



International
Labour
Organization



**Committee of Experts on the Application
of Conventions and Recommendations**

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



General observation,
publication 2019

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At its 2018 session (November–December), the Committee of Experts on the Application of Conventions and Recommendations (CEACR) adopted a general observation on the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The text of this observation is reproduced below.

As part of the regular supervisory system on the application of ILO international labour standards, the CEACR is an independent body whose function is to provide an impartial and technical assessment of the application of these standards by ILO member States. The CEACR is composed of 20 experts, eminent jurists from different geographical regions, legal systems and cultures.

In addition to the comments directly addressed to Governments, the CEACR may decide to publish the so-called “general observations” on certain issues concerning the application of a Convention.

General observation

GENERAL OBSERVATION ON DISCRIMINATION BASED ON RACE, COLOUR AND NATIONAL EXTRACTION ¹

On the occasion of the 60th anniversary of the adoption of the Convention, which to date has achieved almost universal ratification, and on the eve of the 100th anniversary of the ILO, the Committee wishes to recall that no society is free from discrimination and constant efforts are needed to take action against it. The elimination of discrimination and the promotion of equality of opportunity and treatment in employment and occupation, enshrined in the Convention, are among fundamental principles. The Philadelphia Declaration of 1944 declares that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. The principles of equality and non-discrimination in employment and occupation are also enshrined in the 1998 Declaration on the Fundamental Principles and Rights at Work and the 2008 Declaration on Social Justice for a Fair Globalization. The Committee emphasizes that equality in the world of work can only be fully achieved within a general context of equality. In this regard, the Committee recalls that article 1 of the Universal Declaration of Human Rights, 1948, states that “all human beings are born free and equal in dignity and rights”, and notes that the Declaration is celebrating its 70th anniversary this year. The Committee stresses that effective application of these principles is crucial to the realization of social justice and lasting peace by ensuring that no one is left behind.

¹ This is not the first time that the Committee has formulated a general observation devoted to a particular ground of the Convention. In 2002, it adopted a general observation on a particular topic under the ground of sex, namely, sexual harassment (published in 2003). In the same vein, the Committee has also adopted two general observations under the Equal Remuneration Convention, 1951 (No. 100): the first one in 1998 in order to provide specific guidance on the type of statistics, disaggregated by sex, which the Committee needs in order to assess the progress in the implementation of the Convention; and the second one in 2006 in order to underscore the importance and clarify the meaning of “work of equal value”.

The Committee recalls that *Article 1(1)(a)* of the Convention defines discrimination as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment and occupation. The Convention also covers any other grounds as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies (*Article 1(1)(b)*). While recognizing that discrimination based on all grounds falling within the scope of the Convention persists around the world, the Committee has decided to devote this observation to discrimination based on race, colour and national extraction.

The Committee recalls that in its 2012 General Survey on the fundamental Conventions, it reviewed the application of the Convention with respect to all prohibited grounds of discrimination and noted the progress being made in many countries in giving effect to its provisions. The Committee however also noted that, whereas discrimination on the grounds of race, colour and national extraction is generally prohibited in national legislation in most countries, far fewer countries have adopted proactive and comprehensive measures aimed at promoting substantive equality in respect of these grounds. This is despite long-standing international action against discrimination, including the adoption of the International Convention on the Elimination of All Forms of Racial Discrimination, in 1965, complemented by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration (Durban, 2001), the proclamation, in December 2014, by the United Nations General Assembly of the International Decade for People of African Descent (2015–24), and more recently the 2030 Agenda for Sustainable Development (2030 Agenda). In this regard, the Committee recalls that the 2030 Agenda recognizes that “rising inequalities within and among countries” is one of the major challenges confronting the world today. The Committee notes that inequalities disproportionately affect certain groups and members of those groups because of their race, colour or national extraction, which often intersects with other prohibited grounds of discrimination under *Article 1(1)(a)* of the Convention, such as social origin and religion, with compounding effects on women and girls.

The Committee recalls that under the Convention the term “race” includes any discrimination against linguistic communities or minority groups whose identity is based on religious or cultural characteristics or national or ethnic origin. In the context of the Convention, discrimination on the basis of race is generally examined together with discrimination based on colour, since “colour” is one of the ethnic characteristics that differentiate human beings. The Committee also recalls that national extraction covers distinctions made on the basis of a person’s place of birth, ancestry or foreign origin. In its examination of governments’ reports submitted under the Convention, the Committee has thus addressed discrimination in employment and occupation experienced by ethnic minorities, indigenous and tribal peoples, migrant workers, including migrant domestic workers, afro-descendants, national minorities and Roma people, among others, as an aspect of discrimination on the basis of race, colour and national extraction.

The Committee has noted that given the persisting patterns of discrimination on the grounds of race, colour and national extraction, in most cases there is a need for comprehensive legislation containing explicit provisions defining and prohibiting discrimination in all aspects of employment and occupation, in order to ensure full application of the Convention. These definitions should include direct and indirect discrimination, and discrimination-based harassment as a serious form of discrimination, in particular racial harassment. Racial harassment occurs where a person is subject to physical, verbal or non-verbal conduct or other conduct based on race which undermines their dignity or which creates an intimidating, hostile or humiliating working environment for the recipient. Moreover, the intersection of factors such as race, religion, gender or disability increases the risk of harassment, particularly in respect of young women from an ethnic or racial minority.

The Committee also notes that the underlying causes of discrimination and de facto inequalities, resulting from deeply entrenched discrimination and long-standing social exclusion, cannot effectively be addressed without proactive measures. The Committee has considered that in many cases special measures of the type outlined in *Article 5* of the Convention are needed to remedy the effects of past and present discriminatory practices and to promote equal opportunities for all. Noting that forms of discrimination based on race, colour and national extraction often interact with other prohibited grounds of discrimination, including for example,

religion, social origin and sex, the Committee has drawn the governments' attention to the need to take into consideration and address the effects of multiple forms of discrimination in employment and occupation. The Committee has also recalled that universal education, compulsory and free of charge to the same level for everyone, is one of the basic starting points for a national equality policy required under *Articles 2 and 3* to promote equality of opportunity and treatment in employment and occupation.

The Committee has welcomed the adoption of legislation to redress past or present discrimination by an increasing number of countries. That legislation imposes a duty both to prevent and combat discrimination and to promote equality of opportunity and treatment in employment and occupation, because this form of legislation may prove to be most effective in addressing discrimination on the grounds of race, colour and national extraction. The Committee has been pleased to note the efforts deployed in many countries to tackle discrimination and promote equality of opportunity and treatment, irrespective of race, colour and national extraction, by various concrete measures including: (i) targets and quotas in education, vocational training and employment; (ii) special employment promotion programmes; (iii) action plans targeting specific ethnic groups; and (iv) the establishment of specialized bodies with varying mandates, ranging from awareness-raising and promotional functions to dealing with discrimination complaints and formulating policy recommendations.

In spite of all these efforts, the Committee notes with *regret* that the impact of the measures taken remains uncertain in most cases, particularly in the absence of regular monitoring and periodic evaluations. In only a few cases have specific studies been undertaken with a view to examining the situation in employment and occupation of persons belonging to specific ethnic groups and establishing a baseline from which governments, social partners and other stakeholders are able to assess the real impact of such measures periodically. This adds to the lack of collection and publication of employment statistics disaggregated by ethnic origin in many countries, due to either the lack of technical capacity or the absence of legislation and procedures that allow for such collection. The Committee emphasizes that data and qualitative research on the nature and extent of labour inequalities, including its underlying causes, are crucial to determine the nature, extent and causes of discrimination, design and implement a relevant and effective

national equality policy under *Articles 2 and 3* of the Convention, and monitor and evaluate its results. It recalls that *Article 3(f)* requires governments to report on the action taken in pursuance of the national equality policy and the results secured by such action. In this connection, the Committee has systematically requested that governments regularly assess the impact of such policies, in order to review and adjust existing measures and strategies on a continuing basis. The Committee also wishes to stress the importance of consulting with the social partners and the interested groups on the design, monitoring, implementation and evaluation of the measures and plans adopted with a view to ensuring their relevance, raising awareness about their existence, promoting their wider acceptance and ownership and enhancing their effectiveness

The Committee notes with **concern** that discriminatory attitudes and stereotypes based on the race, colour or national extraction of men and women workers continue to hinder their participation in education, vocational training programmes and access to a wider range of employment opportunities, resulting in persisting occupational segregation and lower remuneration received for work of equal value. These factors also frequently drive many persons from these groups into jobs in the informal economy. The Committee also notes that employment quotas, where they exist, remain frequently unfilled, reportedly often due to the lack of skilled persons from the designated groups or because of insufficient efforts to recruit actively the persons targeted. The Committee thus considers that it is necessary to adopt a comprehensive and coordinated approach to tackling the obstacles and barriers faced by persons in employment and occupation because of their race, colour or national extraction, and to promote equality of opportunity and treatment for all. Such an approach should include the adoption of interlocking measures aimed at addressing gaps in education, training and skills, providing unbiased vocational guidance, recognizing and validating the qualifications obtained abroad, and valuing and recognizing traditional knowledge and skills that may be relevant both to accessing and advancing in employment and to engaging in an occupation. The Committee also recalls that, in order to be effective, these measures must include concrete steps, such as laws, policies, programmes, mechanisms and participatory processes, remedies designed to address prejudices and stereotypes and to promote mutual understanding and tolerance among all sections of the population.

The Committee emphasizes the importance of ensuring coordination and complementarity between the interlocking measures and strategies adopted, and between the various competent bodies with a view to ensuring coherence and enhancing impact, while avoiding duplication of efforts and promoting the optimal use of resources. The Committee also considers that it is important to mainstream the promotion of equality of opportunity and treatment in employment and occupation in relevant national policies, such as education and training policies, employment policies, poverty reduction strategies, rural or local development programmes, women's economic empowerment programmes, and climate mitigation and adaptation strategies.

The Committee further notes that some workers face challenges in seeking to engage in the occupation of their choice because of discrimination, in law and practice, based directly or indirectly on race, colour and national extraction. For example, unsecure land tenure and biased approaches towards the traditional occupations engaged in by certain ethnic groups, which are often perceived as outdated, unproductive or environmentally harmful, continue to pose serious challenges to the enjoyment of equality of opportunity and treatment in respect of occupation for many persons. In this regard, the Committee wishes to emphasize that promoting and ensuring access to material goods and services required to carry out an occupation, such as secure access to land, and access to credit and resources, without discrimination, should be part of the objectives of a national policy on equality. Any discriminatory law and practice affecting access to and performance of an occupation, contrary to the equality policy, must be repealed in accordance with *Article 3* of the Convention.

The Committee recalls the important role that employers' and workers' organizations play in promoting understanding, acceptance and realization of the principles of the Convention which set out broad requirements of active cooperation with employers' and workers' organizations with respect to the effective implementation of the national equality policy required under the Convention. The Committee also underlines the importance of collective agreements in applying the national equality policy and advancing equality of opportunity and treatment for all workers, irrespective of race, colour or national extraction.

The Committee, furthermore, notes that significant barriers remain in many countries that impede access to justice for those discriminated against on the basis of race, colour and national extraction, among other grounds, including physical, financial and linguistic obstacles. The Committee thus invites governments to establish accessible dispute resolution mechanisms, where they do not yet exist, and to ensure that the applicable burden and standard of proof do not impede access to justice for victims. In this respect, the Committee recalls that it has noted with interest that in some countries, once the complainant has produced plausible or prima facie evidence of discrimination, the burden of proof shifts to the employer. The Committee further encourages governments to explore avenues towards expanding the accessibility of existing mechanisms, including by amending the rules on legal standing to include civil society organizations, equality bodies, workers' and employers' organizations, and other representative institutions, and to raise public awareness of the relevant legislation and remedies available. The Committee also recalls that sanctions imposed must be effective, proportionate and dissuasive, and effective protection from retaliation must be ensured to the victims of discrimination who lodge complaints or bring cases before the competent authorities, and to witnesses. Further, the Committee considers that addressing discrimination based on race, colour and national extraction through criminal proceedings only, is normally not sufficient – due to the sensitivity of the issue, the standard of proof which is harder to meet, and the fact that criminal law does not address the full range of behaviour that constitute this type of discrimination – and invites governments to ensure that civil remedies are available.

In light of the above, the Committee encourages governments, in cooperation with workers' and employers' organizations and other interested bodies, to strengthen their efforts in the following areas and to provide information in future reports on the measures adopted or envisaged in this respect:

- (i) assessing the situation in employment and occupation of all ethnic groups in their countries and the discrimination faced by them, through dedicated studies, surveys and disaggregated data gathering, respectful of confidentiality, through informed consent and voluntary self-identification, in order to inform the formulation and evaluation of appropriate measures, taking into account the effects of multiple forms of discrimination;

- (ii) consulting, with the social partners and, wherever possible, with interested groups on the design, implementation, monitoring and evaluation of the measures and plans adopted under the national equality policy;
- (iii) adopting proactive and comprehensive measures to promote the substantive equality of all persons and redress discrimination based on race, colour and national extraction including in its multiple forms;
- (iv) ensuring that appropriate measures to promote equality of opportunity and treatment irrespective of race, colour and national extraction in respect of non-waged work are also included in the national equality policy which take into account the compounding effects of discrimination on women, especially as regards access to land, credit and other productive resources;
- (v) regularly monitoring and assessing the results achieved within the framework of the national equality policy with a view to reviewing and adjusting existing measures and strategies and identifying any need for greater coordination between measures and strategies and between competent bodies in order to streamline interventions;
- (vi) undertaking awareness-raising and educational programmes to combat prejudices and stereotypes based on race, colour and national extraction, including developing specific programmes to be used in schools;
- (vii) enhancing the capacity of enforcement authorities, including labour inspectors, tribunals and other competent bodies, as well as workers' and employers' organizations, migration authorities, job placement entities, and other relevant actors to identify, prevent and address cases of discrimination; and
- (viii) ensuring that the enforcement and remedies available in respect of discrimination based on race, colour and national extraction in employment and occupation are primarily effected through civil law rather than criminal law.

Noting that several countries still retain legal provisions that do not specifically prohibit discrimination on the grounds of race, colour

or national extraction, the Committee recalls that it has consistently indicated that, where legal provisions are adopted to give effect to the principle of the Convention, they should include at least all of the grounds of discrimination specified in *Article 1(1)(a)* of the Convention, as well as a clear definition of discrimination, and it therefore urges the governments of those countries to take the necessary steps to amend their legislation with a view to including them.

Finally, the Committee recalls that governments can avail themselves of the technical assistance of the ILO regarding these matters.

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