work types of 3rd level labor intensity regulated by the State and other types of work not suitable for pregnancy, or types of work beyond the normal working hours, or work they are not competent at, and their workload shall be reduced or they shall be assigned to other work according to the certification issued by the medical department. Women employees who are pregnant for above 7 month (including the 7 month), shall not be assigned to night shift and a certain time for break shall be granted during the work. Women employees in pregnancy shall be allowed to take the 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 the maternity. For those in difficult delivery, another 15 days shall be added. For those giving multiple birth, 15 days are added for every baby given. For women employees who suffer from a miscarriage, a certain time for maternity leave shall be granted by the employing unit according to the certificate issued by the medical department.
- Article 9. Women employees with a baby less than one year old [should be provided with] two nursing times of 30 minutes each (including artificial feeding) in one shift. For those who gave multiple birth, 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 works which are not allowed during nursing; postponing working hour is not allowed; and no night shift is allowed.
- Article 11. 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 its 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 labor 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 law.

## 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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