



International
Labour
Organization

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

Module 3

Promoting ethnic and religious equality at work



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



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Introduction

The principle of equality of opportunity and treatment in employment and occupation established in the **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** requires that nobody is treated differently, excluded from an opportunity or given preference on the basis of his/her ethnicity or religion, but that all workers are treated equally in accordance with their merit, capacity, skills and ability. The Chinese government has committed itself to promoting this goal by ratifying Convention No. 111 in 2006, and by incorporating the equality principle in labour legislation. This ratification is an important step towards eliminating any discrimination in the labour market on the basis of race, colour, national extraction or religion. The Chinese government acceded to the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** in 1981, and thus committed itself to eliminating discrimination based on race in the whole society, including the labour market.¹

This module introduces the concepts of ethnic and religious discrimination and equality. Apart from introducing international legal instruments on non-discrimination on the basis of race and religious belief and international experiences in promoting ethnic and religious equality, the module looks into equality challenges faced by ethnic and religious groups in China. The module provides knowledge and tools to promote ethnic and religious equality in the world of work. It applies participatory training methods and encourages people to take practical action to promote equality.

The module includes two units:

Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies

Unit 3.2 Ethnic and religious equality in China

Objective

The overall objectives of this module are to raise participants' conceptual understanding on ethnic and religious equality at work and familiarize them with the principles, strategies, and practical measures for taking action at government, company and workplace levels to eliminate discrimination and promote equality at work for all workers irrespective of their ethnicity or religion.

¹ Accession has the same legally binding effect as ratification but the agreement procedures are different.

Section A. Learning content



Section A. Learning content

Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies

China has 56 ethnic nationality groups and many religions are practiced in the country. Promotion of harmonious relations between ethnic and religious groups has been a priority for the Government since the founding of new China, and equal, united and interdependent relations are sought under the principle of “united together to strive for common prosperity and development.”

1. What is ethnic and religious equality at work?

Ethnic and religious equality at work means that **nobody is excluded from work opportunity, treated differently or given preference at work on the basis of their ethnicity or their belief or non-belief in a religion.** This means that all employment decisions are made with reference to merit, skills, experience and individual suitability of the person to the job in question – without interference of discriminatory bias, prejudices or assumptions based on the person’s ethnicity or religion.

The **principle of equality in employment and occupation with respect to ethnicity and religion** is established in Convention No. 111. The Convention aims to promote **equality of employment opportunity and treatment for all workers regardless of their race, colour, national extraction or religion**, or their sex, political opinion or social origin. With the ratification of the Convention No. 111 in 2006, the Chinese government undertook an obligation to incorporate the equality principle in national labour legislation and to take active measures to promote ethnic and religious equality in the Chinese labour market.



Key terms in the context of Convention No. 111

- **Race:** Under Convention No. 111 race is considered in a wide sense to refer to **ethnic groups** or **linguistic communities** whose identity is based on religious or cultural characteristics or national extraction. The protection against racial discrimination covers ethnic minorities, in particular indigenous and tribal peoples, and any other minorities disadvantaged on racial grounds, including immigrant ethnic groups.
- **Colour:** Skin colour is one of the many ethnic characteristics that differentiate human beings. Due to the importance of colour as the most visible ethnic characteristic, it has been explicitly mentioned under the Convention.
- **National extraction:** National extraction refers to distinctions made on the basis of a person’s foreign origin, ancestry or place of birth. The protection against discrimination on the basis of national extraction covers, for example, foreign immigrants who have obtained citizenship of their new country of residence.

- **Religion:** Convention No. 111 protects against discrimination based on belief in a religion and expression and manifestation of the religion. Also not having a belief in a particular faith is protected under the Convention.²

Race, colour, national extraction and religion are grounds of discrimination that are often closely related and may coincide. Ethnic and religious groups may also face discrimination on other grounds such as sex or social origin, which further disadvantages ethnic women workers or ethnic migrant workers in employment and occupation.



Key terms: Ethnic minorities and indigenous peoples

- **Ethnic minorities:** Ethnic minorities are groups of persons who have “the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” (**International Covenant of Civil, Political and Cultural Rights**, Article 27).
- **Indigenous peoples:** Indigenous peoples are “peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions” (**Indigenous and Tribal Peoples Convention, 1989 (No. 169)**, Article 1).
- **Self-identification** as indigenous or tribal is a fundamental criterion for determining the groups to which the provisions of Convention No. 169 apply. Indigenous peoples, as peoples, have the right to self-determination, not in the sense of a right to statehood and/or any sort of secession, but in the sense of a **right to the autonomy necessary for self-development** (**International Covenant of Civil, Political and Cultural Rights**). Their rights include, as a minimum, the right to land and other natural resources, including the right to water resources; and the right to autonomy and self-government including their own legal systems and their own customary law.

2. International standards on ethnic and religious equality

2.1 ILO standards on ethnic and religious equality at work

The **Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** is the internationally recognized fundamental instrument on equality at work. Convention No. 111 advocates elimination of all forms of discrimination in the world of work, including elimination of discrimination on the basis of **race, colour, national extraction or religion**, as well as sex, political opinion and social origin. The Convention gives a broad definition of discrimination – covering both discrimination in law and in practice as well as direct and indirect discrimination

² For definitions, see ILO: “Equality in employment and occupation, General survey” in *Report of the Committee of Experts on Application of Conventions and Recommendations*, Report III (Part 4B), International Labour Conference, 75th Session, Geneva, 1988; ILO: *International labour standards: A global approach* (Geneva, 2002).

and covers the right to a working environment free from harassment. Convention No. 111 promotes equal opportunity and treatment throughout the work cycle – from equal access to training and specific occupations to equal treatment at work and equal retirement age. The prohibition of gender based discrimination in Convention No. 111 also applies across ethnicities, nationalities and religious groups.

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

Racial, national and religious discrimination is also addressed in the **Abolition of Forced Labour Convention, 1957 (No. 105)**, which prohibits use of forced labour as a means of racial, national or religious discrimination.

From a historical perspective, the right to equality for all people was first included in the **Philadelphia Declaration** (1944) that supplements the ILO Constitution. The Philadelphia Declaration states that, "all human beings, irrespective of **race, creed** or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". This was followed by the adoption of international labour and human rights standards prohibiting racial and religious discrimination (see below).

The principle of equality of opportunity and treatment in employment and occupation was included among the fundamental rights set out in the 1998 **ILO Declaration on Fundamental Principles and Rights at Work**. The 2008 **ILO Declaration on Social Justice for a Fair Globalization** singles out non-discrimination and gender equality as "cross-cutting issues" in the realization of decent work for all, which are "essential for sustainable economic and social development and efficiency.

2.2 International human rights standards on ethnic and religious equality

Ethnic equality is covered in the international instruments protecting against racial discrimination. The main international human rights standard on ethnic and racial equality is the **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**, which was adopted in 1965 and entered into force in 1969. China acceded to the CERD in 1981, and undertook the obligation to condemn racial discrimination and to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.

The term racial discrimination in CERD contains the same components as the definition in Convention No. 111, and is defined as:

“any **distinction, exclusion, restriction or preference** based on **race, colour, descent, or national or ethnic origin** which has the purpose or effect of **nullifying or impairing** the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Pursuant to Article 5 of the CERD, State Parties undertake to prohibit and eliminate racial discrimination in all its forms. They should guarantee the right to everyone without distinction as to race, colour or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration. State Parties should also guarantee equality with respect to the right to form and join trade unions, the right to housing, the right to public health, medical care, social security and social services, the right to education and training and the right to equal participation in cultural activities.

Equality with respect to race and ethnicity are also enshrined in the **International Covenant on Economic, Social and Cultural Rights** (1966) and the **International Covenant on Civil and Political Rights** (1966), which state that the rights established in the Covenants apply to all individuals without distinction of any kind based on race, colour, religion or national origin.

One important milestone in the work of the United Nations to combat ethnic and racial discrimination was the **World Conference against Racism (WCAR)** organized in Durban, South Africa in 2001, and its review conference, **Durban II**, held in Geneva, Switzerland in 2009. The Durban Declaration and Programme of Action (2001) and the Outcome Document of the Durban Review Conference (2009) outlined the actions needed to combat racism, ethnic and racial discrimination, xenophobia and related intolerance at national and international levels.

The specific focus of the **2001 Durban Declaration and Programme of Action** is on the protection of persons of African descent, indigenous peoples, migrants, refugees, persons of Asian origin and Roma or gypsy people, with specific attention paid to women and girls. The programme of action urges the governments to ratify international legal instruments on non-discrimination, enact legislation, adopt policies, implement education and awareness raising activities, and share information in order to combat racism and to promote equality with respect to race. International and regional cooperation as well as civil society and private sector involvement are also encouraged.

The objectives of the **2009 Durban Review Conference (Durban II)** were to review progress and assess the effectiveness of Durban follow-up measures and mechanisms; promote the universal ratification and implementation of the CERD; and share good practices for combating racism, racial discrimination, xenophobia and related intolerance. With regards to **racial discrimination in employment** the Outcome Document of the Durban Review Conference (2009) calls on State Parties to:

- **Undertake preventive initiatives to tackle discrimination in employment** such as, among others, programmes for training and counseling of excluded persons belonging to a minority to help them in the labour market, programmes for employers to combat discrimination or to raise cultural awareness, some examples of mentoring and of positive action in recruitment, and some further experiments with contract compliance and anonymous job applications (para. 21).
- **Adopt legislation**, at the national and regional levels, **to address discrimination and victimization**, as defined in the Durban Declaration and Programme of Action, in employment and training, the provision of goods, facilities and services, in education, housing and public functions (para. 26).
- **Bolster measures to eliminate the barriers and to broaden access to opportunities** for greater and more meaningful participation by people of African and Asian descent, indigenous peoples and persons belonging to national or ethnic, religious and linguistic

minorities in the political, economic, social and cultural spheres of society, and to grant special attention to the situation of women, in particular their practical incorporation into the labour market and in income and employment generation programmes (para.70)

- **Direct special measures, including affirmative or positive measures**, and strategies or actions, as well as new investments in health care, public health, education, employment, electricity, drinking water and environmental control, to communities of African descent and indigenous peoples (para. 72).³

Box 3.1 International standards on combating ethnic and racial discrimination

The Durban Declaration and Programme of Action urged States to become parties of the following instruments as a matter of urgency:

- International Convention on the Elimination of All Forms of Racial Discrimination
- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights.

Other key instruments for combating racial discrimination, as identified in the Durban Declaration and Programme of Action, are:

- Convention on the Prevention and Punishment of the Crime of Genocide of 1948
- ILO Migration for Employment Convention (Revised), 1949 (No. 97)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949
- Convention relating to the Status of Refugees of 1951, and its 1967 Protocol
- ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization
- Convention on the Elimination of All Forms of Discrimination against Women of 1979, with a view to achieving universal ratification within five years, and its Optional Protocol of 1999
- Convention on the Rights of the Child of 1989 and its two Optional Protocols of 2000, and the International Labour Organization Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182)
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Convention on Biological Diversity of 1992
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990
- The Rome Statute of the International Criminal Court of 1998
- United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention of 2000 [...].

Source: United Nations World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: *Durban Declaration and Programme of Action* (2001), para's. 75, 77-78.

Box. 3.2 Ratification of international standards and treaties on ethnic and religious discrimination by China

- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – ratified in 2006
- Indigenous and Tribal Peoples Convention, 1989 (No.169) – not ratified

³ United Nations: *Durban Review Outcome Document* (Geneva, Switzerland, 2009), <http://www.un.org/durbanreview2009/> (accessed 17 Sep. 2010).

- International Convention on the Elimination of All Forms of Racial Discrimination, 1969 – acceded in 1981
- International Covenant on Civil and Political Rights, 1966: signed in 1998 – not ratified
- International Covenant on Economic, Social and Cultural Rights, 1966 – ratified in 2001.

Sources: ILOLEX and OHCHR: *Treaty Bodies database*.



See Unit 1.1 in Module 1 for more information on international policy instruments to promote equality and combat discrimination.

3. Ethnic and religious discrimination: Key concepts

The definition of discrimination enshrined in Article 1 of Convention No. 111 is broad, prohibiting both direct and indirect discrimination in employment and occupation in both law and practice. The Convention also covers other commonly recognized forms of racial or religious discrimination including harassment and other conduct that creates an intimidating or offensive environment at the workplace.

3.1 Discrimination in law and in practice

Discrimination can exist in law or regulations, or in reality and in practice. If a law or regulation excludes some ethnic or religious groups from opportunity or treats these groups differently, this constitutes discrimination in law or “**de jure**” discrimination. Any practices, for example, human resources management practices, that disadvantage certain ethnic or religious groups may constitute discrimination in practice or “**de facto**” discrimination. For example:

- Laws that exclude some ethnic or language groups from civil service or certain employment constitute “de jure” discrimination
- Provision of business guidance and credit information only in national language in minority areas may exclude ethnic entrepreneurs from an opportunity to expand their businesses, and constitutes “de facto” discrimination against these entrepreneurs.

Many countries have already made considerable progress in repealing and amending discriminatory laws and rules. However, identifying and repealing discriminatory practices is more challenging than repealing discrimination in law. Removal of discriminatory practices requires continuous attention to labour market practices, including monitoring discrimination in job advertisements and company human resources practices. In relation hereto, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized the importance of eliminating practical **difficulties and barriers** that members of ethnic groups face in accessing and retaining employment in various economic sectors and occupations.⁴



See Checklist 2 in Section D further in this Module for practical guidance on identifying discrimination in laws, policies and practices.

⁴ ILO: “Individual observation on Convention No. 111 with respect to New Zealand” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95th session, Geneva, 2006.

Box 3.3 Discrimination in law against a minority language group – Latvia

Latvia is a country with a large Russian-speaking minority (45 per cent). The ILO Committee of Experts on the Application of Conventions and Recommendation (CEACR) has repeatedly expressed its concern that the State Language Act adopted in 1999 may disadvantage the Russian speaking population in employment and occupation, and may constitute indirect discrimination on the basis of national extraction.

The CEACR has specifically asked the Latvian government to provide more information on how the State Language Act and the implementing regulations are interpreted and applied in the private sector. In order to assess the factual labour market outcomes for the Russian speaking population, the government was requested to provide detailed information on the impact of the Act on the Russian speaking minority's access to employment and occupation as well as the measures taken to assess these impacts. The CEACR has also requested the government to provide information on the efforts made to provide Latvian language training to these groups, as well as any administrative and judicial decisions and sanctions imposed for violations of the State Language Act.

The Committee on the Elimination of All Forms of Racial Discrimination (CERD) has also raised this issue with the government of Latvia in its concluding observations in 2003.

Sources: ILO: "Individual observations on Convention No. 111 with respect to Latvia" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III, International Labour Conference, 98th Session, 2009; 93rd Session, 2004; 90th Session, 2001; and 88th Session, 1999, Geneva; UN: *Concluding observations of the Committee on the Elimination of Racial Discrimination: Latvia, 2003*, CERD/C/63/CO/7.

Even more challenging than combating direct discrimination in law and in practice is to address the often invisible and hidden obstacles that ethnic and religious minority workers face in gaining equal access and treatment in employment and occupation. This is where it becomes useful to make a difference between direct and indirect discrimination.

3.2 Direct ethnic or religious discrimination

Direct ethnic or religious discrimination occurs when a person is excluded from an opportunity on ethnic or religious grounds, or treated less favourably than another worker belonging to a different ethnic or religious group. Direct discrimination stems from laws, rules or practices that make explicit difference on the grounds of race, ethnicity, national extraction or religion. For example:

- Job advertisements stating that applicants of a certain ethnicity or religion are not considered
- Hiring workers from both ethnic minority and majority groups to perform plantation work as casual labour, but paying minority workers less or refusing to pay them the same benefits and allowances as workers from the majority group.

3.3 Indirect ethnic or religious discrimination

Indirect ethnic or religious discrimination exists when rules and practices appear neutral but in practice lead to disadvantages primarily suffered by persons of one race, ethnicity, national extraction or religious belief. Indirect discrimination may involve certain requirements (e.g. prohibition of head coverings), conditions (e.g. performance monitoring) or practices (e.g. blaming for common incidents) that have a disproportionate negative impact on members of one ethnic or religious group. For example:

- A company uniform that does not permit any head coverings and requires all female employees to wear knee-length skirts. The dress requirement applies to all employees equally but disadvantages female Muslim employees who may choose to wear a headscarf or a long skirt.
- A national vocational training scheme that applies to all parts of the population, but does not take into account the cultural differences between ethnic minority and majority groups (e.g. different languages, different cultural and religious traditions). This may lead to a lower participation of ethnic minority students in vocational training, and result in fewer opportunities for minority peoples to access productive and gainful work.
- Laws, regulations or policies on rural development that do not acknowledge, or may even discourage, traditional livelihood activities that ethnic groups may wish to pursue.

Box 3.4 Discriminatory educational requirements – USA

An American company, Duke Power Co, had an established practice to require a high school diploma and certain scores on broad aptitude tests for internal transfer and promotion. Mr Griggs, an African American employee, complained about this practice claiming that it was indirectly discriminatory against African Americans.

In *Griggs v. Duke Power Co* (1971) the US Supreme Court assessed whether this practice constituted indirect discrimination against certain ethnic groups. The Court found that if the tests **disparately impact certain ethnic minority groups** and businesses are **not able to demonstrate that such tests are "reasonably related" to the job** for which the test is required, then the requirement can constitute **indirect discrimination on the basis of ethnicity**.

Sources: U.S. Supreme Court: *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

Indirect discrimination manifests in subtle ways. It is often embedded in cultural norms and traditions which may be seen as ‘natural’ and permeates institutions and organisational practices. However, the effects of indirect discrimination in terms of unequal labour market outcomes for specific groups usually emerge clearly from statistical analysis.

3.4 Harassment based on race, ethnic origin or religion

Harassment based on race, ethnic origin or religion consists of unwelcome comments or conduct related to race, ethnicity or religious belief that violate the other person’s dignity and/or create an intimidating, hostile, degrading or offensive work environment.⁵ The actions constituting ethnic harassment can be ethnically derogatory language, racist jokes, threatening behavior and gestures etc. In order to eradicate race based discriminatory practices and behaviour at the workplace, some countries have established legal liability for employers for discriminatory actions of their staff in the workplace. Employers have been made responsible for ensuring a non-discriminatory work environment and can be held liable for failing to take appropriate steps to avoid or stop ethnic harassment of a worker by his or her co-workers at the workplace. Canadian rulings, for example, have established that managers who know or ought to know of the discrimination and do not stop it are also engaging in discriminatory conduct and can be held liable.⁶

⁵ See for example Council of the European Union: *Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* and *Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation*.

⁶ “Ontario Board of Inquiry, *Ghosh v. Domglas Inc.* (No.2), 1992, 17 C.H.R.R. D/216, para. 76” in A. Bronstein: *International and comparative labour law: Current challenges* (Geneva, 2009).

Box 3.5 Relief from racial harassment at the workplace – USA***Lockheed Martin to pay US\$2.5 million to settle racial harassment lawsuit***

(Press release, 2 January 2008) The U.S. Equal Employment Opportunity Commission (EEOC) today announced a major settlement of a race discrimination and retaliation lawsuit against **Lockheed Martin, the world's largest military contractor**, for \$2,500,000 and other relief on behalf of an African American electrician who was subjected to a **racially hostile work environment** at several job sites nationwide – including threats of lynching and the “N-word.”

The monetary relief for former Lockheed employee Charles Daniels is the largest amount ever obtained by the EEOC for a single person in a race discrimination case, and one of the largest amounts recovered for an individual in any litigation settlement by the agency. Additionally, the Bethesda, Md.-based company agreed to terminate the harassers and make significant policy changes to address any future discrimination, the EEOC said at a press conference in Hawaii.

The EEOC's suit, filed in August 2005, alleged that Daniels was subjected to severe racial harassment while working on military aircrafts as part of a field service team in Jacksonville, Florida, Whidbey Island, Washington, and Oah'u, Hawaii. The EEOC charged that Daniels was the target of persistent verbal abuse by coworkers and a supervisor whose racial slurs and offensive language included calling him the “N-word” and saying “we should do to blacks what Hitler did to the Jews” and “if the South had won then this would be a better country.” Daniels was also subjected to multiple physical threats, such as lynching and other death threats after he reported the harassment. Despite its legal obligations, Lockheed failed to discipline the harassers and instead allowed the discrimination against Daniels to continue unabated – even though the company was aware of the unlawful conduct.

Commenting on the settlement, Daniels said: “As an armed forces veteran who swore to defend the rights and interest of Americans around the globe, I find it sad that the U.S. government had to sue its largest defense contractor Lockheed Martin -- whose slogan is ‘We never forget who we’re working for’ -- to protect my rights here at home!”

Daniels added, “I am pleased that we stood up for justice, because it should help all hard-working Americans of every race and gender to know that we have rights and protections guaranteed under the laws of this nation.”

EEOC Regional Attorney William Tamayo said, “This is a very good resolution because Lockheed Martin agreed to terminate and permanently bar Daniel’s harassers from employment. It sends a powerful message that racism cannot and must not be tolerated.”

Raymond Cheung, the EEOC attorney who led the government’s litigation effort, added, “To combat the harassment and threats faced by Mr. Daniels is at the heart of why the EEOC was created. Despite concerns of retaliation, this man had the courage to stand up and make public what happened to him, in an effort to ensure that it would not happen to anyone else. It has been a once-in-a-lifetime honor to work on this case.”

The litigation and consent decree were filed by the EEOC under Title VII of the Civil Rights Act in the U.S.

Source: U.S. Equal Employment Opportunity Commission: *U.S. Court for the District of Hawaii, U.S. Equal Employment Opportunity Commission vs. Lockheed Martin, CV-05-00479, 1 February 2008: Lockheed Martin to pay \$2.5 million to settle racial harassment lawsuit* (2008).



See Unit 1.2 in Module 1 for more information on the definitions and forms of discrimination and harassment in Convention No. 111.

3.5 Discrimination on multiple grounds

As mentioned above, race, colour, national extraction and religion form grounds of discrimination that often come together. Additionally, women and/or migrant workers from ethnic and religious groups may face discrimination on the grounds of sex and/or social origin. Persons who are subject to discrimination on multiple grounds have to cope with a cumulation of disadvantages at work and in life.

Discrimination in employment and occupation affects ethnic minority men and women differently. In the labour market, ethnic minority women are more discriminated against than both ethnic minority men and women belonging to the majority population. In addition, ethnic minority women are often, but not always, subject to discrimination within their own community, depending on the status traditionally assigned to women and men in the traditional culture.

Common discriminatory practices against ethnic minority women include less access to education for girls or preventing women from equal access to resources, such as inheriting land and participation in decision making processes. Ethnic minority women:

- Have less access to education and training at all levels
- Are more affected by un- and under-employment
- Are more often involved in non-remunerated work
- Receive less pay for equal work and work of equal value
- Have less access to material goods and formal recognition needed to develop their occupation or to obtain access to employment
- Have less access to administrative and leadership positions
- Experience worse conditions of work, for example, related to working hours and occupational safety and health
- Are particularly vulnerable to sexual abuse and harassment and at risk of human trafficking, especially if they migrate for work far away from their communities.⁷

4. Ethnicity or religion as an inherent requirement of the job

As explained in Module 1, equality does not mean that all workers need to be treated exactly the same in all situations. There are a few situations in which the ethnicity or religion of an applicant, a worker or an entrepreneur can be an **inherent requirement of the job**, and as such a justified reason to treat them differently from others.

In those exceptional situations where ethnicity or religion is an inherent requirement of the job, accepting only applicants from the specified religious or ethnic groups can be justified. These special cases are situations where **only** a person with these characteristics can perform the job in question. These kinds of special jobs may exist, for example, in food and beverages services and some spiritual or personal service such as health, welfare and education services:

- A Buddhist, Christian or Muslim school may require that teachers leading pupils in prayer need to be Buddhist, Christians or Muslims respectively.
- Employees working in a “Halal” kitchen must be Muslim and certified to do that job in accordance with Muslim religious practice.
- Cashiers in a supermarket may be required to handle pork or beef at check-out counters. If a Muslim or Hindu job applicant is not willing to do so, s/he can be legitimately

⁷ ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2007).

rejected because handling of pork or beef can be considered as an inherent requirement of the job in question.

The special characteristics needed for performing the job **need to be assessed on a case-by-case basis**. For example in a Muslim school it would not be acceptable to only hire Muslim persons for maintenance or office jobs. As these jobs **do not involve religious rituals or guidance** the religion can not be considered an inherent requirement of these jobs.

When certain **language abilities** are an inherent requirement of the job, the employer needs to clarify why having this language ability is a business necessity. The criteria in the vacancy notice need to be carefully formulated. For example:

- Requirements such as “Tibetan journalist wanted” would be **discriminatory**.
- A non-discriminatory way to write the same vacancy note would be: “Copy editor needed for a Tibetan language newspaper. Proficiency in Tibetan is a must.” A criterion like this does not exclude any applicants on the basis of their ethnicity, but merely states the objective job requirements on which the selection will be based.



See Section 6.1 in Unit 1.2 of Module 1 for more information on differential treatment based on the inherent requirements of a job.

5. Ethnic and religious discrimination at different stages of the employment cycle

Governments all over the world face challenges in guaranteeing all ethnic and religious groups equal opportunity and treatment in employment and occupation. Steady progress is being made in many countries to realize more inclusive labour markets, but many difficulties remain. Discrimination on the basis of ethnicity or religious belief may appear at different stages of the work cycle and in different occupations, for example in the following ways:

- Limited access to formal education and vocational training
- Job segregation and concentration in unprotected informal employment
- Lack of support to ethnic own-account workers and entrepreneurs
- Unequal pay for work of equal value and poor job security.

The types of problems faced by ethnic and religious groups vary depending on whether they are (1) **indigenous peoples** or belong to **other national ethnic, language, religious or cultural groups** or (2) **ethnic groups with a foreign origin, ancestry or place of birth**. The equality challenges faced by each of these groups in the labour market are explained below.

5.1 Challenges facing indigenous peoples and national ethnic groups in employment and occupation⁸

Due to the lack of specific statistical information on the employment of indigenous peoples and national ethnic groups in many countries, it is difficult to provide a global picture of the discrimination of national ethnic minorities in employment and occupation. However, based on available data some conclusions can be drawn on common challenges.

⁸ Ibid.

Education and training

National ethnic minorities and indigenous peoples often have limited access to formal education and vocational training. Sometimes training is available, but it is unsuitable or does not respond to the needs of national ethnic minorities. Due to the education gap between ethnic minorities and the majority population(s), minority workers are often not able to compete on an equal footing. Consequently, ethnic minorities experience higher levels of un- and under-employment all over the world.

Access to employment and occupations

Many national ethnic minority groups live in remote minority areas and earn a living from traditional occupations, such as animal herding, shifting cultivation, hunting and fishing. These traditional occupations are often unjustly disregarded as being outdated or unproductive, and are even in some cases prohibited by law. Their right to land and other natural and environmental resources is often not recognized, which undermines their right to engage in traditional occupations. The lack of recognition and support for traditional occupations, for example, in terms of credit, training, marketing or other support services, disadvantages ethnic minorities in their occupations. For these reasons, ethnic minorities often belong to the poorest sections of society.

Few opportunities often exist within ethnic minority areas to engage in a gainful job or otherwise earn a cash income and many men and women from ethnic minority groups migrate in search of work and economic opportunities. Migrating as unskilled and untrained labour, and not accustomed to life and work in the cities, people from ethnic groups are vulnerable not only to discrimination but also to becoming victims of child labour, forced labour, trafficking and other human rights violations.

When ethnic groups find employment or occupations in the national and international labour market, they are faced with a number of barriers and disadvantages. They are often included in the labour market in a precarious way that denies their fundamental labour rights. Very few minority workers obtain well-paid jobs in the formal economy. They are often employed as unskilled labour in informal employment with low wages and without any access to social protection or insurance mechanisms. In developing countries, ethnic minority workers are often found as domestic, agricultural or construction workers or as small-scale street vendors.

Conditions of work

Ethnic minority workers earn generally less than other workers in their country. The income of ethnic minorities is also often less than their peers with the same levels of schooling completed among the majority population. This gap increases with higher levels of education. Discrimination against workers from indigenous communities is also a well-known phenomenon in richer societies where many indigenous people are often un- or under-employed, or dependent on social welfare. Ethnic minority workers also, often have less job and social security than other workers. Discriminatory dismissals on the basis of workers' dress, appearance or special dietary habits are common.

Box 3.6 Promoting employment for ethnic Roma – Spain

Roma people are an ethnic group with origins in South Asia. They have lived in Europe for centuries, with the highest concentration in Eastern and Southern parts of the continent. One of the widely recognized good practices to promote employment for Roma people is ACCEDER programme in Spain. While providing services to the unemployed in general, the programme's special focus is on the Roma community among which unemployment is high. The programme began in Madrid in 1998 and has been subsequently expanded to 13 regions in Spain.

ACCEDER aims to increase opportunities for the Roma community to integrate into the labour market. For the period 2000-06, the target was to secure 2,500 labour contracts for unemployed persons, approximately 70 per cent of whom would be Roma. The programme was designed to meet individual needs of jobseekers: it provided guidance on selecting jobs compatible with the applicants' skills, facilitated research of and contact with enterprises, and offered training to improve employability. In 1999 there were 304 active jobseekers enrolled in ACCEDER, and 63 percent found employment.

Source: D. Ringold, M. Oreistein and E. Wilkens: "Roma in an expanding Europe: Breaking the poverty cycle" (2005); Fundación Secretariado Gitano (FSG): "The multiregional operational program fight against discrimination ACCEDER: Actions aimed at the Romani community in Spain" (2006) in ILO: *Equality at work: Tackling the challenges*, Geneva, 2007.

5.2 Challenges facing ethnic and religious minorities with foreign origin in employment and occupation

Dynamic multi-ethnic societies often have various ethnic and religious groups with foreign origin or ancestry or place of birth in their population. Minority groups make up 34 per cent of total US population⁹ and 8 per cent of the UK population.¹⁰

As pointed out in the 2001 **Durban Declaration and Programme of Action**, migrant workers and workers with foreign origin face challenges and racial discrimination in employment and occupation all over the world. Workers with African and Asian origin were specifically mentioned in the Durban Declaration and Programme of Action as groups that face discrimination in the countries where they live and work.

Box 3.7 Discrimination in access to traineeship – Denmark

In Denmark practical short-term traineeships in a private enterprise form part of the education at a technical school. A student interested in a traineeship noted at a school meeting that a specific employer did not want 'p' as trainees. The teacher confirmed that this private employer had instructed the school not to send a 'perker' (derogatory for 'Pakistani'/'Turkish') for training in that firm. The student who was of Pakistani background himself took the case to the Complaints Committee for Ethnic Equal Treatment claiming that the school was discriminating against ethnic minority students. He argued that the **practice of the school to comply with the wish of some employers in relation to the ethnicity of trainees** was not in conformity with the prohibition of direct unequal treatment in the Act on Ethnic Equal Treatment. The school denied that it had a general policy of complying with special wishes from employers, but admitted that unequal ethnic treatment could have occurred in some cases.

The Complaints Committee for Ethnic Equal Treatment found that the technical school had in some concrete cases complied with special wishes from employers not to refer ethnic minority students for training, and that this practice was discriminatory. The Committee could not however establish that the school had a **general policy** only to send students with Danish background for traineeships. The Committee noted that this outcome was mainly due to lack of evidence, because the Committee lacked the mandate to interrogate the involved persons. The Committee recommended the complainant to take the case to the court for further investigation. The case was tried in two subsequent court cases, Copenhagen City Court (BS 6D-1318/2005) and Eastern High Court (B-4028-05).

Source: Complaints Committee for Ethnic Equal Treatment, Denmark: *Decision of 1 September 2004, j.nr. 730.4*.

⁹ CBS News: *Census: Minority population growth slows in the US* (14 May 2009).

¹⁰ "Population statistics, UK" (2001), <http://www.statistics.gov.uk> (accessed Aug. 2009).

6. Protective and affirmative measures to promote ethnic and religious equality at work

Convention No. 111 requires each ratifying state to declare and pursue a **national policy** to promote **equality of opportunity and treatment at work** with a view to eliminating discrimination with respect to race, colour, national extraction and religion in employment and occupation. With the adoption of a policy, the member State commits to taking measures towards progressively achieving ethnic and religious equality in the labour market.

The national policy needs to take into account the whole range of issues that are hampering ethnic minorities' equal opportunity and treatment in the labour market. The policy may provide for specific **education and skills development programmes** designed to raise the educational level of the minorities as well as specific protection and **support to traditional occupations**. In order to promote employability and entrepreneurship among ethnic and religious minorities active labour market policies and employment promotion programmes should contain practical measures to eliminate practical **difficulties and barriers** that members of ethnic groups face in accessing and retaining employment in the various sectors and occupations.¹¹

Convention No. 111 recognizes two types of policy measures that are needed for realization of equality of outcomes in the labour market:

- protective measures
- affirmative action measures also known as positive measures, to overcome the effects of (past) discrimination (Article 5).

6.1 Protective measures

Convention No. 111 provides for special measures to enable certain specific groups to meet their particular needs for protection. With regard to ethnic and religious minorities, special protective measures include, for example, **policies to protect their traditional livelihoods, culture and lifestyle**. For example:

- Support to traditional ethnic livelihoods
- Training, marketing, subsidies and other support to ethnic entrepreneurs producing traditional ethnic or religious products
- Incentives for the protection of ethnic and religious, tangible and intangible heritage, including traditional architecture, religious expressions, art, music and literary or oral traditions.

In addition, for ethnic women, one of the most important of all special support measures is **maternity protection**, aimed at protecting the health and safety of the pregnant mother and the child. Like all other women, minority women have a right to special accommodation and protection during the pregnancy, and shall be entitled to a minimum 90 days of maternity leave with benefits in China.

6.2 Affirmative action

Due to the disadvantages related to lack of education and employment opportunities as well as discriminatory attitudes among the majority population, ethnic and religious groups may need temporary support measures. Use of these kinds of measures aimed at **overcoming existing or**

¹¹ ILO: "Individual observation on Convention No. 111 with respect to New Zealand" in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95th session, Geneva, 2006.

past discrimination and reaching substantive equality are encouraged under Convention No. 111. Special support measures to promote employment of ethnic and religious groups can take place at **national, local or company level**.

Examples of national or local policy measures to support ethnic and religious minorities are:

- Special educational grants for ethnic minority students
- Quotas for ethnic minority groups in companies or in recruitment into the civil service.

Practical positive measures at company level may include:

- Placing advertisements in the ethnic press to encourage applicants from a particular minority group to apply
- Providing bridging courses to enable potential applicants from disadvantaged ethnic or religious groups to compete at a more level playing field
- Training ethnic employees to qualify for types of work or positions in which they have traditionally been underrepresented, such as technical or management positions.

Temporary support measures need to be based on a valid reason and they need to be reviewed regularly to ensure that they are still needed and meet intended objectives. Once the consequences of past discrimination have been evened out and the labour market outcomes for different groups have become equal, these measures should be removed. Otherwise these measures may be viewed as discriminatory against other groups.¹²

The Committee of Experts on Application of Conventions and Recommendations (CEACR) has noted that the most important criteria for assessing the measures taken at national level is the **effectiveness** of these measures in promoting equality under the specific circumstances of each country.¹³

6.3 Reasonable accommodation

Practical measures to accommodate workers' religious needs at the workplace¹⁴

Apart from policy measures, practical workplace accommodation measures are important in promoting equality among different religious and ethnic groups. In an increasing number of countries employers are required to provide **reasonable accommodation** to workers with special religious requirements. In such cases, reasonable accommodation refers to a **practical modification or adjustment** to the work arrangements or environment that enables a qualified applicant or employee with special religious requirements to perform the essential job functions. Only if making an accommodation would impose “undue hardship,” that is, a significant expense or difficulty to the employer’s business, can the employer refuse the accommodation. Examples of reasonable accommodation measures in relation to religion are:

- Providing paid holidays for Jewish festivals (Canada)
- Re-organizing working shifts to allow a doctor belonging to a Seventh-day Adventist Church to have a day off on Saturdays for religious reasons (Peru).

¹² Adapted from ILO: *International labour standards on migrant workers' rights: Guide for policymakers and practitioners in Asia and the Pacific* (Bangkok, 2008).

¹³ See for instance, “Individual observation on Convention No. 111 with respect to Bulgaria” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 94th Session, 2005; ILO: “Fiftieth Anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Section B” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A) International Labour Conference, 98th Session (Geneva, 2009).

¹⁴ A. Bronstein: *International and comparative labour law: Current challenges* (Geneva, 2009).

Whether providing reasonable accommodation will cause undue hardship to an employer's business depends on the situation, for example, the size of the enterprise, the number of affected employees, the cost of the accommodation measure. These factors need to be examined and weighted on a case-by-case basis. Balancing the personal religious needs of the employee and the organizational or institutional needs of the employer may be a difficult task, and so it is not surprising that dispute settlement bodies around the world are frequently called upon to help strike a balance.

Some examples where courts have decided in the employers' favour include:

- An employer was not obliged to change the job assignment of a Muslim meat-cutter who had been dismissed on the grounds that he refused to cut pork. The Court held that refusal to cut pork could only have been legitimate if the possibility to refuse had been expressly provided for in the meat-cutters employment contract. (France)
- The decision of an education authority in UK not to allow a Muslim schoolteacher to attend mosque on Friday afternoons was not discrimination on the basis that the education authority had reached a fair balance between religious requirements and the need for an efficient school timetable (European Court of Human Rights).

In general, tribunals in Canada and the US have been more inclined to protect employees' personal religious needs, whereas the tribunals in Europe have more often protected the employers' organizational and institutional needs. The value judgments on balancing these two need to be done by competent courts in accordance with national legal practice and principles.

Box 3.8 Practical measures to accommodate religious requirements at work – Canada

Work uniforms and protective gear:

- Workplaces, services and facilities frequently have rules about dress. These may take the form of a requirement to wear a particular uniform or protective gear or a prohibition on wearing a head covering. These rules may come into direct conflict with religious dress requirements. Certain creeds, for instance, do not permit men to cut their hair, while an employer, for health and safety reasons, may require employees to have short hair. An example of a religious accommodation measure is to ask concerned workers to contain their hair with a net or other appropriate head covering.

Working hours and leave:

- Some religions require that their members observe periods of prayer at particular times during the day. This practice may conflict with an employer's regular work hours or daily routines in the workplace. One way of overcoming possible tensions is by a modified break policy, flexible hours and/or providing a private area for devotions. An employee may request time-off to observe a holy day because his/her religion may forbid him/her to work on those days. Flexible scheduling may be a solution, and may include alternative arrival and departure times on the days when the person cannot work for the entire period, or use of lunch times in exchange for early departure or staggered working hours. Where the person has already used up paid holidays to which he or she is entitled, the employer should also consider permitting the employee to make up time lost or use floating days off.

Source: Adapted from ILO: *Equality at work: Tackling the challenges* (Geneva, 2007); Ontario Human Rights Commission, *Policy on creed and the accommodation of religious observances* (1996).

7. Laws, policies and practical measures

When ratifying Convention No. 111 the government undertakes the obligation to declare and pursue a **national policy** to promote equality of opportunity and treatment at work with the aim of eliminating any discrimination in the labour market. Main **methods for application** of the

national policy are:

- Enacting and enforcing appropriate legislation
- Repealing discriminatory statutory provisions, administrative instructions or practices
- Ensuring non-discrimination in vocational training, public employment, poverty reduction and employment promotion, as well as employment services under the government's authority
- Promoting educational programmes
- Co-operation with employers' and workers' organizations and other appropriate bodies such as human rights commissions and organizations representing ethnic and religious minorities.

Convention No. 111 is promotional in nature. For this reason **active measures to promote equality and to realize an inclusive labour market** play a key role in implementing the Convention. **Participation of all stakeholders**, including different government departments, workers' and employers' organizations, religious associations, ethnic organizations and other civil society organizations in this process is important for reaching the goal of substantive equality for all religious and ethnic groups in employment and occupation.

Whereas cooperation among all stakeholders is needed, **the government should lead the efforts by example** as the main public sector employer. The Government should pursue the policy in employment under its direct control and ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority.



See also Section D, Checklist 2. Identifying discrimination in laws, policies and practices.

7.1 Legal action and enforcement

Legislation

Legislation is an important guarantee for securing the acceptance and observance of the national equality policy. Legal guarantees for ethnic and religious equality should be put in place and any statutory provisions or administrative instructions that are inconsistent with the concept of equality should be repealed or modified.

Depending on the national conditions and practice, legislation may also be needed to establish special protection measures and temporary support measures (e.g. quotas or subsidies). Also the framework for adopting active labour market measures to promote ethnic minorities' access to employment and special occupations, such as special vocational guidance or training services, may be set in the law. (See section 6 above.)

Clear provisions in law, accessible avenues for legal redress and clearly defined liabilities and sanctions make the principle of ethnic and religious equality at work enforceable, and enable victims of discrimination to seek legal recourse. Legal employer liability to prevent and redress discrimination should also be set in the law.

Administrative supervision

In most countries compliance with equality legislation is monitored in first instance by the **labour inspection** which may play a key role in furthering an understanding as well as enforcing ethnic and religious equality provisions in national law. Labour inspectors have a good understanding of different workplace situations in their respective areas and they keep regular

contacts with employers and workers. Due to this they are often better placed to address workplace issues like discrimination in an informal as well as a formal manner. Labour inspectors should normally have unrestricted day-and-night access to workplaces, as well as unrestricted daytime access to other premises where work is being carried out that is protected by labour law. Their ability to investigate cases without the need to wait for an individual victim to bring a case gives them an opportunity to solve discrimination cases, and if needed enforce the law. In practice the inspectors often help workplaces develop relevant policies. Traditionally these have related to health and safety and labour relations, but increasingly they now include equality issues such as HIV/AIDS. 📖 See Checklists 3 and 4 in Module 1 with tips for labour inspectors on carrying out equality inspections in workplaces.

Specialized agency support

Many countries have established enforcement agencies with powers to examine complaints of discrimination and monitor implementation of anti-discrimination measures. Established usually within the framework of a national machinery set up to improve human rights and/or the status of women, many of these agencies also address issues related to ethnic and religious equality. The agencies can facilitate the filing and resolution of individual complaints and, in many jurisdictions, initiate action on their own to support individual victims.

Box 3.9 Promoting racial equality – Hong Kong, China

The Equal Opportunities Commission (EOC) of Hong Kong, China works to prevent and address discrimination on many grounds, including race and ethnicity. The EOC compiled a manual for complying with the Race Discrimination Ordinance (RDO). The RDO is an anti-discrimination law enacted in July 2008 to protect people against discrimination, harassment and vilification on the ground of their race. Under the RDO, it is unlawful to discriminate, harass or vilify a person on the ground of his/her race. The RDO has entered into force on 10 July 2009.

A systematic approach is the best way to develop and maintain good employment practice. Employers are encouraged to draw up an **equal opportunities policy which includes explicit reference to racial equality**. This represents the employer's commitment to racial equality and forms the framework for action in promoting racial equality and putting it into practice.

The policy should explain that, in terms of racial equality, its objective is to ensure that:

- No job applicant or employee will be treated less favourably than another on the ground of race
- No job applicant or employee of any racial group will suffer a detriment from requirements or conditions which have a disparately adverse impact on people belonging to her or his racial group than people not belonging to her or his racial group, unless such requirements or conditions can be justified as serving a legitimate objective and bearing a rational and proportionate connection to that objective
- Opportunities in the organization for employment, training and career development are equally open to all qualified people regardless of race
- The racial identity of every job applicant and employee is to be respected and no one is subjected to ethnic harassment in any way
- All job applicants and employees understand that the employer is determined to eliminate racial discrimination and harassment; and they know that racial discrimination and harassment is unlawful and they have a proper understanding of the relevant issues
- The grievance system is properly administered regardless of race for job applicants and employees to raise any concern or complaints internally; and that such matters will be dealt with properly with appropriate remedial action; and no reprisal will be directed against anyone raising concerns or complaints; and that all job applicants and employees are aware that they can make use of the grievance system and how to do so.

To be effective, the policy must be implemented through the adoption of good employment procedures and practices, which will achieve the above objectives.

Source: Equal Opportunities Commission, Hong Kong, China, <http://www.eoc.org.hk> (accessed 16 Sep. 2010).

Legal recourse

Access to effective legal remedies is an important last resort in ethnic and religious discrimination cases, if the case cannot be resolved otherwise. The courts play an important role in restoring justice through hearing and deciding individual cases. The civil sanctions that courts can order in discrimination cases range from reinstating the unlawfully dismissed employee to his/her job to paying compensation and damages to the persons whose rights have been violated. In addition, court remedies can play an active role in ordering the employer company to change its human resource management practices. For example in Canada, judicial practice on racial discrimination has established a wide range of systematic remedies that can be ordered on employers in cases of ethnic harassment (see Box 3.18).

In addition to restoring justice in individual cases, legal recourse through individual action has proven to be a significant avenue for accomplishing changes in legal provision and their interpretations. The use of judicial 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.

Legal recourse through court proceedings has however some major shortcomings, which reduce the accessibility of this route to many victims of discrimination. These problems relate to the inflexibility of procedures, the difficulty in assembling evidence and the burden of proof. The use of legal recourse could be made more accessible to all workers through simplification of procedures, lower costs and increased legal aid.

Box 3.10 Court condemns discrimination against a Roma worker – Bulgaria

Example of a court ruling on direct ethnic discrimination in recruitment in practice

On 16 November 2005 a Roma man won a judgment by the Sofia District Court in Bulgaria, based on Bulgaria's Act on protection against discrimination. In 2003 the claimant had sought to apply for a job as a food production worker with a company. He had been told by telephone that the only requirement was that the applicant be a man aged under 30, but that no Roma need apply.

In 2004 when the advertisement reappeared, he applied for the job, and when invited for an interview he did not mention that he was a Roma. At the interview management discouraged him from applying, stating that he should not expect to be hired. Several weeks later he was told he had not been hired. The company failed to establish that the refusal was based on lack of proper qualifications. The court found that there was enough circumstantial evidence of a causal link between Mr. Assenov's ethnicity and the company's refusal to hire him.

Source: European Roma Rights Centre: "Bulgarian court fines employer for denying access to employment to Roma" (16 November 2005) in ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

7.2 Practical measures

Education and training

Discrimination of ethnic or religious groups is often linked with the lower education level of these groups. If an education or skills gap exists, **special support measures** improving employability of ethnic and religious groups can play a decisive role in ensuring equal access and

treatment in the labour market for these groups. Special support measures to ensure ethnic or religious groups access to training and education – from basic education to vocational schools or higher education – plays an important role in realizing equal opportunity and treatment in the labour market.

Equality promotion in public employment, poverty alleviation and employment services

Government can set an example as a “good practice employer” in the public sector by setting targets for the recruitment and promotion of ethnic and religious minorities not only in the regions where they come from but throughout a country. Given the high incidence of poverty among ethnic minorities in many countries, there may be a need to set specific targets for minority groups in overall poverty reduction, employment promotion and social protection programmes and/or develop special target programmes in these areas for them. Employment service centers also require guidance and regulations to provide vocational training and job matching services to minority groups without bias.

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

Training ethnic and religious minorities about their right to equal opportunity and treatment in employment and occupation without distinctions based on ethnicity or religious belief can enable them to exercise their rights (where to go, what to do) and can reduce their vulnerability. Training on rights needs to be combined with financial education among illiterate and semi-illiterate ethnic minority women and men for their economic empowerment. Education and awareness raising programmes can be implemented by government labour bureaus, ethnic affairs offices, trade unions, ethnic and religious minority groups and organizations or other civil society organizations.

Extensive awareness raising and capacity building on respect for all cultures and diversity, as well as ethnic and religious equality in employment and occupation is needed among policymakers, employment, labour and social protection officials, employers and workers and their organizations as well as the general public.

7.3 Cooperation with employers’ and workers’ organizations

Many issues related to ethnic or religious discrimination can be best addressed through negotiation and practical measures at the enterprise level. For this reason action by workers’ and employers’ representatives at enterprise level and within their organizations and federations is essential to realize non-discriminatory workplaces. In order to be able to take this responsibility, the employers’ and workers’ representatives at the grassroots level need support from their representative organizations at local and national level.

Employers’ organizations can provide information and advice to their member companies on practical ways to promote ethnic and religious equality at the workplace and to accommodate workers with special requirements. Employers’ organizations can also train their member companies to build capacity of managers to ensure that ethnic equality is respected and non-discriminatory regulations and rules are applied in company human resources management and other operations.

Box 3.11 Business Unity South Africa (BUSA) and black economic empowerment (BEE)

As part of its contribution to the achievement of black economic empowerment (BEE) goals, Business Unity South Africa (BUSA) has developed a step-by-step guide for its members on how to formulate

sector transformation charters (voluntary agreements to ensure the implementation of BEE objectives in a given sector). It spells out the process underpinning such charters:

- the criteria to be included in the scorecard to determine the status of enterprises with regard to BEE
- the steps required to identify the substantive transformation matters to be addressed
- guidelines on how to monitor and evaluate the effective implementation of the charters.

Source: Business Unity South Africa (BUSA): *A guide on BEE sector transformation charter facilitation and formulation* (2006) in ILO: *Equality at work: Tackling the challenges* (Geneva, 2007).

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

Trade unions and employers' organizations might include ethnic and religious equality in their **collective bargaining** agendas at different levels. Special clauses on ethnic equality and reasonable accommodation are an effective way in promoting and securing equality in workplaces. Additionally, **national tripartite mechanisms** should be mobilized to promote ethnic and religious equality at work.

Box 3.12 Action by social partners to fight racial discrimination – the Netherlands

At the initiative of the social partners, **codes of conduct against racial discrimination, sexual harassment and all forms of discrimination** have been integrated into general labour agreements in the Netherlands. They are non-voluntary agreements: organizations have to develop such a code, but they are free to adjust it to their own needs. Codes have been adopted in the corporate and non-profit world. In 2001, the Government of the Netherlands also issued a model code of conduct to be developed by all departments in the public sector.

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

8. 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.

Box 3.13 Good practice – Trade union action on ethnic and religious equality at work

The International Trade Union Confederation (ITUC) released a plan of action to end racial discrimination and xenophobia. The guidelines for the plan of action concern not only the fight against racism but also the promotion and defense of the rights of migrant workers and above all the respect of equality and diversity.

Basic Principles:

- Respect for human dignity, human rights, equality and diversity form the very essence of our trade union action
- Equal treatment and rights for all workers, women and men, with no distinction as to their skin, or ethnic, cultural or religious identity, shall guide our daily struggle for greater social justice and economic democracy
- Solidarity among all workers in the broadest sense, including at international level.

The objective of this programme is the elimination of racism and xenophobia and the promotion of respect for diversity, particularly in the labour market, at the workplace, and within trade unions at the national, regional and international levels. This objective can only be achieved if we mobilize on a huge scale and raise the awareness of workers, trade union leaders, the authorities and society at large.

Operational objectives:

- To raise awareness and mobilize the trade union movement worldwide through campaigns and training
- To increase the involvement of workers from ethnic minorities or majorities discriminated in trade union activities
- To ensure better representation of the interests of workers from ethnic minorities or majorities discriminated
- To include this issue in social dialogue
- To conduct broad action through a worldwide network.

Source: <http://www.ituc.org> (accessed Aug. 2009).

Box 3.14 Good company practice on ethnic diversity – Belgium

The **Colruyt Group** in Belgium has developed a “**diversity in practice**” approach as an integral part of its personnel policy, including an important non-discrimination policy based on “zero tolerance” of racism and discrimination. No distinction is allowed based on religion, sex, colour or age in recruitment and selection. Vocational training and languages courses are organized for human resources staff and in cooperation with Turkish and Moroccan federations.

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

Box 3.15 Good practice – Promoting ethnic and religious equality through active employment policy – Bulgaria

Employability and entrepreneurship training for Roma workers in Bulgaria

With European Union support, in the context of the Decade of Roma Inclusion 2005-15, the Bulgarian Ministry of Labour and Social Policy is currently implementing a project to foster the employment of Roma workers, which includes the provision of training courses in professions that mainly require specific production skills and a low level of literacy. It is expected that 1,000 people from minorities will be provided with business training and consultancies for business start-up and that 2,000 long-term unemployed from minority groups will benefit from vocational training in marketable craft and agricultural skills to help them find jobs or become self-employed.

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

Box 3.16 Good practice – Code of practice on selection and assessment – UK

- 1.23 It is recommended that ability tests and personality questionnaires should only be used as one of several assessment methods.
- 1.24 Well-designed, properly administered and professionally validated ability tests can be a useful method of predicting candidates’ performance in a particular job. However, this depends critically on the design of the test; its validation as a reliable predictor of performance, irrespective of racial group; and its fair administration by professionals trained in assessment and in the organization’s equal opportunities policy.
- 1.25 If tests and assessment centres are used as part of the selection process, it is recommended that employers take account of the following guidelines:
 - (a) Tests should correspond to the job in question, and measure as closely as possible the appropriate levels of the skills and abilities included in the person specification.

- (b) Special care should be taken to make sure candidates whose first language is not English (or Welsh in Wales) understand the instructions. Tests that are fair for speakers of English (or Welsh) as a first language may present problems for people who are less proficient in the language. The Welsh Language Act 1993 puts Welsh and English on an equal basis in the delivery of public services in Wales and bilingual tests may need to be used for recruitment to some public sector jobs, where the ability to speak Welsh is deemed to be essential or desirable. All the candidates, without exception, should take the same test.
- (c) Test papers, assessment notes and records of decisions should be kept on file for at least 12 months.
- 1.26 As part of their equal opportunities review of the recruitment process, employers should use the information they have received about applicants' racial groups to see whether the tests and assessment methods used might have contributed to any significant disparities between the success rates for different racial groups. If so, they should investigate further and take steps to remove any barriers.

Source: UK Commission for Racial Equality: *Statutory code of practice on racial equality in employment* (London, 2005).

Box 3.17 Good practice – Consultation of indigenous people – Norway

Consultation and participation of Sami people in Norway: Procedures for consultation

In May 2005, the Government of Norway and the Sami Parliament agreed on procedures for consultation, which were subsequently approved in Cabinet. The consultation procedures are regarded as normative guidelines. Norway ratified ILO Convention No. 169 in 1990.

The agreement recognizes that the Sami, as an indigenous people, have the right to be consulted in matters that may affect them directly. The agreement's objectives are:

1. To contribute to the implementation in practice of the State's obligations to consult indigenous peoples under international law
2. To achieve agreement between State authorities and the Sami Parliament whenever consideration is being given to legislative or administrative measures that may directly affect Sami interests
3. To facilitate the development of a partnership perspective between the State authorities and the Sami Parliament that contributes to the strengthening of Sami culture and society
4. To develop a common understanding of the situation and developmental needs of the Sami society.

The agreement establishes that the procedures apply to the Government and its ministries, directorates and other subordinate State agencies or activities in matters that may affect Sami interests directly, including legislation, regulations, specific or individual administrative decisions, guidelines, measures and decisions. The obligation to consult the Sami Parliament includes all material and immaterial forms of Sami culture, including music, theatre, literature, art, media, language, religion, cultural heritage, immaterial property rights and traditional knowledge, place names, health and social welfare, day care facilities for children, education, research, land ownership rights and rights to use lands, matters concerning land administration and competing land utilization, business development, reindeer husbandry, fisheries, agriculture, mineral exploration and extraction activities, wind power, hydroelectric power, sustainable development, preservation of cultural heritage, biodiversity and nature conservation.

Matters which are of a general nature, and are assumed to affect the society as a whole are in principle not covered by the agreement, and such matters shall not be subject to consultations. Geographically the Procedures for Consultations are applicable to traditional Sami areas.

In its commentary on individual provisions contained in the agreement, the Government informs its entities that:

“consultations shall take place in good faith, with the objective of achieving agreement to the proposed measures. This means the process of consultations with the Sami parliament is something more than an ordinary public process through which appropriate bodies are invited

to consider various proposals (process of hearing), as the parties must sincerely and genuinely seek to reach an agreement to the proposed measures. This also means that State authorities are under an obligation to initiate consultations with Sami Parliament and make all necessary efforts to achieve an agreement even though the State authority concerned may believe that the likelihood of achieving an agreement is limited. However, the agreed procedures for consultations do not dictate that an agreement or consent to the proposed measures must always be reached. The required extent of the consultations may vary in specific situations. The most important requirement is that necessary consultation processes and procedures are established in order to enable the Sami Parliament to exert real influence on the process and the final result. A simple information meeting will thus normally not fulfill State authorities obligation to consult indigenous peoples under ILO Convention No. 169.”

The explanatory commentary provides further explanation about the contents of the consultation obligation:

“Fulfillment of the consultation obligation requires that both parties are informed about the counterpart’s position and assessments. The State party shall ensure that its interests and views are communicated to and understood by the Sami Parliament, and that the State party has understood the position of the Sami Parliament. The Sami Parliament has a corresponding responsibility to communicate its points of view on the matter concerned. If the parties do not reach an agreement, they are expected to consider compromises and possible changes in the original proposal with the aim to narrow the gap between their positions. When necessary, provisions shall be made for further consultations.”

Source: ILO: *Indigenous and tribal peoples’ rights in practice: A guide to ILO Convention No.169*, Geneva, 2009; J. Henriksen: *Key principles in implementing ILO Convention No. 169* (Geneva, ILO, 2008); *Prosedyrer for konsultasjoner mellom statlige myndigheter og Sametinget* (2005).

Box 3.18 Good practice – Practical remedies for ethnic harassment at the workplace – Canada

Canadian tribunals have ordered a wide range of systemic remedies in racial discrimination cases including:

- developing and implementing a comprehensive **workplace harassment and discrimination policy**, which includes a definition of harassing behaviour and an internal complaints process
- reviewing internal **workplace standards or restrictions** that adversely impact certain groups and bringing them into human rights compliance
- implementing ‘**special programmes**’ or plans to remedy past discrimination as well to prevent future discrimination
- changing **hiring and/or recruitment practices** in order to achieve proportional representation in the organization
- creating a **workplace race relations committee** (which may include external members) to set objectives and measures to improve workplace race relations
- establishing an **internal review committee** to monitor the implementation of human rights orders or plans, including periodic reports to senior management
- **appointing a person responsible** with full powers to ensure implementation orders are carried out
- requiring managers to attend a **training programme** to identify and address instances of harassment and inappropriate behaviour
- training management to **mentor** cross-culturally diverse workforce
- requiring management to circulate to all employees **information** on available resources, complaints procedures and remedies for those with harassment concerns
- implementing **annual performance assessments** of managers which include evaluation of their compliance with human rights measures
- requiring attendance of all employees at **human rights education programmes**

- requiring the employer to state in all staffing notices and job postings and advertisements that the enterprise is an **'Equal Opportunity Employer'**
- implementing **individual career plans and training programs** for visible minorities.

Source: A. Bronstein: *International and comparative labour law: Current challenges* (Geneva, 2009).

Unit 3.2 Ethnic and religious equality in China

China acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1981 and made an international commitment to eliminate ethnic and racial discrimination in all its forms in society and promote understanding among all ethnic groups. The commitment to promote equality of all ethnic and religious groups in the world of work was reaffirmed in 2006 through ratification of ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). China has put in place a comprehensive legal and policy framework and has taken practical efforts to promote equal opportunity and treatment for all religious groups and the 56 nationalities in the country. Efforts have also been made to ensure that ethnic autonomous areas where a majority of ethnic and religious minorities live get a fair share of China's socio-economic development.

While substantive achievements have been made in areas such as raising the educational level of ethnic minorities, research shows that ethnic and religious minorities still face considerable challenges at many stages of the work cycle. To realize substantive equality of opportunity and treatment to all ethnic and religious groups in China further work is needed to build an inclusive multi-ethnic labour market in China. Further positive action by government, trade unions, employer organizations and other stakeholders needs to be taken to ensure that all workers can compete on a level playing field in the Chinese labour market regardless of ethnicity or religion.

1. Ethnic minorities in China¹⁵

1.1 Who are China's minorities and where do they live?

China has 56 ethnic groups. The Han ethnic group has the largest population, while the populations of the other 55 ethnic groups are relatively small. These 55 ethnic groups are together referred to as China's ethnic minorities. During the past 60 years, the total population of the ethnic minorities has been on the increase, comprising a rising proportion in China's total population. In 2005 the population growth rate was 9.44 per cent, which is about seven times higher than among the Han Chinese population.¹⁶ This is mainly due to exempting ethnic minorities from the one-child policy. In 2000 the total population of ethnic minorities was 106.43 million, i.e. 8.41 per cent of the total population.

China's ethnic groups are very diverse, and they live in very different types of communities. Some of the ethnic groups inhabit vast areas, while others live in compact communities in small areas. Many minority peoples live in areas inhabited mainly by Han people, while in some areas ethnic populations may constitute the majority in their communities. Many minority peoples have part of their population living in their areas of origin, but many ethnic minority peoples have migrated to elsewhere across the country. As China's economy and society continue to develop, more and more minority people live outside their traditional communities. So far, the migrant minority population across the country has topped 30 million.

Ethnic minorities are concentrated in the North-west and South-west regions. Nine provinces, three autonomous regions and one municipality directly under the Central Government in Western China, are home to 70 per cent of China's minority population; and nine border provinces and autonomous regions are home to 60 per cent of China's minority population.

¹⁵ This section is adapted from State Council: *China's ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

¹⁶ National Bureau of Statistics: *National 1% sample survey 2005* (Beijing, 2008).

Around 71 per cent of China's ethnic minority populations live in ethnic autonomous areas established across the country. China has in total 155 ethnic autonomous areas, including five autonomous regions, 30 autonomous prefectures and 120 autonomous counties (banners). In these areas 44 different ethnic minorities exercise regional autonomy under the leadership of the Central Government. As a supplement to the system of regional ethnic autonomy China has also established 1,100 ethnic townships.

The first provincial-level ethnic autonomous region, Inner Mongolia Autonomous Region, was established in 1947, followed by the establishment of Xinjiang Uyghur Autonomous Region in 1955. Guangxi Zhuang Autonomous Region and Ningxia Hui Autonomous Region were established in 1958. Tibet Autonomous Region was established in September 1965.

Box 3.19 Definition of ethnic equality – China

“In China, the definition of full equality among ethnic groups includes three aspects:

- Regardless of their population size, length of history, area of residence, level of economic and social development, differences in spoken and written languages, religious beliefs, folkways and customs, **every ethnic group has equal political status**
- All ethnic groups in China have not only political and legal equality, but also **economic, cultural and social equality**
- Citizens of all ethnic groups are **equal before the law, enjoying the same rights and performing the same duties.**”

Source: State Council: *China's ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

1.2 Ethnic minorities and poverty

The Western provinces account for about half of China's poor which is well above their 29 percentage share in the country's population. However, these provinces are even poorer when measuring the depth and severity of poverty. Their share in the aggregate depth and severity of poverty amount to about 60 and 66 per cent respectively. In other words, if one assesses poverty by a measure that is sensitive to how poor the poor are, then about two-thirds of China's poverty is to be found in the North- and South-western provinces.

About 19 per cent of China's population - or about 26 per cent of the rural population - lives in mountainous areas, and about 8 per cent of the population comprises of non-Han minority ethnic groups. The minority population itself is concentrated in the mountainous areas; as compared with about a fifth of the overall population, nearly two-thirds of them live in such locations. It is widely believed that the ethnic minorities and others living in these locations are relatively disadvantaged.

With respect to the rural population, the estimates indicate that minority communities are significantly poorer than Han majority communities; for the dollar-a-day line their consumption poverty rate is more than twice as high and their income poverty rate is three times as high as that of Han communities. Similarly, consumption and income poverty incidence in mountainous areas is also about twice and three times as high, respectively, as that in non-mountainous areas. In addition, within the minority category, those in mountainous locations have still higher poverty rates, and conversely, amongst those in mountainous locations the minority groups are poorer still. Those with the double disadvantage of minority status and mountainous location thus have the highest poverty rate amounting to 40 per cent and 28 per cent in the case of consumption and income poverty respectively.


Thus, in summary, the incidence and severity of poverty are highest in mountainous and minority areas in the Western provinces, but it is not confined to them. More than half of the poor are in non-mountainous and non-minority areas, that is in the central and coastal provinces. While the Western provinces and areas deserve greater attention in poverty alleviation efforts, an exclusive focus on them would be tantamount to addressing only about half the problem.¹⁷

2. Chinese legal framework on ethnic and religious equality

Equality of all ethnic and religious groups is guaranteed in the Chinese Constitution. No discrimination is allowed in any field of society, including the labour market. The Constitution states:

- **Ethnic equality:** “All nationalities in the People's Republic of China are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality is prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited. [...]” (Article 4)
- **Freedom of religious belief:** “Citizens of the People’s Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens **who** believe in, or do not believe in, any religion. [...]” (Article 36).

The relevant labour laws put the principle of equality and non-discrimination in the Constitution in practice with a special view to equal opportunity and treatment in employment and occupation. Prohibition of discrimination at work on the basis of ethnicity, race and religious belief is prohibited in the **Labour Law** of (1995, Article 12) and the **Employment Promotion Law** (2008, Articles 3 and 28). The Labour Contract Law covers all workers including ethnic minorities.

The Employment Promotion Law provides that “**workers seeking employment shall not be subject to discrimination based on factors such as ethnicity, race [...] or religious belief** [...]” (Article 3). With regards to ethnic equality, the Employment Promotion Law further states, “**workers of all ethnic groups enjoy equal labour rights. When an employer recruits employees, it shall give appropriate consideration to workers of ethnic minorities.**” (Article 28) The principle of religious freedom is clarified in the Regulations on Religious Affairs promulgated by the State Council (2005).  See Good practice 3 in Section E in Module 1.

Special provisions **promoting access of ethnic and religious minorities in employment and civil service in ethnic autonomous regions** have been included in specific laws and regulations. The Civil Servant Law (Article 21), the Law on Regional National Autonomy adopted in 1984 (Article 18) and the State Council Regulations on the Implementation of the Law on Regional National Autonomy promulgated in 2005 stipulate that when employing civil servants, the ethnic autonomous areas should give appropriate preferential treatment to the minorities exercising regional autonomy (Article 28). Specific preferential measures and incentives should be adopted at the local level, and training should be provided to ethnic minority women and men to prepare them for different level civil service and professional

¹⁷ World Bank: *From poor areas to poor people: China's evolving poverty reduction agenda - An assessment of poverty and inequality in China*, March 2009, http://siteresources.worldbank.org/CHINAEXTN/Resources/318949-1239096143906/China_PA_Report_March_2009_eng.pdf (accessed 23 Sep. 2010).

positions in various sectors. The Law on Regional National Autonomy also stipulates that priority should be given to minority nationalities when recruiting personnel in enterprises and institutions in ethnic autonomous areas (Article 23).¹⁸

With the development of the economy and society, China's ethnic minority populations have become more mobile and an increasing number of minority women and men live in urban settings or in scattered settlements. The **Regulations on Ethnic Work in Urban Areas** (1993) and the **Regulations on Administrative Work in Ethnic Townships** (1993) were adopted to guarantee protection of legitimate rights and interests of minority peoples outside the ethnic autonomous areas. The regulations seek to strengthen services and management in urban areas and townships to help minority communities develop production, improve their lives and meet their cultural needs in urban areas and townships. The Regulations on Ethnic Work in Urban Areas also state that "urban people's government shall encourage enterprises to recruit minority workers" (Article 8).

The **Education Law of the People's Republic of China** states that all citizens shall enjoy equal opportunity of education regardless of their nationality, race, religious belief, etc. The State supports minority nationality regions in development of education undertakings aligned with the characteristics and requirements of different minority cultures. Special attention is given to the development of compulsory education in remote border areas, poverty-stricken areas and minority nationality regions (Articles 6, 9, 10 and 12).

The Chinese government has taken active steps to further strengthen the legal framework on ethnic minorities' rights in the country. China's first **National Human Rights Action Plan** (2009-2010) states that implementation regulations to guide the implementation of the Law on Regional Ethnic Autonomy will be issued by the end of 2010. The Regulations on Ethnic Work in Urban Areas and Regulations on Administrative Work in Ethnic Townships will also be revised.

Box 3.20 Why is ethnic equality important for China?

"Maintaining the unity of all ethnic groups is particularly significant for China as a multi-ethnic country:

- The **unity** of all ethnic groups is an important **guarantee for the unification of the country**. The realization of the unity of all ethnic groups is a prerequisite for safeguarding the unification of the country, and **preventing tension** and conflicts among ethnic groups, which could split the country and bring disorder to it.
- The **unity** of all ethnic groups is an important prerequisite for **social stability**. Only such unity can stabilize and harmonize society, bring ease to people's lives and work, and guarantee the country's long-lasting peace and safety.

¹⁸ The Law of the People's Republic of China on Regional National Autonomy was adopted at the Sixth National People's Congress and promulgated in 1984. It established a comprehensive structure of the organs of self-government and defines their power in politics, economy, culture and education etc. Provisions on the Implementation of the Law on National Regional Autonomy of the People's Republic of China were promulgated by the State Council in 2005. The Provisions cover (i) commitment for supporting national autonomous areas to accelerate economic development; (ii) specific measures for national autonomous areas to promote education, science and technology, culture, health and physical culture and social insurance system; and (iii) specific provisions for enhancing ethnic unity.

- The **unity** of all ethnic groups is an **important guarantee of the development** of all social endeavors. Only unity can concentrate the strength of all the ethnic groups for the construction and development of the country, promote economic and social progress and improve the Chinese people's lives.”

Source: State Council: *China's ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

Unity and harmony cannot be achieved without respect for diversity. Diversity in the expression of human experience (language and culture); systems for collecting and disseminating knowledge (society and civilization); and methods of pursuing livelihood (economy) is not only part of the heritage of mankind, but the very foundation of the development of mankind in harmony with nature. The world has a wealth of about 7,000 languages, each one of them representing the “collective genius” of people who learned to adapt to their environment, but also – each one of them – stimulating the linguistic innovation in other languages. Diversity cannot be taken for granted, but must be nurtured. The notion of “seeking harmony in diversity” is at the heart of Chinese philosophy.

Box 3.21 PM Wen Jiabao on respecting diversity of civilizations

“Civilizations can be different, but no civilization is superior to others. Each civilization embodies the common vision and common aspirations of mankind shaped in the course of development and progress. The Chinese civilization has long advocated the great ideas that "Harmony is most valuable," "Seek harmony in diversity" and "Do not do unto others what you would not have others do unto you." Similarly, the Islamic civilization values peace and calls for tolerance. The Koran contains more than 100 references to peace. We should build consensus and seek harmony in a world of diversity and push forward development through exchanges. This is the approach all mankind should embrace in advancing civilization.

Speaking of respecting diversity of civilizations, we must recognize that diversity of civilizations is largely reflected in ethnic and religious diversity. China is a multi-ethnic and multi-religious country. It is made up of 56 ethnic groups. The indigenous Taoism has long existed in harmony with Buddhism, Islam and Christianity, religions introduced from the outside. It is the basic policy of the Chinese government to implement and improve the system of regional ethnic autonomy, ensure equality among all ethnic groups and speed up the economic and social development of minority ethnic groups and areas inhabited by these groups. It is also our policy to ensure freedom of religious belief and bring into play the positive role of religious personages and religious believers in promoting economic and social development.”

Source: “Respecting diversity of civilizations and China-Arab relations,” Speech of PM Wen Jiabao at the Headquarters of the Arab League, delivered on 26 November 2009, <http://www.chinaembassycanada.org/eng/xw/t629434.htm>, (accessed 23 Sep. 2010).

The challenges to nurturing diversity are very well captured in the lessons learned from a recent project carried out in Yunnan, as illustrated below.

Box 3.22 The role of diversity in the livelihoods of ethnic minorities' communities – Yunnan, China

The Yunnan Initiative, which resulted from the 2000 Cultures and Biodiversity Congress (CUBIC 2000), calls attention to the uncertainties that local and indigenous peoples face in their quest to use, nurture and sustain the ecosystems in which they live and on which they depend. The Yunnan Initiative articulated the principles and strategies for cultural and ecological conservation as well as sustainable economic development applicable to places that are culturally and biologically diverse. The CUBIC 2000 concluded that partnerships between local groups and government, nongovernmental organizations, and the business sector must be based on participatory processes and intercultural dialogue and institutional

development, and aim for an interaction between local knowledge and aspects of scientific knowledge for an equitable and sustainable stream of benefits.


The project **Support of indigenous knowledge for the use and conservation of biological diversity of ethnic minorities in three ecological regions in Yunnan, Southwest China** promoted indigenous knowledge for livelihoods and aimed to strengthen local institutions to use indigenous knowledge for the conservation and sustainable use of biodiversity. It was a cooperative project between Chinese and international organizations that served as intermediaries and strategic partners in the pilot areas. It also included representatives of ethnic minorities as well as forest and nature conservation agencies. The project emphasized the interlinkages between sustainable biodiversity management and poverty alleviation in Yunnan, covering tropical rainforest, sub-tropical broadleaf forest, and alpine ecosystems.

The project was completed in 2006. Challenges during project implementation were due to commercialization and the market economy. These changes have deeply affected traditional knowledge related to the use of biological resources for medicine, food and shelters, land-use practices and customary institutions for governing access to natural resources. They have also created a divide between the older and younger generations in indigenous communities, due to the younger people working off-farm and moving to the cities. This has caused a rapid and often coerced removal of indigenous peoples from their once close dependence upon and rights to their immediate environment for their livelihoods.

It was further concluded that indigenous knowledge is not sufficiently taken into account in the design and implementation of conservation and development schemes in which the government is involved. This failure is often perceived to be due to government officials and resource managers privileging scientific knowledge over local knowledge. However, it may be that the conflict is rather between local versus “outside” objectives. The role of indigenous knowledge is sidelined because local people’s objectives are ignored. The knowledge, skills, interest, and patience to regulate at the local level are absent in the State.

Despite the fact that local users have the highly developed knowledge to manage their own resources, policies and regulations are made to favour the objectives and interests of the State. By privileging these objectives, local objectives, such as subsistence and resource-based commerce – the space in which indigenous knowledge can be exercised – are limited and indigenous knowledge is marginalized. Ultimately, local people have little control over their resources when these same resources are of value to higher-level elites and the State. An emancipatory approach to local development liberates people by creating a space of local discretionary power in which people can make decisions on their own behalf. Representation is a mechanism to bring forward the needs and aspirations as well of the knowledge of local communities. In addition, local authorities must have discretionary powers over resources and decisions of significance to local people.

Source: Terralingua: *Indigenous knowledge, biodiversity conservation, and poverty alleviation among ethnic minorities in Yunnan, China*, 21 December 2009, <http://www.terralingua.org/bcdconservation/?p=117> (accessed 23 Sep. 2010).

 Further information on the provisions on ethnic and religious equality in Chinese laws and regulations, see the Annex at the end of this Module.

3. Policy measures taken to promote ethnic and religious equality

Promotion of harmonious relations between ethnic and religious groups has been a priority for the Chinese government since the founding of new China. Equal, united and interdependent relations are sought under the principle of “united together to strive for common prosperity and development”. The Central Government has taken various policy measures to promote employment and re-employment in ethnic minority areas, such as increased budget allocations

for re-employment subsidies and support to upgrading of employment services. Provincial and local level governments have taken supplementary policy measures targeting special needs in their areas.

3.1 Labour market measures¹⁹

In 2003-2006 the central government earmarked RMB 3.6 billion in reemployment subsidies for the five autonomous regions, accounting for 9 per cent of the total central budget layouts to subsidize localities. In order to support development of employment services and human resources management in ethnic areas the Central Government has established a standardized regulatory and service regime. The Central Government has also built capacities of local labour bureaus and employment services centres.

The Government has also facilitated **inter-provincial recruitment and labour migration** between ethnic and economically more developed areas. Special events such as “National Private Enterprises Recruitment Weeks”, have been organized to boost **employment of college graduates** in ethnic regions. Administration of **unemployment registration** has been developed and **employment guidance services** strengthened.

3.2 Preferential policies - temporary support measures²⁰

In view of the gap between ethnic minorities and the Han people in social and economic status, citizens of ethnic groups enjoy all civil rights prescribed by the Constitution and the law, as well as some special rights and interests in accordance with the law:

- Educational development subsidies for ethnic minorities were set up in 1951.
- In 1955, the Ministry of Finance of the Central Government established a subsidy for national areas as an exclusive fund for some special expenses in national areas.
- In 1964, the Central Government established a mobile fund for national autonomous areas, which is 5 per cent of the expense in the area in the previous year.
- In 1964, the Central Government increased the proportion of the reserve fund for national autonomous areas. The reserve fund became 5 per cent of the total expense in autonomous areas (whereas 4 per cent in common provinces and areas), 4 per cent in autonomous prefectures, 3 per cent in autonomous counties, and 1 per cent in common counties. Yunnan and Qinghai enjoy the same policy as autonomous areas.
- In 1980, the Ministry of Finance of the Central Government launched a preferential policy of "fixed subsidy increasing 10 per cent per year" in 8 national provinces and areas including 5 autonomous areas and Yunnan, Guizhou, Qinghai and the subsidy would keep increasing until 1998.
- In 2005, the State Council promulgated the Supportive Development Plan of Ethnic Minorities with Small Population (2005-2010). The Plan includes more than 4,000 development programs for 22 ethnic minorities with a small population. The State planned to promote their development with 2 billion Yuan investment in 5 years.
- A fund for the development of ethnic minorities was set up in 1992.
- Preferential policies for ethnic minority enterprises regarding profit retention, self-owned funds and price subsidies were introduced in 1963.


¹⁹ This section is based on information provided by the State Ethnic Affairs Commission (SEAC) in 2010.

²⁰ This section is based on information provided by the State Ethnic Affairs Commission (SEAC) in 2010 and State Council: *China's ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

- In 1997, special loans with discounted interest and exemptions from value added tax were given to 1,760 designated companies producing special commodities for ethnic groups.
- A fund to ensure the production and promotion of the special commodities needed by the ethnic minorities was established in 2007 by the State.



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


Convention No. 111 recognizes that realization of equal employment outcomes for all workers requires providing special measures of protection and assistance to vulnerable and disadvantaged groups. These measures respond to a specific protection need or seek to remedy effects of past or continuing discrimination. Availability of statistical data on employment outcomes of different groups of workers is essential in identifying which groups need special protection and/or affirmative action measures in order to gain “de facto” equality in practice in the labour market. When the special measures respond to an actual need for support, these measures cannot be considered as discrimination against other groups in the labour market.  See Section 6 in Unit 3.1 of this Module and Section 6.3 in Unit 1.2 of Module 1 for more information on protective and affirmative measures.

In China, statistical data on the employment and poverty situation of ethnic minorities show that special measures of protection and assistance for ethnic minorities are justified and needed for the realization of equality of outcomes.

- China’s ethnic population is disproportionately affected by poverty. Ethnic minorities account for 8.4 per cent of the total population in China, but they account for 52.5% of the population living in absolute poverty
- The vast majority of ethnic minority people is concentrated in agriculture and in low-end jobs. Ethnic minorities are underrepresented in high paid jobs which require high education levels.
- The ethnic minority population’s overall education level continues to be lower than that of the majority population. Highly educated ethnic minority graduates face more difficulties in finding jobs in the labour market than graduates from the majority population.

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

In addition, current affirmative action measures for ethnic minorities within the country which relate to privileged access to employment opportunities for ethnic minorities in the areas which are associated with the origin of the concerned ethnic group could be reviewed for their effectiveness and relevance. These privileges create a feeling of discrimination among members of the country-wide majority group while they are of rather limited use to the members of the concerned ethnic minorities. Affirmative action measures can be more effective in promoting

equality if they are geared at increasing knowledge and “marketable” skills for use within the labour market of the country as a whole.  See the end of Section 6.3 in Unit 1.2 of Module 1 for a further explanation on this issue.

Source: SEAC, unpublished materials (2010); U. Sun: 21 million ethnic minorities in poverty 2008, <http://www.chinaethnicgroups.com> (accessed 28 Aug. 2009); R. Hasmath: *The big payoff? Educational and occupational attainments of ethnic minorities in Beijing* (2008).

3.3 Development of poor ethnic minority areas

In 2005 comprehensive **development of poor minority villages** became the focus of national poverty-relief efforts. In 2007 the state formulated the 11th **Five-year Plan for the Development of the Ethnic Minorities**, containing 11 key projects. In 2009 the State announced new standards for poverty-relief work, and expanded the coverage to low-income rural people in the minority areas. Specific government measures include providing work as a form of relief, relocating people from places with poor conditions, building settlements for formerly nomadic people, repairing dangerous housing for rural residents, supplying safe drinking water in rural areas, and providing minimum living allowances to rural and urban residents.²¹

Box 3.23 Local policy examples on promoting equal opportunities for ethnic minorities – China

In 2007 **Karamay City, Xinjiang province**, adopted a 20 per cent quota for employment of minority workers (reflecting the ethnic composition of the city). In addition, any employer employing more than 20 per cent of ethnic workers for a period of three years would receive a subsidy of 5,000 RMB per person, payable over the course of three years. The policy applies to both state-owned and private enterprises.*

In 2008 the Department of Labour and Social Security in **Qinghai Province** promulgated specific policy measures to extend employment opportunities to ethnic minorities. The policy measures included:

- Increase of public spending in vocational and entrepreneurship training activities by RMB 600 thousand to foster development of ethnic folk culture, tourism and catering industries. Provision of vocational training to strengthen local skills in noodle making, cooking, pastry making and production of ethnic handicrafts and tourist souvenirs.
- Development of brand names for local products and cultural features such as “Sala embroidery” and “Sala family” and marketing them nationwide to boost the cultural sector and improve livelihoods for local people.
- Documentation of results and sharing good practices of promoting ethnic minorities’ employment creation and enterprise start-up through exhibitions.
- Distribution of RMB 360 thousand to Xunhua County for rural-urban labour market integration and boosting employment for local workers.**

Sources:

*Karamay City Bureau of Labour and Social Security: *Employment Promotion Subsidy Policy* (20 April 2007).

** “Qinghai adopts six measures to expand employment channels for ethnic minorities” in *Qinghai Channel, Xinbua Net* (14 November 2008).

²¹ State Council: *China’s ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

Box 3.24 Local policies to accommodate special religious requirements at workplaces – China

In order to ensure that Muslims have access to their special diet, **regulations on the supply and management of “halal” food have been drawn up in 16 provinces** (autonomous regions and municipalities directly under the Central Government), including Beijing, Jiangsu and Xinjiang. Some major cities such as Guangzhou, Kunming and Chengdu have also adopted special regulations.

The rights of ethnic minorities to celebrate their own festivals have also been ensured in the law and regulation which prescribe that people's governments in the autonomous areas can enact their own holiday policies in accordance with the customs of the relevant ethnic minorities. As prescribed by these policies ethnic minority workers can enjoy paid holidays when participating in their own major festivals and celebrations.

Source: State Council: *China's ethnic policy and common prosperity and development of all ethnic groups* (Beijing, 2009).

4. Current ethnic employment situation in China

4.1 Access to education

Equal access to education from primary education to vocational or higher education is a prerequisite for equality in the labour market. Despite the preferential policies put in place, there are still substantive differences between the education level of Han Chinese and ethnic groups, as well as between the ethnic minorities. Data from the 2000 national census show that the illiteracy and semi-literacy rate of persons over the age of 15 among ethnic groups is 30.8 per cent, which is 8.6 per cent higher than the national average. The differences between different ethnic groups are however considerable, with illiteracy reaching over 60 per cent among some groups. According to the census, the average length of education received by Han Chinese girls and boys is 7.06 and 8.16 years respectively, whereas the rate for ethnic girls and boys is 6.03 and 7.24 years.

In terms of higher education, the proportion of ethnic minorities who have received junior college or university education is lower than the national average for 51 of China's 56 ethnic minorities. However, the rate of persons with higher education was higher than the national average among Korean, Mongol, Manchu and Hui ethnic groups. Preferential policies adopted by the government include special training opportunities for ethnic minorities and lower grade requirements for minority students' admission to colleges and universities.

Table 1. Average years of education of the population, 2000

Nationality	Sex	Average value (years)	Number of people
Total	Male	8.08	558 994
	Female	6.97	538 253
	Subtotal	7.54	1 097 247
Han nationality	Male	8.16	511 150
	Female	7.06	492 264
	Subtotal	7.62	1 003 414
Minorities	Male	7.24	47 844
	Female	6.03	45 989
	Subtotal	6.65	93 833

Source: NBS: *Population data of Chinese nationalities*, National Census (Beijing, 2000).

Statistical data show that total education expenditure and the average per capita education expenditure in the five autonomous regions in the western areas is lower than in other regions. In 1998, the average per capita expenditure of primary school students was RMB 429.94 in the western areas and RMB 784.28 in eastern areas.

Box 3.25 Xinjiang students receive bilingual education – China

Urumqi: Over 600,000 students of ethnic minority groups in Xinjiang are taking bilingual education, accounting for 25.4 percent of the overall number of students, a local education official told Xinhua news agency Wednesday. In some villages in southern Xinjiang, local farmers voluntarily build “bilingual kindergarten” and encourage children to learn the language of their own ethnic group and Mandarin, according to Dai Xiang, vice director of Xinjiang Bilingual Education Guiding Office. Most kindergartens of this kind are equipped with computers, TVs, DVDs and other technology. Each child receives an annual subsidy of 1,000 Yuan for food expenses.

Dai added that investment from the central government on bilingual education in Xinjiang has reached 1.2 billion Yuan since 2008. “By 2012, the Central Government will invest a total of 4 billion Yuan to fund bilingual education in Xinjiang.” The official also spoke of the importance of knowing two languages, saying “bilingual education will facilitate the communication and understanding between people of different ethnic groups.”

Source: “Xinjiang students receive bilingual education” in *China Daily* (2 September 2009).

4.2 Access to employment

A study conducted in Xinjiang in 2006 found that 30 per cent of ethnic minority people consider that ethnicity forms an obstacle to finding employment. The rates vary widely among the different ethnic groups: 49 per cent of the Kazakhs and 45 per cent of the Uyghur consider their ethnicity as an obstacle as compared to 9 per cent of the Hui and 7 per cent of the Mongol people. The research showed that ethnic minorities with different physical characteristics are more likely to be discriminated than groups with characteristics that are more similar to the majority population. The rates were lower for urban ethnic workers than for rural ethnic workers who had migrated to cities for work. Rural migrant ethnic workers bear the double burden of being ethnic and rural: 71 per cent of rural Kazakhs and 48 per cent of rural Uyghurs found their ethnicity an obstacle for employment.²²

A survey on poverty, employment and labour protection among ethnic minorities conducted by the State Ethnic Affairs Commission (SEAC) and the ILO in Xinjiang and Inner Mongolia in 2005 found that 19.12 per cent of all non-Han respondents had been asked questions about their ethnicity when applying for a job, whereas only 0.43 per cent Han Chinese were posed the same question. The question was posed more often to Uyghur, Kazakh and Hui workers than to workers with Mongolian ethnicity.²³

Ethnic minority college graduates have more difficulties in finding employment than Han Chinese graduates. A survey among ethnic university students in Xinjiang found that 66.28 per cent of the unemployed college graduates in the province are ethnic minority graduates (Wang, 2006). Comparison of employment rates of two normal universities in Qinghai found in 2006 that the employment rate of mainly Han Chinese graduates from Qinghai Normal University was 71.5 per cent, while the rate for Qinghai Hainan Normal University for Nationalities was

²² Q. Qi and H. Du: *Investigation and analysis on employment issue of university students of Xinjiang ethnic minorities* (2006).

²³ State Ethnic Affairs Commission (SEAC) and ILO: *Poverty alleviation through employment and protection of labour rights and interests of ethnic minorities, Study in Xinjiang and Inner Mongolia* (Beijing, 2005), unpublished document, in Chinese.

only 39.8 per cent (Ma, 2006); 47 per cent of ethnic university students interviewed for another study saw ethnic discrimination as a problem in the labour market.²⁴

Box 3.26 Distinctions and preferences between different ethnic groups – Yunnan, China

Preferences given to Han, Bai and Naxi groups, discrimination against Tibetan, Lisu and Yi groups

A study in Diqing Tibetan Autonomous Prefecture in Yunnan shows that local employers are more inclined to employ Han applicants and ethnically Bai and Naxi applicants than local applicants belonging to Tibetan, Lisu and Yi nationalities. Persons of Bai and Naxi ethnicity come from Kunming, Dali and Lijiang and they are assumed to be more ‘civilized’ and have better qualifications and skills than local minorities. Based on these assumptions, employers avoid recruiting Tibetan, Lisu and Yi applicants from local vocational schools. Some interviewed employers acknowledged that they had never verified whether the assumed differences in competences were true.

The tendency to prefer applicants from other localities is especially high in the tourism sector. One newly opened hotel in the region had recruited 280 employees out of which 167 (59.6 per cent) were from other prefectures and 113 (40.4 per cent) were from the local prefecture. All twenty managers of the hotel had Han ethnicity.

Source: Y. Sha: *Unpublished materials* (2009); J. Wen, S. Tao and L. Li: *Analysis on the current situation existing questions and countermeasures of employment of floating minority populations in urbanization* (2008).

4.3 Job segregation

In 2000, up to 78.8 per cent of ethnic minority people engaged in **agriculture**, animal husbandry, forestry fishery and hydro power in China, whereas the corresponding rate for Han Chinese was 63.0 per cent.²⁵ The rates for ethnic women and men engaged in agriculture are 81.8 per cent and 76.1 per cent respectively, whereas for Han women and men they are 67.7 per cent and 59.3 per cent respectively. (Table 2); 93.2 per cent of ethnic women and 91 per cent men are in physical work, while rates for Han Chinese women and men are 2.7 per cent and 2.9 per cent lower (Table 3).

Ethnic minorities engaged in non-agricultural work are concentrated in township enterprises, township private enterprises or other small businesses, or are self-employed, which are all considered to be **irregular employing units**. Ethnic Han workers dominate in **regular employing units** such as Communist Party and government organizations, institutions, state-owned enterprises, state proprietary enterprises, collectively-owned enterprises, joint ventures and foreign funded enterprises. The SEAC and ILO data show that while the differences are not so striking between urban Han and ethnic workers, the gap is especially large when comparing Han and ethnic rural migrants’ employment. While 24.1 per cent of Han rural migrants work in regular units and 75.9 per cent in irregular units, the data shows that only 7 per cent of ethnic rural migrants have access to employment in regular units and 93 per cent of ethnic rural migrants were employed in irregular units²⁶ (see Table 4).

²⁴ Q. Qi and H. Du: *Investigation and analysis on employment issue of university students of Xinjiang ethnic minorities* (2006).

²⁵ NBS: *National Census* (Beijing, 2000).

²⁶ SEAC and ILO: *Poverty alleviation through employment and protection of labour rights and interests of ethnic minorities, Study in Xinjiang and Inner Mongolia* (Beijing, 2005), unpublished document, in Chinese.

Table 2. Occupational structure of male and female ethnic labour, 2000 (Unit: %)

Name of Index		Han nationality	Minority nationalities
Persons in all specific technical fields	Total	10.6	8.8
	Male	5.1	4.5
	Female	6.7	5.0
Persons in charge of party, government, enterprise, institution	Total	3.1	2.1
	Male	2.6	1.7
	Female	0.6	0.4
Clerks and relevant staff	Total	5.8	3.9
	Male	4.1	2.7
	Female	2.1	1.3
Persons engaging in business and service sectors	Total	17.4	10.4
	Male	8.7	4.8
	Female	10.5	6.4
Persons engaging in agriculture, forestry, animal husbandry, fishery and hydro power.	Total	63.0	78.8
	Male	59.3	76.1
	Female	67.7	81.8
Persons engaging in production and transportation and relevant staff	Total	30.3	14.4
	Male	20.1	10.0
	Female	10.0	5.0

Source: NBS: *Population data of Chinese nationalities*, National Census (Beijing, 2000).

Table 3. A contrast chart of mental and physical occupational structure of male and female nationalities, 2000 (Unit: %)

Nationality	Mental occupation		Physical occupation		Proportion between two (mental/physical)	
	Male	Female	Male	Female	Male	Female
Han nationality	11.8	9.43	88.1	90.5	7.48: 1	9.59: 1
Minority nationalities	8.91	6.72	91	93.2	10.22: 1	13.87: 1

Source: NBS: *Population data of Chinese nationalities*, National Census (Beijing, 2000).

Table 4. The nature of units for which employees work (Unit: %)

	Han nationality	Ethnic minorities
City Residents		
Regular Departments or Enterprises	37.0	28.0
Irregular Departments	63.0	71.8
Immigrant workers from pastoral area		
Regular Departments or Enterprises	24.1	7.0
Irregular Departments	75.9	93.0

Source: SEAC and ILO: *Poverty alleviation through employment and protection of labour rights and interests of ethnic minorities, Study in Xinjiang and Inner Mongolia* (Beijing, 2005).

Box 3.27 100,000+ Ningxia rural women take non-farming jobs – China

More than 100,000 rural women in Ningxia Hui autonomous region have left their farms for other jobs in 2009, according to the human resources department of the regional government. Starting from this January, governments at all levels of the region began offering a variety of training courses for rural women, including gardening, flower arranging and knitting. After receiving the training, thousands of women have found jobs other than farming close to their home and earning more than 1,200 Yuan (\$176) every month.

Source: “100,000+ Ningxia rural women take non-farming jobs” in *China Daily* (29 October 2009).

4.4 Conditions of employment and job security

The SEAC-ILO study in Xinjiang and Inner Mongolia in 2005 found considerable differences in per capita monthly income between Han and ethnic workers. The study concluded that ethnic families are in a greater risk of falling into poverty than Han families. The income of ethnic workers was considerably lower than Han workers among all analyzed groups consisting of workers in stable employment; workers in temporary employment; the unemployed; the retired; and rural migrant workers.

Ethnic groups face direct forms of wage discrimination but indirect forms of wage discrimination against them are also common as they are usually concentrated in temporary work in informal employment. Among the 988 non-Han workers interviewed by the SEAC-ILO study, 20.35 per cent of the rural ethnic migrants and 10.74 per cent of the urban ethnic workers responded that their wage is lower than other workers doing the same work under the same conditions. The corresponding responses from the interviewed 704 Han rural migrants and urban workers were 7.0 per cent and 3.88 per cent respectively.

In terms of job security, ethnic minorities have suffered more from labour market transition than Han Chinese workers. Whereas the rate of workers in steady employment relations with permanent contracts has decreased for all workers in China, the decrease is steeper among ethnic workers (15.6 per cent) than among Han Chinese workers (10.8 per cent), as shown in Table 5 below.

Table 5. Distribution of workers in different types of work units by ethnicity (current and previous employment) (Unit: %)

	Han nationality	Ethnic minorities Total	Uygur	Kazakh	Mongol	Hui	Other ethnic minorities
The nature of current working unit							
Party and government organs	1.2	0.6	0.5				5.0
Institutions	7.8	6.4	6.9	6.3	2.2	6.8	10.0
Others	28.8	25.0	18.2	6.3	30.4	47.5	30.0
Enterprises	62.3	68.0	74.4	87.5	67.4	45.8	55.0
(a) State-owned enterprises	23.1	9.5	9.3	21.4	6.5	11.5	
(b) Urban collectively-owned enterprises	18.1	3.9	2.7	14.3	6.5		9.1
(c) Urban private and self-employed	41.9	53.2	45.0	28.6	74.2	76.9	81.8
(d) Rural private and self-employed	7.5	11.6	11.9	35.7	9.7		9.09
(e) Overseas-funded enterprises and joint ventures	2.5	1.3	2.0				
(f) Others	6.9	20.6	29.1		3.2	11.5	
Sample number of enterprises	160	634	151	14	31	27	11

The nature of previous employment unit							
Party and government organs	3.1	2.3	3.0	12.5			
Institutions	10.9	7.6	9.4	6.3	4.4	3.4	10.0
Others	35.0	22.4	26.1	12.5	10.9	22.0	20.0
Enterprises	51.0	67.7	61.6	68.8	84.9	74.6	70.0
(a) State-owned enterprises	33.1	19.5	9.8	9.1	25.6	40.9	28.6
(b) Urban collectively-owned enterprises	15.4	7.8	7.3	9.1	5.1	11.4	7.1
(c) Urban private and self-employed	33.1	41.6	37.4	27.3	59.0	40.9	42.9
(d) Rural private and self-employed	10.8	12.6	17.1	36.4	7.7		7.1
(e) Overseas-funded enterprises and joint ventures	2.3	0.4		9.1			
(f) Others	5.38	18.18	28.46	9.09	2.56	6.82	14.29
Sample number of enterprises	131	233	125	11	39	44	14

Source: SEAC and ILO: *Poverty alleviation through employment and protection of labour rights and interests of ethnic minorities, Study in Xinjiang and Inner Mongolia* (Beijing, 2005).

5. Underlying causes for ethnic and religious discrimination in China and steps for further action

Reasons behind ethnic and religious discrimination are various and often deeply embedded in the culture and social-economic context of the specific country. In China, ethnic minorities are in a disadvantaged position in the labour market due to many factors including lower educational levels, concentration of these groups in remote less developed areas, as well as discrimination due to stereotypes and prejudices towards ethnic minority workers. In order to tackle these challenges, positive action needs to be taken and adequate support measures need to be stipulated in the law.

5.1 Causes linked to bias and stereotyped ideas

True substantive ethnic and religious equality in the labour market requires that all employment decisions are made with reference to a person's **individual** abilities, qualification, merit, effort and suitability – without interference of generalized or biased assumptions on the characteristics of the ethnic or religious group to which s/he belongs. **Removing bias and assumptions** is a challenging task because every society and culture has stereotyped ideas about different groups of the population and their assumed abilities. For this reason active measures need to be taken to raise awareness and challenge these traditional ideas.

In China, ethnic minorities are often seen as backward and Han Chinese are perceived as presenting modernity. These views about ethnic minorities are often not based on actual empirical facts, but on stereotyped ideas distributed through public media, schoolbooks and other channels. Such racist stereotypes are discriminatory as they put ethnic minority people in a disadvantaged position in society. The UN Committee on Elimination of Racial Discrimination

noted the need to effectively tackle and penalize distribution of any materials with racially derogatory or prejudicing contents in its latest Concluding Observation for China in 2001.²⁷



Common prejudices and stereotypes in China

Common stereotypes in society:

- Ethnic minorities are seen as backward while Han Chinese are perceived as representing modernity, development and civilization. Ethnic minorities are seen as lazy, unable to adapt to society, and preoccupied with traditional ideas and beliefs.
- Due to reference to ethnic minorities as a “disadvantaged group” ethnic minorities are seen as “weak and in need of protection.” This has further disadvantaged ethnic minorities in the labour market.

A study done in Chengdu, Sichuan, found that urban Han residents had strong prejudices against ethnic rural migrants. The locals refused to hire ethnic migrant workers, or even rent a room to them. Common prejudices related to perceiving ethnic minorities as lazy, guided by their traditional ideas, customs and religious beliefs. Some respondents even thought that ethnic minorities have a tendency to commit/participate in criminal activity. **Importantly, the research found that many of the respondents with strong prejudices had never been in contact with people from the ethnic minorities.**

Common employer prejudices against persons with another ethnicity or religion are:

- Different behaviour and customs are considered to be an obstacle for the formation of a good working environment and team spirit in the company. Special dietary requirements are perceived as troublesome, especially in the case of business travel and dinners.
- Employers commonly assume that the education level and language proficiency of ethnic minority students and graduates are lower than that of Han Chinese. They base these assumptions on prejudice and stereotypes, and do not assess each individual based on his or her merit, skills, abilities and personal suitability for the job.

Sources: Y. Sha: unpublished materials (2009); S. Ma, *Analysis on cultural factors affecting the employment of minority university students on the Qinghai-Tibet Plateau* (2006); T. Nyima: “Thorough analysis of discrimination of Tibetan areas of Yunnan” (2006) in W. Li and L. Stearns (ed): *Employment discrimination: International standards and national practice* (Beijing, 2006). In Chinese; Y. Wang and T. Li: *Analysis on outstanding problems in the employment of university students of minorities* (2005); J. Wen, S. Tao and L. Li: *Analysis on the current situation, existing questions and countermeasures of employment of floating minority populations in urbanization* (2008).

5.2 Causes linked to regional differences in socio-economic development

China’s remarkable economic growth and policies to promote “moderate prosperity” or “*xiaokang*” to its entire population have resulted in the improvement of human development throughout the country. Due to these achievements, China has already met many of the Millennium Development Goals (MDGs) set for 2015. While human conditions have improved across the country, remote areas in the country’s Western parts are still faced with considerable development challenges including poverty and poor access to quality education and health

²⁷ United Nations: *Concluding observations of the Committee on the Elimination of Racial Discrimination: China, 2001*, A/56/18, paras. 231-255.

services.²⁸ As ethnic minority populations are concentrated in these areas, they are disproportionately affected by this poverty. Currently 52.2 per cent of China's rural population in poverty are living in ethnic autonomous regions. The overall poverty rate among ethnic minorities is 17.6 per cent, which is 13.4 per cent higher than the national average poverty rate of 4.2 per cent.²⁹ The UN Committee on Elimination of Racial Discrimination has noted this development disparity between Western and Eastern areas as an obstacle for real "de facto" equality of ethnic minorities in the society and labour market.³⁰

5.3 Causes linked to legislation and policy measures

In the past few years, the Chinese National People's Congress has carried out a large project on improving the labour legislation in China. The Employment Promotion Law and the Labour Contract law came into force in January 2008 and the Labour Dispute Settlement and Arbitration Law came into force in May 2009. These laws, especially the Employment Promotion Law, set the legal framework for promoting ethnic and religious equality in the Chinese labour market. While reinforcing the general principle of ethnic and religious equality in employment and occupation, these laws do not establish any specific support measures for realizing substantive equality for ethnic and religious minorities. Legislative or regulatory work to put in place **effective temporary support measures** to help remedy the impacts of (past) ethnic and religious discrimination and disadvantages still needs to be done in China.

The Law on Regional National Autonomy, the Regulations on Ethnic Work in Urban Areas and the Regulations on Administrative Work in Ethnic Townships were all adopted before China's full-scale transition to a market economy. For this reason, the special support measures stipulated in these instruments may not be suited to the needs of the current labour market. As mentioned above, the government is seeking to provide more guidance on implementing the Law on Regional National Autonomy and issue revised regulations on ethnic work in urban and township areas before the end of 2010.³¹ These new instruments should provide for effective temporary measures to ensure that ethnic and religious minorities can reach equality in the Chinese labour market in practice.

5.4 Further action to promote non-discrimination and equality at work for ethnic minorities in China – Next steps

Priorities are:

- 1) **Raise the education level of ethnic minorities to level the playing field for equal competition in the labour market.**
- 2) Adopt or modify **special support measures** to ensure ethnic minorities have equal access to education and employment opportunities **throughout the country.**
 - Set clear enforceable standards backed up with operational legal remedies in legislation. Assign clear responsibilities at national and local level.
 - Adopt **special support programmes** with numeric targets, timetables and monitoring mechanisms. The governments at the various levels, as public sector employers, could

²⁸ UN China, *China's progress towards the Millennium Development Goals*, Beijing, 2008; UNDP, *China national human development report* (draft), Beijing, 2009; United Nations: *Concluding observations of the Committee on the Elimination of Racial Discrimination: China, 2001*, A/56/18, paras. 231-255.

²⁹ Adapted from U. Sun: *21 million ethnic minorities in poverty in 2008* (2009).

³⁰ United Nations: *Concluding observations of the Committee on the Elimination of Racial Discrimination: China, 2001*, A/56/18, paras. 231-255.

³¹ State Council: *National human rights action plan of China* (2009-2010).

- play a leading role for setting targets or quota for employing ethnic and religious minorities in the public service throughout the country.
- Establish operational **legal remedies** for ethnic and religious minorities accessible to all applicants and workers, including civil servants.
- Design and implement **educational activities and awareness raising** to eliminate stereotypes and prejudice in the society.
- **Review schoolbooks and monitor public media** to make sure no racially derogatory or prejudicing contents are published and disseminated throughout the country.
- Provide **education in local languages and in Chinese** as well as on ethnic heritage, culture and religion for ethnic minorities.

Section B. Session guide



Section B. Session guide

Training map for Module 3

Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies		2.5-3 hours
Learning objectives	<ul style="list-style-type: none"> Describe the concepts and international standards on ethnic and religious equality in employment and occupation Identify policy and practical measures to promote ethnic and religious equality as well as the roles of different stakeholders in this respect 	
Training aids	<p>Section A. Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies</p> <p>Section C. Exercise 1. Brainstorming on ethnicity and religion – Prejudices or facts?</p> <p>Section C. Exercise 2. Is this ethnic or religious discrimination? Case discussion</p> <p>Section C. Exercise 3. Use and display of religious symbols in the workplace: Case discussion</p> <p>Section C. Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples: Case discussion</p> <p>Section C. Exercise 5. Review of good practice examples</p>	
Unit 3.2 Ethnic and religious equality in China		1.5–2 hours
Learning objectives	<ul style="list-style-type: none"> Recognize the common forms of ethnic and religious discrimination in the Chinese labour market Describe the Chinese legal and policy framework on ethnic and religious equality, and consider practical measures to promote ethnic and religious equality at work 	
Training aids	<p>Section A. Unit 3.2 Ethnic and religious equality in China</p> <p>Section C. Exercise 6. Ethnicity and religion at work in China: Case discussion</p> <p>Section C. Exercise 7. Ethnic and religious equality action planning</p>	
Total Module 3		4–5 hours

Session plan for Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies

Overview

This unit outlines the basic concepts related to ethnic equality at work and the international legal instruments in which the principle of ethnic equality at work is established. Some of the main obstacles that ethnic and religious groups face in employment and occupation across the globe are also discussed. The unit describes policy and practical measures that can be taken at national, local and workplace levels to respond to the specific challenges faced by ethnic and religious groups. It concludes with a discussion on the roles and responsibilities of different stakeholders to promote ethnic and religious equality.





Learning objectives

By the end of Unit 3.1 participants will be able to:

- Describe the concepts and international standards on ethnic and religious equality in employment and occupation
- Identify policy and practical measures to promote ethnic and religious equality as well as the roles of different stakeholders in this respect.



Step-by-step session plan

Step 1. Introduction of learning objectives		1 min. 
Aim	To clarify the objectives of the Unit	
Step 2. Exercise 1. Brainstorming on ethnicity and religion – Prejudices or facts?		20 min.
Aim	To make participants question their own and each other's stereotyped ideas about ethnic groups and jobs that are "suitable" for them	
Training aids	Section C. Exercise 1. Brainstorming on ethnicity and religion – Prejudices or facts?	
Step 3. Presentation and discussion: Ethnic and religious equality at work: Concepts, standards and strategies – 1		20 min. 
Aim	To review the key concepts, international legal instruments and policy approaches to promote ethnic and religious equality and eliminate discrimination on the grounds of ethnicity and religion at work	
Training aids	Section A. Unit 3.1 - 1. What is ethnic and religious equality at work? Section A. Unit 3.1 - 2 International standards on ethnic and religious equality Section A. Unit 3.1 - 3 Ethnic and religious discrimination: Key concepts Section A. Unit 3.1 - 4 Ethnicity or religion as an inherent requirement of the job. Section A. Unit 3.1 - 6 Protective and affirmative measures to promote ethnic and religious equality at work	
Tips	Make the presentation as interactive and vivid as possible. Refer to practical examples, and involve participants by asking them to provide examples on e.g. actions constituting direct and indirect discrimination or ethnic harassment from their experiences. Discuss specific situations in which ethnicity or religious belief can be an inherent requirement of the job and give a brief overview about special	

	policies and affirmative action measures to promote ethnic and religious equality at work	
Step 4. Exercise 2. Is this ethnic or religious discrimination? Case discussion		30 min.
Aim	To identify different forms of direct and indirect ethnic and religious discrimination at various stages of the employment cycle and consider reasonable accommodation measures that can be taken at the workplace to meet the special religious needs of employees	
Training aids	Section C. Exercise 2. Is this ethnic or religious discrimination? Case discussion	
Step 5. Exercise 3. Use and display of religious symbols in the workplace: Case discussion		20–30 min.
Aim	To explore the complexity of the debate on religious discrimination and to discuss how the realization of equal labour market outcomes for workers belonging to different religious groups requires a capacity to mediate between different value systems in society.	
Training aids	Section C. Exercise 3. Use and display of religious symbols in the workplace: Case discussion	
Tips	This exercise is most suitable for audiences with some previous understanding on equality and discrimination, mostly policymakers. Steps 5 and 6 can be done in parallel so that half of the groups discuss Exercise 3 and half of them discuss Exercise 4. After finishing the group discussion all participants should join the plenary discussion on both exercises. Exercises 3 and 4 can also be done at the end of Session 3.2, if the trainer feels that the audience needs to have better understanding of the current situation and ongoing policy debates on ethnicity and religion in China before discussing Exercises 3 and 4.	
Step 6. Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples: Case discussion		20–30 min.
Aim	To analyze how Convention No. 111 applies to independent occupations, including the traditional livelihoods of indigenous peoples or ethnic groups and highlight the importance of consultation and participation of these groups in decision making processes affecting their rights and interests.	
Training aids	Section C. Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples. Case discussion	
Tips	This exercise is most suitable for audiences with some previous understanding on non-discrimination, mostly policymakers. See also the Tips for step 5.	
Step 7. Presentation & Discussion: Ethnic and religious equality at work: Concepts, standards and strategies – 2		20 min.
Aim	To review a range of practical measures to promote ethnic and religious equality in employment	
Training aids	Section A. Unit 3.1 - 7 Laws, policies and practical measures	
Tips	Make the presentation as interactive and vivid as possible. Ask participants to give examples from their own work experience on what kind of practical action different stakeholders (government, employers', workers' and ethnic or religious organizations) can take to promote ethnic and religious equality at work. Briefly present the role of government, employers' organizations and trade unions in promoting equality. Highlight the importance of effective enforcement and access to legal remedies in combating discrimination. Give a few good practice examples of both promotion and enforcement work.	

Step 8. Exercise 5. Review of good practice examples		20–40 min.
Aim	To review good practice on ethnic and religious equality and consider possible actions that different stakeholders can take to promote ethnic and religious equality in China	
Training aids	Section C. Exercise 5. Review of good practice examples Section A. Unit 3.1 - 8 Good practice examples	
Tips	Select some of the good practice examples from Section A Unit 3.1 according to the profile and interests of your participants	
Step 9. Round-up: Key learning points		10 min.
	<ul style="list-style-type: none"> • The key to ethnic and religious equality at work is treating persons as individuals and giving them opportunities based on their own personal abilities. No assumptions should be made on a person's abilities based on common prejudice about the ethnic or religious group that she/he represents. • Ethnic or religious discrimination is often not easy to recognize, but it may appear at any stages of the employment cycle. Close attention should be paid to all human resource management practices to make sure that all procedures are free from discriminatory bias. Also support services to self-employed persons should be free from any discrimination. • The issues related to special religious or other needs of certain groups of workers can be best dealt with through practical accommodation measures agreed at the workplace. Workplace cooperation is the best way to find solutions that work for everybody. • Balancing the needs and interests of different ethnic and religious groups in the society requires careful consideration. It is important to make sure that all groups have the possibility to participate in the decision making processes related to their rights and interests. For this purpose adequate and effective consultation mechanisms need to be established. • Legal measures for the promotion of non-discrimination in employment and occupation 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. • China has ratified the key international standards to safeguard the rights of all ethnic and religious groups in the country, and steps are being taken to promote equality in the labour market. • Addressing ethnic and religious discrimination in employment and occupation requires action by many stakeholders. Joint efforts to promote equality are key to reaching substantive equality for all ethnic and religious groups in the labour market. 	
Total Unit 3.1		2.5-3 hours

Session plan for Unit 3.2 Ethnic and religious equality in China

Overview

This unit outlines the Chinese legal and policy framework on ethnic and religious equality at work and the equality challenges that ethnic and religious groups face in the Chinese labour market. The unit discusses underlying reasons for ethnic and religious discrimination at work in China. Emerging good practices to promote ethnic and religious equality in the Chinese labour market are also highlighted.



Learning objectives


By the end of Unit 3.2 participants will be able to:

- Recognize the common forms of ethnic and religious discrimination in the Chinese labour market
- Describe the Chinese legal and policy framework on ethnic and religious equality, and consider practical measures to promote ethnic and religious equality at work.



Step-by-step session plan

Step 1. Introduction of learning objectives		1 min.
Aim	To clarify the objectives of the unit	
Step 2. Presentation and discussion: Ethnic and religious equality in China – 1		30 min.
Aim	To recall the Chinese legal and policy framework and the current situation in relation to ethnic and religious discrimination in employment	
Training aids	Section A. Unit 3.2 - 2 Chinese legal framework on ethnic and religious equality Section A. Unit 3.2 - 3 Policy measures taken to promote ethnic and religious equality. Section A. Unit 3.2 - 4 Current ethnic employment situation in China Annex. Provisions on ethnic and religious equality at work in Chinese laws and regulations.	
Tips	Make the presentation as participatory as possible. Give a short overview of the Chinese legal and policy framework on ethnic and religious equality and highlight a few local good practices. Involve participants by asking them to share further good practice examples for the promotion of employment of ethnic workers or on the accommodation of special religious or cultural needs of minority workers. Briefly discuss unequal labour market outcomes for different ethnic groups – highlighting differences in access to education, access to employment, job segregation, and conditions of employment including pay.	
Step 3. Exercise 6. Ethnicity and religion at work in China: Case discussion		20 min.
Aim	To consider the usefulness of practical reasonable accommodation measures to meet the religious requirements of certain workers and to explore the concept of ‘inherent requirements of the job’ in relation to ethnicity.	
Training aids	Section C. Exercise 6. Ethnicity and religion at work in China: Case discussion	

Step 4. Presentation and discussion: Ethnic and religious equality in China		20 min.
- 2		
Aim	To discuss the causes of ethnic and religious discrimination in China and the possible ways to address them	
Training aids	Section A. Unit 3.2 - 5 Underlying causes for ethnic and religious discrimination in China and steps for further action	
Tips	Ask participants to share their views on what the underlying causes for ethnic and religious 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 and to add points and measures not mentioned by participants.	
Step 5. Exercise 7. Ethnic and religious equality action planning		20-40 min.
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. Ethnic and religious equality action planning	
Step 6. Round-up: Key learning points		5 min.
	<ul style="list-style-type: none"> • Ethnic equality, religious freedom and ethnic unity are underlying principles in the Chinese Constitution as well as in the concerned government policy frameworks. While efforts are being made to ensure that all of China's 56 ethnic groups can have a fair share in the country's development, considerable challenges still exist in ensuring equitable access of ethnic and religious minorities to education, employment, occupation and income. • Active efforts are being made to promote equal opportunities and treatment in the labour market for all ethnic and religious groups. Special support measures are needed to ensure more equal labour market outcomes and substantive equality for ethnic minorities. • Comprehensive and enforceable legislation is essential for realizing ethnic and religious equality in the Chinese labour market. In addition, equality at the workplace can be promoted through very practical measures taken at the workplace level by employers and workers. • Extensive awareness raising on ethnic and religious equality is necessary in workplaces, organizations and among the general public in society to value and foster respect for cultural and religious diversity. 	
		Total Unit 3.2 1.5-2 hours

Section C. Exercises



Section C. Exercises

Unit 3.1 Ethnic and religious equality at work: Concepts, standards and strategies

Exercise 1. Brainstorming on ethnicity and religion – Prejudices or facts?

Instructions for trainers



Aim – To make participants question their own and each other’s stereotyped ideas about ethnic groups and jobs that are “suitable” for them



Time – 20 minutes



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



Training materials and preparation – One sheet of flipchart paper and a few marker pens for each table. Write the following statements at the centre of the charts (one statement per flipchart):

1. jobs for Muslim men are...
2. jobs for ethnic minority women should...
3. ethnic autonomous areas are....
4. ethnic workers in cities should...
5. ethnic equality means...
6. freedom of religion in the workplace means...



Steps:

- Start the activity by explaining that this activity has one key rule: Nobody is allowed to speak during the group work. Groups will have to “discuss” the statement written on their flip chart using all communication means they want – writing, drawing, gestures - except for their voice! Instruct the groups to brainstorm different views and opinions about the words written on the flipcharts, and in the end agree on answers, if possible. Tell participants that in this exercise a signal (a bell, music, a whistle) will be given to indicate when to start and stop the group work. After five minutes of group work, at the signal, each group should move to the next table and continue the work started by the previous group.
- Divide participants in groups of 4-5 people maximum (one group per table). Try to have as much diversity as possible in each group. Give each table one flipchart with a statement.
- Give a signal to start the group work. Monitor the groups to make sure they keep in complete silence and only communicate through writing down questions, making

drawings, or any other written means. Encourage them to react to comments and questions made by other members of their group.

- After 5 minutes, give the signal for all groups to move ahead to the next table. They should review what the earlier group has written or add more ideas or react to comments or questions written by the earlier group.
- After another 5 minutes stop the game. Ask the participants to hang their sheets on a wall and take their original seats. Ask a volunteer to read the comments on each of the sheets aloud for all participants. Discuss some of the comments for each concept, selecting some positive and negative remarks in each case. Ask participants whether the comments made are opinions or facts.
- Ask participants about how they felt about communicating non-verbally. For example, did writing the comments on flipcharts reveal some hidden bias or pre-conception about certain groups that possibly would not have come out in regular discussion? Facilitate discussion and encourage participants to point out any comments on the flipcharts that they found surprising or interesting.
- Facilitate further discussion on stereotyped ideas about ethnic and religious minorities. Ask participants to share a few examples about stereotyping in the labour market, in the media, in the literature or in any other source.
- Round up the discussion as follows:
 - Everybody has views and opinions on the characteristics of population groups of an other ethnicity or religion than one's own group. These opinions are often not based on facts and evidence.
 - Negative opinions that are not based on facts amount to prejudice, cause bias, and lead to discrimination. Discrimination is prohibited in laws. Equality in employment and occupation means that all employment decisions are made with reference to job applicants' and employees' individual merits, abilities and skills, without any interference of discriminatory bias.
 - It is important to differentiate facts from prejudices and learn about the legal provisions against discrimination with a view to promoting equality in employment and occupation.

Exercise 2. Is this ethnic or religious discrimination? Case discussion

Instructions for trainers



Aim – To identify different forms of direct and indirect ethnic and religious discrimination at various stages of employment cycle and consider reasonable accommodation measures that can be taken at the workplace to meet the special religious needs of employees.



Time – 30 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, and divide participants in groups of 3-6 persons. Give each group a **handout** with one of the three case studies (A, B & C) and ask them to read it and discuss the answers. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of 5 minutes.
- Reconvene in plenary when the groups are ready. Ask the group(s) working on case A to give a brief presentation. After the group(s) presented their views on the case invite other groups to comment and share their views. After soliciting a few comments, give the key learning points of the case using the **Case responses**, as needed. Emphasize the points not mentioned by the groups and correct any misunderstandings. Ask whether there are any questions and answer these, soliciting also answers by other participants.
- Repeat the process for Cases B and C. Facilitate discussion to get further comments on each case. Encourage participants also to ask questions, and answer these, soliciting also comments and answers from other participants.
- Round-up the discussion as follows:
 - Someone's ethnicity or religion is often irrelevant and not an objective qualification for the overall majority of jobs, although some exceptions exist.
 - Ethnic or religious discrimination may take different forms and may appear at different stages of the employment cycle from recruitment to dismissal. It is not always easy to prove that ethnic or religious discrimination has taken place, but evidence can be found by analyzing labour force or establishment survey data or administrative company records of earlier recruitment outcomes; reviewing job advertisements and written tests; or collecting information on job interviews.
 - Establishing a non-discriminatory workplace requires that all human resource management practices – including recruitment procedures and use of aptitude tests – are based on non-discriminatory criteria and are applied in a non-discriminatory way.

- The specific religious requirements of workers are best accommodated through practical measures at the workplace. These measures are often easy and inexpensive, so employers and workers should work together to find applicable solutions.

Exercise 2. Is this ethnic or religious discrimination? Case discussion**Handout****CASES****A. Recruitment (Textile Factory case)**

Mr Batbaatar recently applied, for the fourth time, for a job as a knitter at a textile factory, close to where he lives in Baotou, Inner Mongolia. As before, he did not receive a reply to his application. However, his daughter, who had applied at the same time, in the name of Yu Xiaowei was called in for a trial. Mr Batbaatar comes and complains about discrimination. What information would you collect to establish whether there is a case of discrimination? On what grounds could Mr Batbaatar have been discriminated?

B. Aptitude tests and dismissal (Post Office case)

Ms Rita, a lady belonging to an ethnic minority nationality, had worked for her local Post Office on a casual basis for a number of years. One day she was asked to take a written aptitude test to check her suitability for contractual employment in the Post Office. She failed the test, and her employment was terminated. Before leaving the post office, Ms Rita found out that the Han Chinese workers in the same employment situation had been given temporary or permanent employment contracts without having to take a test. She complained about this to the responsible managers, but her complaint was not investigated. Could Ms Rita's case involve discrimination? What kind of information would you collect to establish whether Ms Rita was discriminated?

C. Workers with special religious requirements (Oil Company case)

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

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

Exercise 2. Is this ethnic or religious discrimination? Case discussion



Case responses

A. Response: Recruitment (Textile Factory case)

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

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

The case may also raise issues of discrimination on the grounds of sex or age, but these issues were not discussed in the real-life case. With regards to gender it can be noted that whereas textile work is considered a 'women's job' in China, in Southern Asia it is considered a 'men's job'. Both these views are based on stereotyped ideas about gender roles and presumed capabilities of both sexes. Promoting gender equality requires getting rid of these discriminatory biases, and assessing the each applicant's suitability for the job with reference to their actual individual capabilities, skills, merit and experience.

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

B. Response: Aptitude tests and dismissal (Post Office case)

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


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

While well-designed, properly administered and professionally validated ability tests can be a useful method of predicting applicants' suitability for a specific job or assessing workers' job performance, the use of tests may also imply problems. The tests need to be designed so that they assess effectively the genuine key abilities and competences required in the job, without

prejudicing any ethnic, religious or language group. The tests shall also always be applied in a non-discriminatory way. All applicants shall take the same test and their performance shall be assessed against the same criteria.

The Commission for racial equality in the UK has developed the following guidelines for use of assessment tests as part of selection process or performance evaluation.

- Tests should correspond to the job in question, and measure as closely as possible the appropriate levels of the skills and abilities included in the job specification.
- Special care should be taken to make sure candidates who speak a different language as their first language understand the instructions.
- All the candidates, without exception, should take the same test.
- Test papers, assessment notes and records of decisions should be kept on file for at least 12 months.
- The employers should use the information about the information on test takers' ethnicity to see whether the tests and assessment methods used might have contributed to any significant disparities between the success rates for different ethnic groups. If so, they should investigate further and take steps to remove any barriers.

 For further information, see Box 3.16 in Unit 3.1.

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

C. Response: Workers with special religious requirements (Oil Company case)

This is a real life case from Kazakhstan involving a local subsidiary of Sinopec Group. In the real case the court found that the decision to dismiss Mr Kyrkymbai was indirect discrimination on the basis of religion. The court ordered the local Sinopec division to reinstate Mr Kyrkymbai in his job (i.e. let him return to work) and to pay him the wages that were due since his unlawful dismissal. He also received US\$665 in emotional damages.

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

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

While the employer's argument is legitimate – and it is indeed required to have company policies on occupational safety and health³² – the court had to weigh the two arguments against each other and see whether the safety requirements could have been met in a non-discriminatory way. Thus, the court needed to assess whether the employer could taken any practical measures to accommodate the special religious requirements of Mr Kyrkymbai.

Reasonable accommodation of religious requirements at the workplace refers to practical modification or adjustment to the work arrangements or environment that enables a qualified applicant or employee with special religious requirements to perform essential job functions. The

³² See ILO Occupational Safety and Health Convention, 1981 (No. 155).

obligation to provide reasonable accommodation is imposed on employers in many jurisdictions. In these jurisdictions employers can only refuse providing reasonable accommodation if this would impose a significant expense or difficulty (undue hardship). Failure to provide reasonable accommodation is considered discrimination.

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

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

Exercise 3. Use and display of religious symbols at work: Case discussion

Instructions for trainers



Aim – To explore the complexity of the debate on religious discrimination and to discuss how the realization of equal labour market outcomes for workers belonging to different religious groups requires a capacity to mediate between different value systems in society.



Target group – Audiences with some previous understanding on non-discrimination, mostly policy makers.



Time – 20-30 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 and divide them into groups of 3-6 persons. Distribute the **handout** with the case to the groups and ask them to discuss the questions. Tell each group to prepare a presentation on the case study and select a spokesperson to present it in plenary for a maximum of 3 minutes.
- Reconvene in plenary when the groups are ready. Ask each of the groups to give a brief presentation and discuss the case. Add points not mentioned by the group or correct misunderstandings using the **Case responses** as needed.
- Encourage participants to give further comments on whether these kinds of issues are discussed and how they are addressed in China. Solicit a few comments from the participants and facilitate the discussion.
- Round-up the discussion as follows:
 - Finding a right balance between freedom of religious expressions and other interests such as equal access to training and employment is not easy, and different views can be taken towards this issue.
 - The question on using Muslim headscarves (hijab) in schools and at the workplace has spurred a lot of debate in different countries, and has led to different political decisions sometimes prohibiting and sometimes requiring the use of headscarves.

- For the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) the most important value is to ensure that Muslim women have equal access to and opportunity in employment regardless whether they choose to wear a headscarf or not. This view is put clearly forward in CEACR observations on the application of Convention No. 111 in France, Turkey and the Islamic Republic of Iran.³³

³³ For the references, see the Case responses for this exercise.

Exercise 3. Use and display of religious symbols at work: Case discussion**Handout****CASE**

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

Turkey is also a secular state with a majority Muslim population. Turkey **prohibits** the wearing of a headscarf in universities, arguing that head scarves are a symbol of backwardness and of rising Muslim fundamentalism.

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

1. Do you see scope for discrimination in any of the above cases? If so, on which ground? Would this be direct or indirect discrimination? From the equality point of view, how would you argue for or against banning headscarves in schools and at work?
2. Is there any discussion on the use of religious symbols at work or in schools in China? What is the position adopted by Courts or different authorities towards this issue? Are there any laws or policies restricting or promoting the use of religious symbols in public?

Exercise 3. Use and display of religious symbols at work: Case discussion**Case responses**

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

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

- (a) In the case of **France**, the CEACR was concerned that the prohibition on wearing any religious signs or apparel, including headscarves, in public schools imposed by Act No. 65 of 17 March 2004 and its implementing circular of 18 May 2004 might in practice result in some children, particularly girls, being kept away from public schools for reasons associated with their religious convictions, thereby reducing their capacity for finding employment, contrary to the Convention. The Committee reminded the Government of the importance of ensuring that the application of this Act did not have the effect of reducing girls’ capacity for finding employment in the future, which would be contrary to the principle of non-discrimination on religious grounds. The CEACR is still following up on the issue.³⁴
- (b) In the case of **Turkey**, the issue was first discussed in 2001. The CEACR expressed its concern that the requirement that public servants and students uncover their heads would in fact disproportionately affect Muslim women, possibly impairing or precluding altogether their right to equal access to education and employment due to their religious practice. The CEACR maintained that restrictions on the wearing of head coverings may have the effect of nullifying or impairing the access to university education of women who feel obliged to or wish to wear, a headscarf out of religious obligation or conviction. The Committee trusted that the Government would keep the evolving situation under continuous review in order to determine whether such a general restriction is still necessary, and to ensure that the right of equal access to education and training at the university level of women who feel obliged to or wish to wear a headscarf out of religious conviction was not restricted, contrary to the Convention. The Committee remains concerned that the current restrictions may, in practice, keep women away from university education and training.³⁵

³⁴ “Individual observation on Convention No. 111 with respect to France,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 93rd Session, Geneva, 2005; 95th Session, Geneva, 2006; and 97th Session, Geneva, 2008.

³⁵ “Individual observation on Convention No. 111 with respect to Turkey,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 89th Session, Geneva, 2001; 91st Session, Geneva, 2003; 95th Session, Geneva, 2006.

- (c) In the case of the **Islamic Republic of Iran** CEACR raised concerns with respect to the obligatory dress code for women, including wearing a head covering, and the imposition of sanctions in accordance with the Act on administrative infringements for violations of the Code. The CEACR was particularly concerned over “the negative impact that such a requirement could have on the employment of non-Islamic women in the public sector.” For a number of years, the Committee also expressed concern regarding the Disciplinary Rules for University and Higher Education Institutes Students, which classify non-observance of Islamic veil requirements as a political and moral offence, with sanctions including dismissal from university or permanent exclusion from all universities. The Committee had noted the Government’s reply that “Islamic covering is considered a women's uniform protecting her against misbehaviour in the workplace” and that the “Hijab so far has not led to any dismissals nor has it had any adverse impact on the employment of non-Muslim applicants”. The Committee requested the Government to provide more detailed information on the manner in which the abovementioned administrative and disciplinary rules regarding the dress code are being applied in practice with respect to education and employment, including information on the number of violations of the dress code by women and the sanctions imposed.³⁶

³⁶ “Individual observation on Convention No. 111 with respect to Islamic Republic of Iran,” in *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 95th Session, Geneva, 2006 (Geneva).

Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples: Case discussion

Instructions for trainers



Aim – To analyze how Convention No. 111 applies to independent occupations, including the traditional livelihoods of indigenous peoples or ethnic groups, and to highlight the importance of consultation and participation of these groups in decision making processes affecting their rights or interests.



Target group – Audiences with some previous understanding on non-discrimination, mostly policy makers.



Time – 20-30 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 aims of the exercise with the participants and divide participants to groups of 3-6 persons. Distribute the **handout** of the case to the groups and ask them to discuss and respond to the questions. Request each group to prepare a presentation on the case study and select a spokesperson to present it in the plenary for a maximum of 3 minutes.
- Reconvene in plenary when the groups are ready. Ask each group to give a brief presentation and discuss the case. After presentations, facilitate general discussion on the issue by encouraging participants to share their views.
- Give the round-up points using the **Case responses**, as needed. Ask participants whether they have further opinions or any questions.
- Round-up the discussion as follows:
 - Convention No.111 applies also to independent occupations, including traditional livelihoods of indigenous peoples or ethnic groups.
 - Indigenous peoples and ethnic groups need to be able to participate in decision making on issues which affect their rights and interests. For this purpose appropriate and effective mechanisms of consultation need to be established.



See also Box 3.17 Consultation of indigenous people – Norway in Section A of this Module for further information.

Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples: Case discussion



Handout

CASE

In 1971 the Japanese government announced plans to construct a massive industrial park and a large dam on the Saru River to supply water and electricity. The dam would be built in Nibutani, on land sacred to the Ainu people. Although the industrial park never materialized, appropriation of Ainu land and construction continued, and the dam was completed in 1997. The government did not consult the Ainu before or during the construction process, nor did it conduct environmental impact or cultural studies.

However, Kayano Shigeru and another Ainu activist, resisting both the government and some of their neighbours, refused to sell their land to the government. Instead they filed a lawsuit in the Sapporo District Court against the Japanese government on the basis of violation of their indigenous rights. In a landmark decision in 1997, the court recognized the indigenous rights of the Ainu and declared the land appropriation unconstitutional. However, by the time of this decision, the dam was completed and the reservoir filled, drowning sites sacred to the Ainu. A second dam is now being proposed.

The dam construction caused a wide range of problems for the Ainu. First of all, it caused considerable social and political conflict among the local Ainu community, especially among those who sold their land and the two who refused to sell. Many of the Ainu agreed to sell their land to the government because they were poor and they could no longer make a living as farmers. The fish no longer filled the Saru River because of changes in water temperature; places where Ainu used to gather wild plants had disappeared; and the sacred sites that were central to Ainu ceremonies in Nibutani were now under water.

Still, the 1997 Nibutani case was a breakthrough in recognition of the ethnic identity of the Ainu. Although the Ainu plaintiffs failed to stop construction, **the court ruled that the Ainu people were indigenous as defined by the United Nations (UN) protocols**. The court also criticized the Hokkaido Prefecture government for its management of other Ainu properties. On 29 March 1997, the day after the decision was announced, Prime Minister Hashimoto Ryutaro for the first time referred to the Ainu as an indigenous people. A decade earlier the government had conceded in a UN-ordered report that it recognized the Ainu as a minority, but they had not been officially considered as Japan's original inhabitants. On 6 June 2008, a "Resolution on demand to classify Ainu as indigenous peoples" was adopted unanimously at a plenary session of both houses of the Japanese Parliament.

Questions for discussion:

1. Was appropriation of Ainu land by the government discrimination against the Ainu?
2. If a similar kind of case threatening the traditional livelihood and areas of ethnic groups would happen in China, how could the ethnic groups protect their rights? Which laws protect ethnic minorities against acquisition of their land and traditional livelihoods in China?
3. In case the government development projects require acquisitions of land, what are the important steps to make the land acquisition process fair and transparent?

Source: R. Rice: *Ainu submergence and emergence: Human rights discourse and the expression of ethnicity in modern Japan* (2006).

Exercise 4. The Ainu in Japan – Protection of traditional livelihoods of indigenous peoples: Case discussion



Case responses

This case discusses the need to protect ethnic minorities' traditional occupations and right to maintain their traditional livelihoods. Denying ethnic groups their traditional methods of pursuing a livelihood is a common form of direct discrimination in occupation.

Convention No. 111 covers both those who are employed in employment relations as well as those who are self-employed or engaged in independent occupations, including rural occupations. All women and men working in independent occupations need to have equal access to credit, market facilities and support services. With regards to rights of indigenous peoples to their traditional livelihoods a recent ILO publication articulates the issue as follows:

“Equality in respect of access to particular occupations implies that nobody should be excluded from exercising the occupation of their choice on discriminatory grounds. Where indigenous peoples pursue their traditional occupations, they should enjoy access to credit, market facilities, agricultural extension and skills training facilities on an equal footing with other parts of the population. In all these cases, state policies will need to focus on equal opportunity in providing the skills, assets and resources on an equal basis.”³⁷

The establishment of appropriate and effective mechanisms for the consultation of indigenous and tribal peoples regarding matters that concern them is the cornerstone of the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). The establishment of processes of consultation is an essential means of ensuring effective indigenous peoples' participation in decision making.³⁸ Articles 6(1) and 7(1) of the Convention state the following on consultations:

Article 6(1). In applying the provisions of this Convention, governments shall:

- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;
- (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them;
- (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

Article 7(1). The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

³⁷ ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2007).

³⁸ ILO: *Indigenous and Tribal Peoples' Rights in Practice: A guide to ILO Convention No.169* (Geneva, 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 ethnic and religious 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 3.1 for discussion based on participants' interests:

-  Box 3.6 Promoting employment for ethnic Roma – Spain
-  Box 3.8 Practical measures to accommodate religious requirements at work – Canada
-  Box 3.9 Promoting racial equality – Hong Kong, China
-  Box 3.11 Business Unity South Africa (BUSA) and black economic empowerment (BEE)
-  Box 3.13 Good practice – Trade union action on ethnic and religious equality at work
-  Box 3.14 Good Company practice on ethnic diversity – Belgium
-  Box 3.15 Good practice: Promoting ethnic and religious equality through active employment policy – Bulgaria
-  Box 3.16 Good practice: Code of practice on selection and assessment – UK
-  Box 3.17 Good practice: Consultation of indigenous people – Norway
-  Box 3.18 Practical remedies for ethnic harassment at the workplace – Canada

Choose examples that reflect different issues related to ethnic and religious equality, such as reasonable accommodation, consultation with ethnic groups, harassment) and action taken by different stakeholders. **Photocopy** the selected examples and the questions for discussion to be given out as **handouts** to participants. Prepare also one sheet of flipchart paper and one marker pen for each group



Steps:

- Share the aims of the exercise with the participants, and divide the participants in groups. Distribute the **handouts** and flipchart papers, giving each group one of the selected good practices and the questions for discussion.
- Ask the groups to read the good practice allocated to them and discuss the questions given in the handout.

- After the groups have finished discussion, ask all groups to briefly present the outcomes of their discussion. Allow the groups to comment on each other's 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:
 - Enterprise level: Company managers, workplace trade unions
 - Employers' organizations
 - Workers' organizations
 - Ethnic affairs commissions
 - Labour officials
 - Judicial officials
 - Policy makers and legislators
 - Religious associations or ethnic associations
 - Women's Federations, Youth Federations etc.
- Invite participants to comment on suggestions given, asking, for example, the employers representatives whether the suggestions made for their action were feasible and whether the ethnic or religious association's representatives think the action proposed for them is feasible.
- Round-up the discussion as follows:
 - Promoting equality and combating discrimination require practical action by many stakeholders in the labour market and the society. Adopting 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 several good practices of equality promotion among ethnic and religious minority groups 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.

Exercise 5. Review of good practice examples**Handout****Questions for discussion**

1. What are the key characteristics of the good practice example? Who is taking action, what are the objectives of the measure, and who are the beneficiaries of the measure?
2. Have similar practical measures or action been taken in 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.
3. 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?
4. Which practical actions from the case study would be applicable within your organization? What would be priority actions and how would you implement them.

Unit 3.2 Ethnic and religious equality in China

Exercise 6. Ethnicity and religion at work in China: Case discussion

Instructions for trainers



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



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:

- Provide a **handout** with the case studies A and B to all participants. Ask them to read both case examples and discuss the questions in small groups.
- Reconvene in plenary when the groups are ready. Ask volunteers to give their views on the two cases. Facilitate the discussion and encourage participants to comment on the earlier speakers comments.
- After soliciting a few comments from the participants, add any points not mentioned by the groups and correct misunderstandings using the **Case responses**, as needed. Ask whether there are any questions and answer these, soliciting also answers by other participants.
- Round-up the discussion as follows:
 - These two cases illustrate two common situations that may take place in the Chinese labour market. In order to assess whether certain practice is discriminatory against certain religious or ethnic groups requires good understanding of discrimination and the concept of ‘inherent requirements of the job’.
 - It is also good to remember that often the solutions to issues emerging at the workplace are very practical. The best solutions to promote ethnic and religious equality can often be found through workplace cooperation and consultation.
 - Trade unions, ethnic and religious associations or other civil society organizations can play an important role in facilitating consultations between an individual employer and workers to find a good solution to practical problems.

Exercise 6. Ethnicity and religion at work in China: Case discussion



Handouts

CASES

A. Special dietary requirements at the workplace

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

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

B. Ethnicity as recruitment criteria?

A large-sized electronics store in Chengdu started a recruitment campaign to recruit specifically Uighur sales personnel. The company stated that the reason for exclusive recruitment of Uighurs was the need to attract new customers.

1. Is this discrimination? On what grounds?
2. Can you think of any reason why the employer could have a justified reason to consider ethnicity as an inherent requirement of the job?

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

Exercise 6. Ethnicity and religion at work in China: Case discussion**Sample answers****A. Special dietary requirements at the workplace**

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

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

The applicable legal provisions are Article 12 of the Labour Law and Article 28 of the Employment Promotion Law.

Source: W. Zhou: *Unpublished training materials* (Nanchang, 2009). (Based on interviews with an Uighur student and Chengdu Islamic Association staff, April 2009.)

B. Ethnicity as recruitment criteria?

This example highlights the concept of “inherent requirements of a job” and the need to provide justifiable reasons for special preferences given to applicants representing certain groups. In general, there seems to be no valid reason why ethnicity could be considered as an inherent requirement of a job for an electronics sales person. So, unless there are specific justifiable reasons for giving preference to one ethnic group, this recruitment practice is discriminatory.

In special circumstances, however, giving preferences to a certain ethnic group can be justified due to special reasons related to the inherent requirements of the job in question. In this case, a justifiable reason could be a business necessity or opportunity based on the following factors:

- The employer had reliable information showing that the sales of the company were particularly low among the Uighur population
- The employer had reliable information showing that Uighur sales persons can promote sales more effectively among the Uighur population than non-Uighur sales persons
- The employer could show that Uighur employees were currently underrepresented in the company staff, and more were needed to boost sales among Uighur customers.

In case the above criteria are met, giving preference to Uighur applicants could be justifiable, and not considered as discrimination. However, the employer must state the reasons for the preference in any job advertisements because otherwise they may be viewed as discriminatory.

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

Exercise 7. Ethnic and religious 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 at 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 an ethnic and religious equality action plan for their province or organization. The action plans should include the following elements:
 - Review of the local ethnic and religious discrimination situation
 - Identification of needs for improvement (legislation, partnerships, etc.) and clearly defined objectives
 - Who will do what: Roles of stakeholders and specific suggestions for measures that each of them should take
 - Resources.
- 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 presents their action plan to other groups. Alternatively, do a gallery work: Ask all groups to hang their flipcharts on the wall, ask some of them to stay with their group work outcome to answer questions and invite the others to walk around, look at and discuss the group work outcomes in informal small groups.
- Conclude the activity 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.


Section D. Practical tools




Section D. Practical tools

Checklist 1. Useful policy measures to eliminate discrimination against ethnic minorities

In order to effectively eliminate discrimination against ethnic minorities, the following elements 1-12 should be considered in the national and local policy.

Check  those measures that have been put in place in your locality.

Useful policy measures to eliminate discrimination against national ethnic minorities	
1. Legislation prohibiting and preventing discrimination in employment and occupation against ethnic minorities, as well as effective enforcement of such legislation. Ensuring access of ethnic minorities to judicial and administrative procedures.	
2. Measures to protect ethnic minority workers in the informal economy from work-related discrimination, forced labour and other exploitative labour practices.	
3. Provisions to ensure that ethnic minorities can carry out their traditional occupations without undue restrictions and, to this end, recognizing their right to exist and to maintain their cultures, traditions and institutions in national law and policies.	
4. Social dialogue (between employers and trade unions) on ethnic minority persons' equal opportunities to access decent work.	
5. Promotion of awareness and respect for ethnic minorities among the majority group(s) in society.	
6. Provision of equal education and training opportunities for ethnic minorities and the majority group(s) in the country.	
7. In cases where ethnic minorities have (had) less access to education and training, provision of positive measures (i) to remedy the effects of lack of education and training among adults who need to earn a living and (ii) to ensure that future generations of ethnic minorities do have equal chances to education and training .	
8. Provision of training which is based on the needs, social and cultural conditions, and economic and natural environment relevant to the groups concerned.	
9. Provision of bilingual and intercultural education .	
10. Consultation with and participation of ethnic minorities in the development, implementation and evaluation of measures designed to promote their equality of opportunity and treatment in employment and occupation, including any special measures.	

11. Mainstreaming the promotion of equal opportunities in employment and occupation in relevant national policies, such as land policies, poverty reduction strategies, rural or local development programmes, training policies, employment policies (including, among others, active labour market, gender and environmental policies).	
12. Enhanced cooperation between governmental units responsible for development, industry, labour, employment and social protection, human rights, ethnic affairs, equality and non-discrimination, etc.	
13. Integration of a gender perspective in all measures undertaken to promote equality of opportunity and treatment of ethnic minorities.	
14. Monitoring the situation of ethnic minorities in employment and occupation on the basis of appropriate data (broken down by sex).	

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

Checklist 2. Identifying discrimination in laws, policies and practices

Discrimination is often hidden and embedded in established practices that are considered natural. For this reason it is not always easy to identify discrimination. Go through the steps below to analyze whether a specific law, policy or practice constitutes discrimination against ethnic and religious groups.

A. Steps 1-3. Determine whether the law, policy or practice treats a person or group of persons differently, excludes any person or group, or gives preferences to a person or group	
1. Identify any person(s) or groups that face differential treatment.	
2. Identify the act, omission or process that treats the persons or groups concerned differently or leads to exclusions (a law, administrative regulation, policy, measure or practice, etc.).	
3. Identify the actor or party, responsible for the act or omission of an act (for example, an administrative body or authority or a private actor, such as a company).	
B. Steps 4-6. Establish whether the differential treatment is based on a prohibited ground (in ILO Convention No. 111 and/or national legislation).	
4. Do the person(s) or groups that face differential treatment, exclusion or preference have personal characteristics that relate to one or more of the prohibited grounds of discrimination (race, colour, sex, religion, political opinion, national extraction or social origin or any other ground as determined in national legislation, such as disability)?	
5. Is the treatment due to the person's ethnic origin, religion, sex or any other ground or possible multiple grounds?	
6. In a case of suspected indirect discrimination, do the apparently neutral measures disproportionately affect ethnic minority or religious groups, as compared to the majority population group(s)?	
C. Steps 7-9. Establish whether there is negative effect on equality in employment and occupation.	
7. In which ways does the distinction, exclusion or preference have a negative effect?	
8. Identify the aspect of employment and occupation that is affected (training, access to particular occupations, access to necessary resources, recruitment, remuneration, other terms and conditions of work, dismissal, social protection and insurance, retirement, etc.).	
9. Examine whether there are differences in how men and women from the ethnic or religious groups are affected.	


D. Steps 10-11. Establish whether there is a valid and legitimate justification?	
10. Is the differential treatment justified because it is based on an inherent requirement of a particular job (e.g. a non-minority job applicant has been preferred over a minority applicant due to a difference in qualifications that is actually needed for the job)?	
11. In case of suspected indirect discrimination, the following questions should be examined to determine whether the measure concerned could be justified because it is necessary and proportionate to achieve an legitimate objective : <ol style="list-style-type: none"> a. Is the objective of the measure(s) concerned based on respect for ethnic minority peoples' rights and dignity? b. Has the distinct situation of the ethnic minority peoples concerned (needs, economic situation, language, etc.) been taken into account when designing and putting in place the measure(s) concerned? c. Have the communities concerned been consulted and have they participated in decision making on the measure(s)? d. Have any alternative measures been explored that are more respectful of the ethnic minority people's right to exist and maintain their culture and institutions? 	


<p>Answer/Key:</p> <p>(A) <i>Distinction, exclusion or preference</i> (B) <i>based on prohibited grounds</i> (C) leading to <i>negative effect</i> on equality in employment and occupation for the group in question constitutes discrimination:</p> <ul style="list-style-type: none"> • A+B+C= discrimination <p>Exemption: The measure is not deemed discriminatory when A+B+C are justified due to existence of (D) a <i>valid and legitimate reason</i> for the differential treatment:</p> <ul style="list-style-type: none"> • A+B+C+D= justifiable, not discrimination

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

Checklist 3. Key steps for coordinated and systematic action to protect the rights of indigenous and tribal peoples

In order to overcome discrimination and ensure that indigenous peoples benefit on an equal footing in the national society, the following elements should be considered in national and local policy.

Check  those steps that have been taken in your locality. If some steps have not been taken, consider whether your organization could take action on this issue.

Simultaneous and complementary steps to implement ILO Convention No.169 to promote indigenous and tribal peoples' rights	
1. Careful analysis and amendment of existing laws, policies and programs in all sectors, in consultation with the peoples concerned, to ensure that these are in line with the Convention No.169	
2. Enactment of new legislation or regulations where necessary, and following consultation to make the provisions of the Convention No.169 operational	
3. Establishment of specific institutions to promote and implement indigenous peoples' rights , or - particularly in countries with a large indigenous population - institutions to coordinate the implementation, across sectors and levels of governance	
4. Establishment of permanent mechanisms at all levels of governance for indigenous peoples' participation in decision-making , including for: <ol style="list-style-type: none"> a. planning b. implementation c. monitoring d. evaluation e. reporting on implementation measures 	
5. Establishment of clear priorities and timeframes for implementation , in order to generate collaboration and minimize risk of conflict	
6. Assignment of necessary budgetary resources for <ol style="list-style-type: none"> a. specific actions b. mainstreaming efforts across sectors 	
7. Awareness-raising, training and capacity building of: <ol style="list-style-type: none"> a. indigenous representatives and communities b. decision-makers, c. government officials, d. judges, e. media as well as f. the public in general. 	

Adapted from ILO: *Indigenous and tribal peoples' rights in practice. A guide to ILO Convention No.169* (Geneva, 2009).

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Annex

Provisions on ethnic and religious equality at work in Chinese laws and regulations

The Constitution (adopted for enforcement at the 5th Session of the Fifth National People's Congress on December 4th, 1982):

- Article 4. All nationalities in the People's Republic of China are equal. ... Discrimination against and oppression of any nationality are prohibited...
- Article 36. Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may ... discriminate against citizens who believe in, or do not believe in, any religion.

The Labour Law (adopted by the Standing Committee of the National People's Congress in July 1994, and came into force on January 1st, 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 14. Where there are special stipulations in laws rules and regulations on the employment of [...] the personnel of minority nationalities [...] such special stipulations should apply.

The Employment Promotion Law (adopted by the Standing Committee of the National People's Congress in August 2007, and came into force on January 1st, 2008):

- Article 3. Workers shall have the right to equal employment and to choose 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 28. Workers of all ethnic groups enjoy equal labour rights. When an employer recruits employees, it shall give appropriate consideration to workers of ethnic minorities.

The Civil Servant Law (adopted by the Standing Committee of the National People's Congress on April 27th, 2005, and came into force on January 1st, 2006):

- Article 21. When recruiting public servants according to the provisions of the preceding paragraphs, the local authorities in the autonomous regions of ethnic groups may give appropriate consideration to the applicants of ethnic minorities in accordance with the provisions of law and regulation concerned.

The Trade Union Law (adopted by the 5th Session of the National People's Congress in 1992, and came into force on the date of its promulgation):

- Article 3. All labourers doing physical or mental work in enterprises, public institutions and government organs within the Chinese territory who earn their living primarily from wages shall have the right to participate in and form trade union organizations pursuant to the law, regardless of nationality, race, sex, occupation, religious belief or education. No organization or individual may hinder or restrict them from doing so.

The Law on Regional Ethnic Autonomy (adopted by the Standing Committee of the National People's Congress in May 1984, and came into force on October 1st, 1984):

- Article 18. The cadres in the departments under the organs of the self-government of a national autonomous area should, whenever possible, be chosen from among citizens of the nationality exercising regional autonomy and of the other minority nationalities in the area.
- Article 22. In accordance with the needs of socialist construction, the organs of self-government of ethnic autonomous areas shall take various measures to train large

numbers of cadres at different levels and various kinds of specialized personnel, including scientists, technicians and managerial executives, as well as skilled workers from among the local ethnic groups, giving full play to their roles, and shall pay attention to the training of cadres at various levels and specialized and technical personnel of various kinds from among the women of ethnic minorities. The organs of self-government of national autonomous areas should give appropriate favourable consideration to the applicants of ethnic minorities when recruiting functionaries. The self-governing organs of ethnic autonomous areas may adopt special measures to provide preferential treatment and encouragement to specialized personnel joining in the various kinds of construction in these areas.

- Article 23. When recruiting personnel, enterprises and institutions in ethnic autonomous areas shall give priority to minority nationalities and may enlist them from the population of ethnic minorities in rural and pastoral areas in accordance with the State regulations.

The Regulation of Labour Market Management (promulgated by Decree No. 10 of the Ministry of Labour and Social Security on December 8th, 2000, and came into force on the date of its promulgation):

- Article 11. When recruiting a person, the employer shall not refuse to hire or raise thresholds of employment on the basis of gender, nationality, race or religious belief, unless otherwise prescribed by the state as unsuitable types of work or posts.

The Regulation on Administration of Human Resources Markets (promulgated by Decree No. 1 of the Ministry of Human Resources and State Administration of Industry and Commerce on September 11th, 2001, and revised on March 22nd, 2005):

- Article 26. When recruiting a person, the employer shall not refuse to hire or raise thresholds of employment on the basis of ethnicity or religious belief; [...].

The Regulation on Employment Service and Employment Administration (promulgated by Decree No. 28 of the Ministry of Labour and Social Security in November 2007, and came into force on January 1st, 2008):

- Article 4. Workers shall enjoy equal right to employment under the law. Labourers shall not be discriminated against in employment on the basis of ethnicity, race, sex or religious belief.
- Article 17. In the process of recruitment, an employer shall give appropriate favourable consideration to candidates of ethnic minorities in accordance with law.

The Regulation on Urban Nationality Work (promulgated by Decree No. 2 of State Ethnic Affairs Commission on September 15th, 1993, and came into force on October 23rd, 1993):

- Article 8. Urban people's government shall pay attention to the training and choice of cadres of minority nationalities. The relevant departments of urban people's government shall pay attention to the training and use of the specialized persons of minorities. The Urban people's government shall encourage the enterprises to recruit minority workers.

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.

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