

REPORT OF THE DIRECTOR-GENERAL

Equality at work: The continuing challenge

Global Report under the follow-up to the ILO Declaration
on Fundamental Principles and Rights at Work

INTERNATIONAL LABOUR CONFERENCE
100th Session 2011

Report I(B)

INTERNATIONAL LABOUR OFFICE GENEVA

This Report may also be consulted on the ILO website (www.ilo.org/declaration).

ISBN 978-92-2-123091-5 (print)

ISBN 978-92-2-123092-2 (web PDF)

ISSN 0074-6681

First published 2011

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Contents

Executive summary	ix
List of abbreviations	xvii
Introduction	1
Part I. An evolving picture: Capturing the trends	5
The impact of the global economic crisis on non-discrimination in employment and occupation	5
Impact on migrant workers	5
The crisis and women workers	6
Poverty and discrimination	7
Responding to the crisis	9
Stimulus packages	9
Preventing harmful effects of fiscal consolidation	10
Institutional capacity to deal with non-discrimination	11
Monitoring the impact of policies and measures	12
Measuring discrimination	13
Recent legal developments	14
Ratification of core Conventions	14
Legislative trends	14
Remaining challenges	15
Discrimination based on multiple grounds	16
Addressing multiple discrimination	17
Part II. From principles to practice	19
Discrimination based on sex	19
Promoting gender equality through gender mainstreaming	19
Affirmative action	20
Persistence in gender pay gaps	21
Means to narrow the gender pay gap	22
Maternity and paternity status	24
Balancing work and family responsibilities	25
Girls' access to education	26
Legislation on marital status	26

Complaints of sexual harassment	27
Discrimination based on race and ethnicity	27
Alarming trends worldwide	27
Little progress for people of African descent	28
Indigenous peoples: The case of Latin America	31
Policies and measures targeting indigenous peoples	32
Europe and the Roma people	33
Discrimination based on nationality and the case of migrant workers	34
Manifestations of discrimination in employment	35
Working conditions	35
Measures aimed at limiting migration and expelling migrant workers	36
Integration versus assimilation	37
Xenophobia and violence	37
Limited awareness of rights	39
Legal developments and proactive measures	39
Diversity policies	39
Discrimination based on religion	40
Increasing visibility of religious discrimination	40
Manifestation of religion in the workplace	40
Freedom not to disclose one's religion	41
Managing a religiously diverse workplace	41
Discrimination based on political opinion	42
Legislative measures	42
Discrimination based on social origin	43
Caste-based discrimination	43
Legislative and policy developments	44
Discrimination based on HIV status	44
Marginalization of persons living with HIV and AIDS	45
HIV testing and screening	45
Recent legal developments and remaining gaps	46
Role of the social partners	46
Discrimination based on disability	46
Pervasive inequalities in employment	46
Limited access to education and vocational training	47
Failure to provide reasonable accommodation	47
Recent efforts to provide adequate legal protection	48
Enhancing the employability of persons with disabilities	48
Discrimination based on age	49
An increase in age-related complaints	49
Measures to achieve equality for older workers	49
The situation of younger workers	50
Discrimination based on sexual orientation	51
Progress on anti-discrimination measures	51
Trade unions taking action	51
Discrimination based on genetics	52
Legislative developments	52
Discrimination based on lifestyle	53
Discrimination based on body weight	53
Discrimination based on smoking	54

Part III. The ILO's response	57
Decent work for all	57
Promoting action on non-discrimination	58
Better design and enforcement of legislation	59
Gender equality	59
Equal remuneration for men and women	62
Reconciling work and family responsibilities	63
Equality with respect to race and ethnicity	63
Protecting migrant workers	64
Equal opportunities for persons with disabilities	65
Age discrimination	65
 Part IV. Towards an action plan	 67
Promoting the relevant ILO instruments	67
Developing and sharing knowledge on the elimination of discrimination in employment and occupation	68
Developing the institutional capacity of ILO constituents to effectively implement non-discrimination at work	69
Strengthening international partnerships with major international actors on equality	69





Executive summary

The global economic and financial crisis, which has predictably turned into a major employment crisis, forms the background to the third Global Report on discrimination. The aim of the Report is to provide a dynamic picture of trends over the last four years and present some findings, conclusions and recommendations for future action by the ILO and its constituents.

This Report contains both good and bad news about recent worldwide trends regarding discrimination in employment and occupation. On the positive side, there is more legislation, there are more institutional initiatives, and, in general, a growing awareness of the need to overcome discrimination at work. However, capacity does not keep pace with the political will, and a prolonged economic downturn exposes structural weaknesses and even aggravates structural discrimination. Furthermore, the agenda of discrimination at work is continuously diversifying, and new challenges arise where old ones remain at best only partially answered.

Weathering the effects of the global crisis

This Report shows that discrimination continues to be persistent and multifaceted. A major area of concern is access to jobs. The proportion of workers who are vulnerable to poverty is on the increase again, reversing the positive trends noted over the last few years. Discrimination has also become more varied, and discrimination on multiple grounds is becoming the rule rather than the exception. Such trends have been witnessed by equality bodies, which have received an increased number of complaints of workplace discrimination.

In times of crisis, inequality, insecurity and the danger of exclusion are fed by direct or indirect

discrimination. Attitudes are influenced, and it becomes more difficult to strengthen policies and legislation against discrimination. Discrimination occurs as a result of actions by employers, national legislation and practice, social and cultural factors, and different perceptions of the causes of economic and social troubles. And yet, the link between non-discrimination and social stability is particularly important at a time of economic adversity.

Different economies and sectors of the economy have been affected in different ways. Workers in more stable employment relationships are naturally less affected by the crisis than those in temporary or precarious employment. The risk is especially acute for the low-skilled, older and migrant workers, as well as those workers – including university graduates – who are looking for their first job.

The employment of women has been seriously affected in several countries by the impact of the crisis on export sectors. Earlier downturns have revealed a similar impact on the employment and income of women as many have been pushed into informal employment. Despite this, in many developed market economy countries the crisis has not had a disproportionate impact on women's employment that could be attributed to discrimination. It is also too early to draw conclusions from available data on the wage gap, and the trends so far discerned appear to be contradictory. What is clear is that institutional solutions, such as equal remuneration mechanisms, are helpful at least for those in employment whose jobs are not immediately threatened.

Measures that have been adopted in order to mitigate the effects of the crisis, in particular austerity packages, have on occasion indirectly and inadvertently increased discrimination against certain groups of workers. Growth and unemployment concerns are naturally important, and concerns

about discrimination can easily take second place to short-term economic and employment policies or budgetary decisions which affect both public and private institutions dealing with discrimination.

In many developing countries, transfer programmes that are targeted at the poor provide income support on condition that children attend school and that they and their parents visit health centres. These measures may, however, have only a limited impact on poverty reduction if they do not also address factors of economic vulnerability such as ethnic, racial and gender discrimination.

The fundamental right of non-discrimination in employment and occupation for all women and men needs to be at the core of policies for recovery and of action to reduce poverty in order to achieve more sustainable growth and fairer societies. The right response includes legislation, institution building, awareness raising, voluntary action by the social partners, and a change in attitudes through education.

The good news: Trends in anti-discrimination legislation and policies

In spite of the crisis and the prevailing policy environment, there have continued to be positive advances in anti-discrimination legislation and policies. These concern both the amount and the content of new legislation. Thus, in the middle of a hardening global climate, laws on equality and non-discrimination at work cover an increasingly broad set of grounds for discrimination and stipulate more comprehensive protection.

For instance, rapid advances have been made with legislation to prohibit discrimination on the basis of disability and age. Race and sex continue to be the two grounds of discrimination which are specifically included in almost all legislation for equality and against discrimination at work. However, less progress has been made in obtaining explicit mention of other grounds for discrimination, such as national extraction, social origin and political opinion.

In Europe, anti-discrimination legislation has been consolidated, and definitions of discrimination and the allocation of the burden of proof have been brought into line with European Union directives. Around the world, new laws have been introduced or existing legislation amended to eliminate discrimination based on age, maternity and marital status, disabilities, lifestyle and genetic predisposition. Existing legislation has been complemented by family-friendly policies relating, for example, to parental leave, maternity protection and breastfeeding, as well as other

new policies for continual training for older workers and quotas for women in managerial positions. Such policies have been implemented at the enterprise and national levels.

Ratifications of the two fundamental Conventions in this area – the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – stand at 168 and 169 respectively, out of a total of 183 ILO member States. That makes them the fifth and fourth most ratified ILO Conventions. When ratification levels are over 90 per cent, the target of universal ratification is attainable.

New ombudsman offices dealing specifically with discrimination on several grounds have been established in six European countries. Enforcement mechanisms include effective labour inspectorates, specialist courts or ombudsman authorities, adequate protection against victimization, the availability of effective remedies, and a fair allocation of the burden of proof. They also call for adequate awareness of rights on the part of workers who may suffer discrimination – which means all workers – as well as readily accessible complaints procedures. In many countries, equality bodies have significantly contributed to a better implementation of laws and policies against discrimination at work; in others, they have faced serious constraints in fulfilling their mandate.

The bad news: Capacity constraints

Having laws and institutions to prevent discrimination at work and offer remedies is not enough; keeping them functioning effectively is a challenge, especially in troubled times. Many of the institutions are faced with a shortage of human and financial resources, inadequate policy coherence at the national and local levels, and insufficient synergy and cooperation with other relevant institutions. Labour inspectors, judges, public officials and other competent authorities encounter a lack of knowledge and inadequate institutional capacity when they attempt to identify and address discrimination cases. This prevents victims of discrimination from submitting their claims successfully.

During economic downturns, there is a tendency to give lower priority to policies that are targeted against discrimination and promote awareness of workers' rights. Austerity measures and cutbacks in the budgets of labour administrations and inspection services, and in funds available to specialized bodies dealing with non-discrimination and equality, can

seriously compromise the ability of existing institutions to prevent the economic crisis from generating more discrimination and more inequalities.

The value of available data is often limited because of differences in definitions of discrimination at work in different countries. Data are typically collected through ad hoc research or situation tests, but seldom in a systematic way. In particular, international comparisons are at best scant and sketchy.

The lack of reliable data makes it difficult to monitor and assess the impact of measures that have been taken. If statistics are meagre or unreliable, the extent of discriminatory practices will remain largely unknown. Among the serious capacity constraints is an inadequate commitment by governments to put into place human, technical and financial resources to improve data collection at the national level. Taking this important but complex first step will significantly contribute to the identification of problems and the measures needed to tackle them.

Gender equality

Significant progress has been made in recent decades in advancing gender equality in the world of work. National policies and legislative frameworks have improved, but major challenges remain. Women continue to suffer discrimination in terms of the jobs available to them, their remuneration, benefits and working conditions, and access to decision-making positions. Recent data show that 829 million women live in poverty worldwide, while the equivalent figure for men is 522 million.

Women's wages are on average 70–90 per cent of men's. The gender pay gap still exists despite advances in education, and women continue to be over-represented in low-income jobs. A significant proportion of this pay gap is explained by occupational and sectoral segregation.

Reconciling work and family responsibilities

The availability of affordable childcare facilities outside the family is a precondition for many women and men to engage fully in working life and earn their living. A lack of such services places workers with family responsibilities at a disadvantage and reduces the range of jobs accessible to them. The lack of adequate paid leave can also render sectors of the labour market inaccessible or unattractive for workers with family responsibilities. These are everyday examples of structural discrimination.

Flexible and negotiated arrangements on working schedules, job sharing and teleworking are gradually being introduced as an element of more family-friendly policies, which can reduce the structural disadvantages experienced by workers with family responsibilities.

Maternity and paternity protection

Discrimination related to pregnancy and maternity is still common. The access of women to certain jobs can be restricted on the basis of their reproductive role. Several equality bodies worldwide have even witnessed increased discrimination against women on grounds of maternity. Specific cases concern dismissals for pregnancy and nursing, failure to grant time for nursing, withholding of pre- and postnatal benefits, denial of promotion, and refusal to allow workers to return to posts occupied before maternity leave.

At the same time, new legal provisions are being introduced to protect women against dismissal and discrimination due to pregnancy, marital status, family responsibilities or maternity leave. Many countries provide women with paid leave if they have a miscarriage or stillbirth or suffer from some other abnormal condition. There are increasing provisions for paternity leave. However, groups such as part-time workers or those in export processing zones may not be able to benefit from such improvements.

Sexual harassment

Sexual harassment occurs on every continent and in different types and categories of occupations. Surveys show that it is a significant problem in workplaces. Women who are most vulnerable to sexual harassment are young, financially dependent, single or divorced, and migrants. Men who experience harassment tend to be young, gay and members of ethnic or racial minorities. Experiences in many countries have shown that effective action against sexual harassment in the workplace requires a combination of legal frameworks, stronger enforcement, adequately funded institutions and greater awareness.

Race and ethnicity

In line with previous Global Reports on discrimination at work, it is important to emphasize that the need to combat racism is as relevant today as it ever was. Although some progress has been made, there

are still many areas where achievements are lacking or insufficient. What is called for is a mix of legal, policy and other instruments, including guaranteed access to effective remedies for all victims. Barriers impeding equal access to the labour market need to be dismantled. This concerns, in particular, people of African and Asian descent, indigenous peoples and ethnic minorities, and above all women within these groups. Labelling certain groups in a stereotypical way can have a significant damaging effect.

Migrant workers

In many countries migrant workers make up 8 to 20 per cent of the labour force, and in certain regions the figure is significantly higher. Research shows consistently that they face widespread pervasive discrimination in access to employment, and many encounter discrimination when employed. Migrant workers have also been particularly affected by the economic crisis, with reduced employment or migration opportunities and increased xenophobia, a deterioration in working conditions and even violence. Unfair working conditions are faced by migrants in both developed and developing countries.

Some countries exclude migrant workers from social insurance programmes. Others only allow access for migrants to short-term programmes, such as health care, but deny them long-term portable benefits such as old-age pensions. Countries may allow access to long-term benefits but not permit portability between countries, which in turn discourages return migration.

In some cases, discriminatory tendencies have recently been aggravated by hostile political discourse, and there is a risk that this may lead to exclusion, rejection and expulsion of migrant workers. Social tensions and hardening attitudes towards migrants – as with any social group – can result in systematic and widespread discrimination. Populist policies can foster greater xenophobia and discrimination directed towards migrants.

There is a need for prompt and comprehensive responses to emerging trends in discourse and policies which can harm existing and future efforts to ensure equality of treatment and employment opportunities for all. With increased economic insecurity for the entire population, minorities and foreign or foreign-born workers run the risk of becoming scapegoats.

The remedies needed include strengthening anti-discriminatory measures that have been identified by the United Nations conferences; attention to political rhetoric to avoid stigmatization and xenophobic acts; macro- and microeconomic policies to maintain and

create a job-rich recovery; and an active role for employers' and workers' organizations in leading debate and action in the right direction and ensuring that racism and violence remain unacceptable.

Religion

Over the last four years, there appears to have been a rise in the number of women and men experiencing discrimination on religious grounds. This trend is reflected in the number of cases of religious discrimination referred to equality commissions. Where systemic religious discrimination exists, it usually concerns all aspects of life and is not limited to employment and occupation. Nevertheless, over the last four years, religious discrimination in employment appears to have increased and is combined with anxieties over labour migration in a context of economic and social insecurity.

Political opinion

The right to hold and express political opinions is inextricably linked to freedom of expression. Discrimination on the basis of political opinion tends to take place in the public sector, where loyalty to the policies of the authorities in power can be a factor in access to employment. In some countries legislation requires that job applicants satisfy certain political prerequisites in order to have access to public service jobs. However, individual complaints relating to termination of employment can be difficult to prove.

Some political parties are closely linked with an ethnic, linguistic or religious identity. In such cases any discrimination based on political opinion may coincide with discrimination on other grounds. Discrimination on grounds of political opinion may also be combined with anti-union discrimination. This typically involves trade union members being accused of engaging in unacceptable political activities.

Social origin

Discrimination on the basis of social origin persists where rigid social stratification prevails. One example of this is caste-based discrimination in South Asia. Even in open societies, where social mobility is more common, there are large differences in educational attainment. Such differences undermine equality of opportunity in employment and advancement for various social categories.

Persons with disabilities

Work-related discrimination against persons with disabilities ranges from limited access to education, vocational training and rehabilitation, to marked differences in wages between workers with disabilities and the rest of the workforce as well as exclusion from certain jobs. About 10 per cent of the world's population, or some 650 million people, suffer from physical, sensory, intellectual or mental impairments of one form or another, and over 470 million of these are of working age. Available statistics show that their employment rate is low compared with non-disabled persons.

The United Nations estimates that 80 per cent of persons with disabilities in developing countries live in poverty, many of them in rural areas. According to the World Bank, 20 per cent of the world's poor suffer from some form of disability. An important advancement in terms of disability legislation was the entry into force in 2008 of the United Nations Convention on the Rights of Persons with Disabilities.

HIV/AIDS

Since the majority of people living with HIV are employed, the workplace remains a key arena for the fight against the pandemic and its effects. Preventing stigmatization and discrimination in employment is also a way of alleviating poverty and respecting the human rights of all individuals.

Discrimination against persons with HIV can take place through mandatory testing of workers, or testing under conditions which are not genuinely voluntary or do not guarantee the confidentiality of test results. A study commissioned by the ILO in East Asia revealed that some employers conducted tests which formally were voluntary but in practice denied employment to anyone who refused to participate.

In June 2010, the International Labour Conference adopted the HIV and AIDS Recommendation, 2010 (No. 200). The new Recommendation is the first international labour standard on HIV and AIDS. It contains protections against discrimination in recruitment and terms and conditions of employment, and prohibits termination of employment on the basis of real or perceived HIV status.

Age discrimination

Countries are increasingly making efforts to enact legislation against discrimination on the basis of age. Awareness of age discrimination appears to have increased. According to a survey carried out by the European Commission in November 2009, 58 per cent of Europeans considered that age discrimination was widespread in their country, compared with 42 per cent the year before. A total of 64 per cent of those surveyed expected that the economic crisis would lead to more age discrimination in the labour market.

Legislation as well as policies at the national and enterprise levels can play a major role in overcoming stereotypes concerning older workers. A number of countries have carried out large-scale government-sponsored information campaigns to overcome the reluctance to retain and hire older workers.

As for young people, their difficulties in the labour market cannot all be attributed to discrimination, although they do face hurdles to employment. As recent developments have shown, this can be particularly explosive in situations where young people are unable to find suitable employment after completing their education or training. While this is more of a general economic and employment policy question, it is important to avoid any unintended discriminatory measures when promoting jobs for the growing number of young people who try to enter the labour market, whether they are coming from the "high end" of education systems or trying to enter the labour market without qualifications.

Sexual orientation

Violence, harassment, discrimination at work, exclusion, stigmatization and prejudice are sometimes faced by lesbian, gay, bisexual and transgender persons in or seeking employment. Homosexuality remains criminalized in a number of countries. Some studies put the salary gap between gay and non-gay employees at 3 to 30 per cent. Same-sex partners do not always acquire the same benefits as married couples, and the right to include partners in health insurance plans and other work-related benefits may not be guaranteed.

The European Union's Charter of Fundamental Rights, which strengthens and expands the non-discrimination provisions of the Employment Equality Directive 2000/78/EC, is the first international human rights instrument to completely prohibit discrimination based on sexual orientation. It entered into force with the ratification of the Lisbon Treaty in 2009.

Lifestyle

In some regions and countries, discrimination based on lifestyle has emerged as a topical issue, especially in relation to smoking and obesity (which could also be regarded as health issues). The issue is still concentrated around a limited number of mainly industrialized countries, and further monitoring and research will certainly shed light on emerging patterns so that appropriate guidance and interventions by governments and the social partners can be designed.

Action by employers' and workers' organizations

Discrimination must be addressed at the national level, where governments need to act and political, legislative and administrative interventions and social dialogue are required to ensure equality at work. Action is also required at the workplace level, with the direct involvement of the social partners. Many employers have successfully turned diversity into an asset and promoted both productivity and innovation, and human resources policies are increasingly embracing considerations of non-discrimination.

Preventing discrimination in practice contributes to the retention of knowledgeable and high-performing staff. This is also important for the reputation of a company or establishment. A policy of non-discrimination sends a clear signal that recruitment decisions are based on the competencies required to do a job. This is a sound business decision that is also in the interests of workers. Employers' and workers' organizations should share their experiences and study the available information on good practices in this regard.

The International Organisation of Employers (IOE) and its members have continued to support efforts to combat discrimination at the workplace. They have provided leadership and advocacy, offering practical guidance to national employers by drafting codes, promoting good practices, arranging training and providing guidance materials.

The International Trade Union Confederation (ITUC) gives priority to defending the rights of workers who are most vulnerable to discrimination, including women, migrants, and racial or ethnic minorities, through its Decent Work Decent Life Campaign. A new campaign, launched in 2008, further promotes gender equality in national policies on the basis of the Equal Remuneration Convention 1951, (No. 100). Altogether 102 trade unions from 64 countries have participated in this campaign.

Action by the ILO

Over the last four years, several programmes have been developed and activities implemented at the global, regional and national levels. Non-discrimination has been included as a priority in the Decent Work Country Programmes (DWCPs) of 36 countries. Particular attention has been paid to equal remuneration, the elimination of racial discrimination and better enforcement of legislation in general.

Promoting the rights of vulnerable groups, such as workers with HIV/AIDS or disabilities and indigenous peoples, are among the major areas of focus. Technical cooperation projects have included awareness raising, capacity building, information gathering and sharing, research, and training. The emphasis has been on providing advisory services and practical materials for capacity development.

With ILO support, more equality policies and action plans have been adopted and implemented at the national and workplace levels over the past four years. The work of bringing national legislation into line with the relevant ILO Conventions has continued. ILO tools have been used more regularly; judges have increasingly referred to ILO Conventions in their case reviews; and constituents are more aware of their rights.

Looking ahead

This Global Report has tried to give a picture of both progress and shortcomings. There is a distinct positive message that there is a growing system of legislation and institutional arrangements which would not have come about without an increased level of general awareness and political acceptance of the need to combat discrimination at work. This progress is rooted in the fundamental principles and rights at work and reflects a constant endeavour to translate them into reality, to monitor them, and to enhance the collective and individual means of exercising these rights.

Nevertheless, it has to be noted that by far the biggest challenge to the effective realization of these rights comes from the external economic and social context. This has been affected, in some places seriously, both by adverse macroeconomic developments and by the effects of pervasive poverty and a lack of sustainable growth. In a worst-case scenario, this could threaten the achievements of several decades.

As we see in some current political discourse, in particular where populist solutions are advocated, economically adverse times open up new space for

discrimination in general, including discrimination at work. This tide will not be turned by ILO interventions alone. The ILO's constituents should be playing a key role in strategic interventions that maintain the shared will to advance the non-discrimination agenda, as well as the legislative and institutional basis of action against discrimination, through data generation and knowledge sharing as well as capacity building at all levels.

In the light of all this, four priority areas are proposed for future action: (a) promotion of the

universal ratification and application of the two fundamental ILO Conventions on equality and non-discrimination; (b) development and sharing of knowledge on the elimination of discrimination in employment and occupation; (c) development of the institutional capacity of ILO constituents to more effectively implement the fundamental right of non-discrimination at work; and (d) strengthening of international partnerships with major actors on equality.

List of abbreviations

CEACR	Committee of Experts on the Application of Conventions and Recommendations
CELADE	Latin American and Caribbean Demographic Centre
DWCP	Decent Work Country Programme
EEOC	Equal Employment Opportunity Commission (United States)
EPZ	export processing zone
HALDE	Haute Autorité de Lutte contre les Discriminations et pour l’Egalité (France)
HIV/AIDS	human immunodeficiency virus/acquired immune deficiency syndrome
IILS	International Institute for Labour Studies
IMF	International Monetary Fund
IOE	International Organisation of Employers
ITUC	International Trade Union Confederation
LGBT	lesbian, gay, bisexual and transgender
MNE	multinational enterprise
OECD	Organisation for Economic Co-operation and Development
PLHIV	persons living with HIV
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization





Introduction

1. The elimination of discrimination at work has been a cornerstone of the ILO's mandate since its inception in 1919. Its paramount importance is echoed in the 1944 Declaration of Philadelphia, the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the 2008 ILO Declaration on Social Justice for a Fair Globalization, and the 2009 ILO Global Jobs Pact.

2. Clarity of concept helps us to understand the problem and to tackle it efficiently. Article 1 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), 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 or treatment in employment or occupation”, and allows for additional grounds to be included after consultation with national workers' and employers' organizations. The Equal Remuneration Convention, 1951 (No. 100), provides for “equal remuneration for men and women workers for work of equal value”.

3. Discrimination in employment and occupation can occur in many different settings and can take many forms. It can relate to hiring, promotion, job assignment, termination, compensation, working conditions and even harassment. Discrimination is direct when rules, practices and policies exclude or give preference to certain individuals just because they belong to a particular group, for example, job advertisements which indicate that only men should apply. Discrimination is indirect when apparently neutral norms and practices have a disproportionate

and unjustifiable effect on one or more identifiable groups. An example is requiring applicants to be of a certain height, which could disproportionately exclude women and members of some ethnic groups. Structural discrimination is inherent or institutionalized in social patterns, institutional structures and legal constructs that reflect and reproduce discriminatory practices and outcomes. These may include differential or inferior conditions of training for ethnic minorities.¹

4. Two earlier Global Reports on the theme of equality were produced under the follow-up to the 1998 Declaration, presenting a dynamic global picture related to the elimination of discrimination in employment and occupation. The first of these, *Time for equality at work*, stressed that the workplace – be it a factory, an office, a farm or the street – was a strategic entry point for freeing society from discrimination.² It highlighted the high economic, social and political costs of tolerating discrimination at work, and argued that the benefits stemming from more inclusive workplaces surpassed the cost of redressing discrimination.

5. The second, *Equality at work: Tackling the challenges*, highlighted the fact that despite encouraging developments in the fight against long-recognized forms of discrimination at the workplace, problems still persisted. Moreover, other forms based on factors such as age, disability, migrant status, HIV and AIDS, sexual orientation, genetic predisposition and unhealthy lifestyles, had become more evident. To make the fight against all forms of discrimination at the workplace more effective, the Report advocated,

1. ILO: *Equality at work: Tackling the challenges*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 96th Session, Geneva, 2007, paras 28, 29, 31.
2. ILO: *Time for equality at work*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report I(B), International Labour Conference, 91st Session, Geneva, 2003, para. 11.

among other things, better enforcement of legislation as well as non-regulatory initiatives by governments and enterprises, and enhancement of social partners' capacity to address and overcome discrimination.³

6. Over the past few years, the world has experienced the worst economic crisis since the Great Depression, a crisis that has resulted in widespread job losses and social hardship. The ILO has estimated that globally 22 million more jobs will be needed in 2011 to restore pre-crisis employment rates.⁴ Experience from earlier crises suggests that the risk is especially acute for low-skilled, migrant and older workers. Young people, who are disproportionately hit by unemployment, will face still greater difficulties in obtaining decent work. There are some indications that the proportion of people of working age who do not participate in the labour market at all has started to increase.

7. This Report, the third Global Report on non-discrimination, builds on the findings, conclusions and recommendations of the first two. It reviews progress and challenges with respect to various grounds of discrimination and proposes priority areas for future action, informed by lessons learned from previous and ongoing programmes and activities. It does so against the background of a slow and uncertain recovery from a global economic and financial crisis which has led to a deep employment crisis. The Report therefore addresses discrimination in the context of broader developments as regards inequality and vulnerability.

8. The Report is divided into four parts. Part I, *An evolving picture: Capturing the trends*, provides a general overview of the impact of the crisis on certain groups of workers who are more vulnerable to discrimination, with a focus on the ILO's response and particularly on the Global Jobs Pact. It highlights progress on the ratification and implementation of the fundamental ILO standards addressing discrimination – the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) – and considers general trends in key areas over the past four years. Building on the findings of the second Global

Report on discrimination, it also reviews developments in combating discrimination in employment and occupation by measuring discrimination through data collection and testing; by evaluating identified “good practice” measures; and by reviewing the effectiveness of national equality bodies.

9. Part II, *From principles to practice*, highlights recent trends and developments in discrimination on different grounds. Specific attention is paid to discrimination based on sex, race and ethnicity and the situation of migrant workers, a group considered to suffer the highest incidence of discrimination. Other long-recognized grounds, including religion and social origin, as well as new trends in discrimination based on age, sexual orientation, real or perceived HIV status and disabilities, are also discussed. Discrimination based on political opinion is addressed for the first time in this Global Report. Reference is also made to emerging issues related to discrimination based on lifestyle and genetic predisposition. It outlines the role of governments in demonstrating political commitment and providing an enabling environment, reviews action taken by employers' and workers' organizations, and provides a critical review of legal frameworks and policies at both the national and enterprise levels against discriminatory practices.

10. Part III, *The ILO's response*, reviews ILO assistance to member States for the elimination of discrimination in employment and occupation since the adoption by the Governing Body of the 2007 technical cooperation priorities and action plans.⁵ It highlights programmes and activities undertaken by both ILO field offices and headquarters units at the national, regional and global levels which have achieved positive results and could be regarded as good practices and provide lessons for the future.

11. Building on the assessment of the impact of different programmes and activities carried out by the ILO over the past four years, Part IV, *Towards an action plan*, recommends priority themes and areas, and appropriate strategies for future action by the ILO and its constituents in line with the ILO's Decent Work Agenda.

3. ILO: *Equality at work: Tackling the challenges*, op. cit., p. ix.

4. International Institute for Labour Studies (IILS): *World of Work Report 2010: From one crisis to the next?* (ILO, Geneva, 2010), p. 17.

5. See ILO: *Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plans regarding the elimination of discrimination in employment and occupation*, Report of the Committee on Technical Cooperation, GB.300/TC/4, Governing Body, 300th Session, Geneva, Nov. 2007.





Part I

An evolving picture: Capturing the trends

The impact of the global economic crisis on non-discrimination in employment and occupation

12. Discrimination on various grounds can be exacerbated in times of economic uncertainty. There may be a tendency for governments to give lower priority to action against discrimination during periods of economic downturn.¹ Whatever has been the social impact of the financial crisis, post-crisis recovery strategies and measures must not ignore the principles of non-discrimination and equality. This is a challenging context, in which it is of the utmost importance for governments and other economic and social actors to reaffirm their commitment to maintaining and strengthening non-discrimination policies and institutions.

Impact on migrant workers

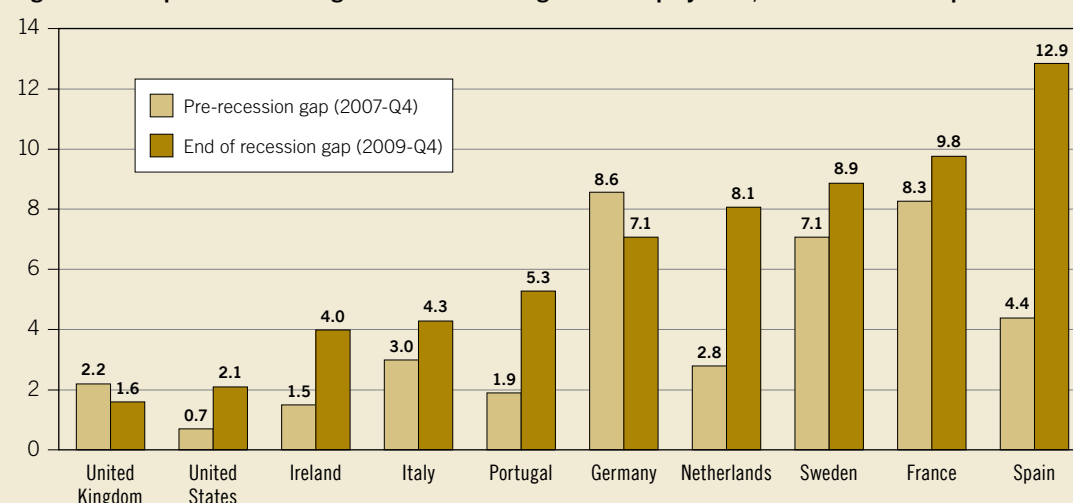
13. According to a recent ILO study, migrant workers have been particularly affected by the crisis, with more situations of discrimination in access to employment and migration opportunities, increased xenophobia and violence, and worsened conditions of work, among other factors.² These have added to the existing situations of inequality and discrimination against migrant workers. In previous downturns, a certain number of migrants returned home. Given

the global nature of the crisis, returning home may not have been a viable option this time, as equal or greater job displacement has taken place in the migrant workers' countries of origin.³ Migrants tend to experience job losses before other individuals partly because they are widely employed in sectors – like construction and tourism – which are most immediately affected by economic downturns.⁴

14. Many countries have lowered their quotas for economic migrants. Australia, for example, decreased its cap of 133,500 skilled migrants in 2008 to 108,100 in 2009.⁵ In Thailand, the registration of 700,000 foreign workers was delayed in a bid to keep jobs for Thai workers. In Italy, some employers abandoned applications they had filed when the business outlook was better. In 2008, about 10,000 employers (5.6 per cent of processed applications) withdrew requests they had filed in December 2007.⁶ Similarly, some trade unions in Poland called for restrictions on the entry of workers from outside the European Union (EU), mainly from Ukraine, Belarus and China, in order to make room for returning Polish workers expected to lose their jobs in other EU countries. The anxiety about migrant workers created by the crisis was revealed by a *Financial Times*/Harris poll, which found that over 50 per cent of United Kingdom nationals wanted to apply restrictions on access to the British labour market to workers from fellow EU Member States.⁷ In Ireland, the Government has increased restrictions on both the

1. ILO: *Global employment trends for youth*, special issue on the impact of the global economic crisis on youth (Geneva, Aug. 2010), p. 10.
2. See I. Awad: *The global economic crisis and migrant workers: Impact and response* (Geneva, ILO, 2009).
3. IOE: *Trends in the workplace survey 2009*, p. 31.
4. *ibid.*
5. OECD: *International Migration Outlook: SOPEMI 2009*, p. 36.
6. OECD: *International Migration Outlook: SOPEMI 2009 – Special focus: Managing labour migration beyond the crisis*, p. 31.
7. I. Awad, *op. cit.*, p. 44.

Figure 1.1. Gap between immigrant and non-immigrant unemployment, 2007 and 2009 (per cent)



Source: Eurostat, Current Population Survey (United States) and Quarterly National Household Survey (Ireland).

entry of work permit holders and their rights and entitlements once they arrive.⁸

15. A study on the impact of the crisis on employment gaps between immigrant and native-born workers has shown large variations between countries.⁹ In Spain, for example, the gap widened greatly, while in Germany it actually narrowed. In most major immigrant-receiving countries for which data were available, unemployment increased faster among immigrants than among natives between late 2007 and late 2009. In some cases, the unemployment gap opened up where it had previously been negligible (for example, in the United States), while in others, immigrants both entered and left the recession with much higher jobless rates (see figure 1.1).

16. Not all situations of inequality can be attributed to acts of direct discrimination. The consequences of crisis on migrant workers have been harshest in the sectors and countries most severely affected by the crisis. For example, in countries where construction had been the engine of growth in previous years, migrant workers have suffered the biggest loss of employment. Similarly, certain immigrant groups have been hit harder than others, for instance, Pakistanis and Bangladeshis in the United Kingdom and Hispanics in the United States. By contrast,

groups that fared better were generally concentrated in jobs requiring higher levels of education.¹⁰

The crisis and women workers

17. Female employment has been seriously affected in several countries by the particular impact of the crisis on export sectors.¹¹ The African textile industry, for example, with a 90 per cent female low-skilled and low-educated workforce, has experienced cuts as a result of import contraction in foreign markets.

18. Past crises have revealed a similar disproportionate impact on the employment of women in developing countries. In the 1990s crisis in Asia, women's incomes declined steeply compared to men's as a result of contractions in sectors that employed more women. Increased competition for casual and domestic work placed a downward pressure on women's wages as many women had little choice but to enter into informal employment following economic contraction. A United Nations report indicates that the current crisis is following a similar pattern, partly as a result of attitudes that give preference to male employment by promoting the image of the male breadwinner. When jobs are scarce, women

8. D. Papademetriou, M. Sumption and A. Terrazas: *Migration and immigrants two years after the financial collapse: Where do we stand?*, BBC World Service, Migration Policy Institute, 2010, p. 92.

9. *ibid.*, pp. 10, 20.

10. *ibid.*, p. 10.

11. This and the following paragraphs are based on International Trade Union Confederation (ITUC): *Gender in(equality) in the labour market: An overview of global trends and developments* (Brussels, 2009).

encounter tougher competition in access to jobs, increasing the influence of existing and persistent barriers to their employment.

19. The same UN report also noted that newly unemployed women who must earn incomes to support their families turn to precarious forms of employment in the informal economy, often with harsh working conditions. A 2009 study in Thailand found that 80 per cent of surveyed street vendors in the country reported higher levels of competition since the beginning of the economic crisis.¹² It is important that governments remain proactive and protect women in the informal sector, but the priority given to narrowing the gender pay gap or to public awareness campaigns for gender equality at the workplace is likely to be adversely affected in an environment of budget cuts and crisis response.

20. In developed market-economy countries, the crisis has not had a clear disproportionate impact on the employment of women that could be attributed to discrimination. In the United States, for example, from December 2007 to April 2010, women lost only 46 jobs for every 100 jobs lost by men, and an ILO study showed that female migrant workers are concentrated in sectors that have either expanded during the crisis or have not been affected.¹³ In the United Kingdom, there was also a greater decline in employment rates for men than for women during the second and third quarters of 2008.¹⁴

21. Similarly, data on the wage gap have yet to evolve in any clear or definitive direction. In the United Kingdom, for example, the *2008 Annual Survey of Hours and Earnings* showed that the gender pay gap had increased from 12.5 per cent in 2007 to 12.8 per cent in 2008, based on stronger growth in men's hourly earnings.¹⁵ However, the trend was reversed the following year as the gender pay gap decreased to 12.2 per cent in 2009.¹⁶ In the United States, the gender pay gap (by median wage) increased, with women's wages declining from 80.2 per cent of men's in 2007 to 79.9 per cent in 2008, comparing full-time wage and salaried workers.¹⁷

22. Recent data show that 829 million people living in poverty in the world are women, compared to 522 million men.¹⁸ With women's wages equal to only 70 to 90 per cent of men's for work of equal value, non-discrimination in remuneration should be a core component of measures aimed at both gender equality and reducing poverty.

Poverty and discrimination

23. In 2009, the number of workers worldwide in poverty was estimated to be between 1.48 and 1.59 billion. These figures reflect a likely increase in the number of such vulnerable workers by between 41.6 and 109.5 million during the period 2008–09. They also show that the global financial and economic crisis is likely to have had a severe impact on many millions of women and men around the world. Before the crisis, the proportion of workers in employment vulnerable to poverty was on a downward trend in all regions. Some evidence suggests that in the period 2007–08, the global number of workers in vulnerable employment decreased for the first time, by around 10.5 million people, to just below half of all workers (49.5 per cent).¹⁹ That trend may now be reversed.

24. Living in poverty is not only about low incomes. It also means a vicious cycle of diminished health, reduced working capacity, bad working and living conditions, low productivity and reduced life expectancy. Combined with illiteracy, hunger, child labour and early parenthood, the pervasive effect of poverty can be transferred from parents to their children. Globally, this phenomenon appears to affect certain groups disproportionately. In some countries, women register higher levels of poverty²⁰ and households headed by females are more likely to be poor. Similarly, indigenous peoples, tribal groups and people of African descent are also over-represented among the poor. The world's population of indigenous peoples, for instance, is about 300 to 370

12. A. Ellis, D. Kirkwood and D. Malhotra: *Economic opportunities for women in the East Asia and Pacific region* (Washington, DC, World Bank, 2010), p. 68.

13. United States Congress: *Understanding the economy: Working mothers in the Great Recession*, report by the US Congress Joint Economic Committee (Washington, DC, May 2010), p. 1; I. Awad, op. cit., pp. 41, 43.

14. ITUC: *Gender in (equality) in the labour market*, op. cit., p. 36.

15. United Kingdom Office for National Statistics: First release, *2008 Annual Survey of Hours and Earnings*, 14 Nov. 2008, p. 6.

16. United Kingdom Office for National Statistics: *2009 Annual Survey of Hours and Earnings*, 12 Nov. 2009, p. 4.

17. ILO: *Global wage report: Update 2009* (Geneva, 2009), para. 12.

18. ILO: *Gender equality at the heart of decent work*, Report VI, International Labour Conference, 98th Session, Geneva, 2009, para. 58.

19. ILO: *Global employment trends* (Geneva, Jan. 2010), p. 18.

20. The simple disaggregation of poverty counts by sex will lead to underestimates of gender gaps in poverty because poor women might also be found in some non-poor households. Second, the gender gap in poverty may appear larger in some countries which have a higher proportion of households with over-representation of women.

million. They make up 15 per cent of the world's poor and about one third of the world's 900 million extremely poor rural people.²¹ In South Asia, Dalit communities also register dramatically high levels of poverty. In India, the poverty rate for Dalits (65.8 per cent) is almost twice the rate for the rest of the population (33.3 per cent).²²

25. The disproportionate impact of poverty on these groups is not a simple coincidence. It has its origins in structural discrimination based on one or a combination of grounds such as sex, race, colour, ethnicity or religion.²³ This situation is often a result of social exclusion and exploitation, such as forced labour or child labour in its worst forms. Discrimination in employment and occupation emerges as a crucial factor in causing and exacerbating poverty. Not only can discrimination substantially shrink wage and other incomes; people affected by it often register lower participation levels and employment rates. Once in employment, low incomes that result from wage discrimination and occupational segregation in poorly remunerated activities prevent individuals from working their way out of poverty. Discrimination in employment and occupation can also result in long-term poverty by limiting access to assets and services.

26. The crisis has resulted in severe job losses in high-income economies. At the beginning of 2010, 14 million jobs were still needed to restore employment to pre-crisis levels.²⁴ At the same time, larger numbers of workers are signalling their wish to emigrate for work. In the case of Ireland, for example, 100,000 people are predicted to leave the country over the coming four years.²⁵ Persons with disabilities have seen a decrease in job opportunities. In Japan, for example, the number of dismissed workers with disabilities increased on a quarter-to-quarter basis for five consecutive months from November 2008 to March 2009.²⁶

27. The already dire labour market prospects for young workers appear to have worsened as a consequence of the crisis. There were a record 81 million unemployed young people in the world at the end of 2009, and a record 1 per cent annual increase in youth unemployment, compared to a 0.5 per cent change in the adult rate, between 2008 and 2009.²⁷ Young women and men have been disproportionately harmed since the onset of the crisis, and if similar patterns are experienced as in past recessions, it could take around 11 years for youth employment to return to pre-recession levels.²⁸ Unemployed young people encountering the crisis environment may lose hope of obtaining employment and detach themselves from the labour market altogether, leaving a legacy of a "lost generation".²⁹

28. The impact of wage discrimination on poverty has been demonstrated and quantified by a number of recent studies. In 2008, one such study³⁰ analysed the effects of gender discrimination on poverty in Brazil between 1992 and 2001, using data obtained from the National Household Survey.³¹ The results show that, when gender discrimination is eliminated, the percentage of poor people tends to decline by an average of 10 per cent. Results were even more striking among the most vulnerable segments of the population, such as members of households headed by black women who lack a formal employment contract or are not trade union members. Similar conclusions have been drawn from other research in developed countries. For example, an EU study³² shows that, despite the very low employment rates among women living in low-income households, removing wage discrimination of working women would substantially reduce poverty in most EU countries. That impact varies widely across the EU; it is larger for countries with the highest levels of wage discrimination (where about 10 per cent of the poor would be assisted out of poverty) and

21. International Fund for Agricultural Development: Fact Sheet, 2007, p. 1.

22. S. Alkire and M.E. Santos: *Acute multidimensional poverty: A new index for developing countries*, OPHI Working Paper No. 38 (Oxford, OPHI, July 2010), p. 127.

23. ILO: *Working out of poverty*, Report of the Director-General, International Labour Conference, 91st Session, Geneva, 2003, p. 34.

24. International Institute for Labour Studies (IILS): *World of work report 2010: From one crisis to the next?* (ILO, Geneva, 2010), p. 3.

25. M. Savage: "Economic crash to drive 100,000 out of Ireland", *The Independent*, 18 Nov. 2010.

26. Ministry of Health, Labour and Welfare: *Employment measures in post-financial crisis Japan*, July 2009, p. 30.

27. ILO: *Global employment trends for youth*, op. cit., pp. 1, 4, 5.

28. IILS: *World of work report 2010*, op. cit., p. 2.

29. ILO: *Global employment trends for youth*, op. cit., p. 1.

30. R.C. Santos Simão and S.E. Monsueto: "The impact of gender discrimination on poverty in Brazil", in *CEPAL Review* 95 (Aug. 2008), p. 141.

31. In studies of this type, the methodology is based on an estimation of counterfactual distribution of per capita household income based on a hypothetical scenario in which the labour market pays equal wages to men and women in accordance with their qualifications.

32. C. Gradín, C. del Río and O. Cantó: "Gender wage discrimination and poverty in the EU", in *Feminist Economics*, 12 May 2010, p. 100.

smaller in those with the lowest levels of wage discrimination (where only between 2 and 4 per cent of the poor would cross the poverty threshold). However, the study underlined the fact that the impact of wage discrimination on poverty is critical in all EU countries for paid working women and their households.

29. There is a crucial link between poverty eradication, employment and equality. This is reflected in the slow but progressive acceptance of the need to rethink poverty reduction strategies and to shift from a one-dimensional approach based on income levels to a multidimensional strategy that effectively addresses the underlying causes of persistent high poverty and economic insecurity. Some countries have started to align their income-generating policies in poor areas with social policies. Those policies may still be ineffective in reducing poverty if they do not take into consideration the effects of discrimination in employment and occupation. In many developing countries, transfer programmes targeted at the poor are designed to provide income support and are made conditional on keeping children in school and/or visits by mothers and children to health centres. However, these measures may have only a limited impact on poverty reduction if they do not at the same time address the determinants of economic vulnerability, including the ethnic, racial and gender discrimination that keep wages at a low level.³³

Responding to the crisis

30. A job-rich recovery, with macro- and micro-economic policies supporting employment and growth, is essential in the current context. However, non-discrimination efforts can all too easily be undermined by short-term measures taken to alleviate difficult fiscal conditions. Non-discrimination laws and policies, equality institutions and political commitment, have been hard won over a number of decades; care should be taken to protect them. Lessons should have been learned from the experiences of the last century.

31. In June 2009, the ILO adopted the Global Jobs Pact, a centrepiece of its response to the crisis. The pact emphasizes the need to enhance support

for women and men who are more vulnerable to discrimination, including youth at risk, low-wage, low-skilled, informal economy and migrant workers. Furthermore, it calls on countries to enact policies that promote core international labour standards, such as equal remuneration for work of equal value and elimination of discrimination in employment, in order to reduce gender inequality and discrimination at the workplace.³⁴ These objectives were endorsed by the leaders of the G20 at the Pittsburgh Summit in 2009, when they committed their nations to adopting key elements of the general framework of the Global Jobs Pact to advance the social dimension of globalization. They also called on international institutions to consider the goals of the Global Jobs Pact in their crisis and post-crisis analysis and policy-making activities.³⁵ Similarly, G20 labour ministers emphasized the importance of following the Pact's guidelines for strong, sustainable and balanced global growth.³⁶ The ILO is co-operating actively with several countries which have reflected the Pact in their stimulus packages and recovery measures.

Stimulus packages

32. While the crisis had the effect of increasing vulnerability for many workers, the stimulus measures designed to bring about recovery have not always contributed to correcting the disparities. With the goal of economic recovery in mind, many countries have focused their stimulus packages on sectors that have endured significant damage from the crisis. In many cases these were male-dominated sectors of employment. While stimulus measures have been credited for averting a deeper crisis and helping to jump-start the economy, prioritization of responding to the fiscal effects of the crisis has resulted in national resources not always being distributed relatively equally among all sectors of the labour market. Responses may have resulted in the indirect exclusion of vulnerable groups from the benefits of stimulus measures. Those groups include young people, ethnic minorities and women, who are often under-represented in the targeted industries.

33. In Germany, two recovery packages initiated by the Government have targeted sectors comprising a

33. United Nations: *Retooling global development*, World Economic and Social Survey 2010, UN Department of Economic and Social Affairs (2010), p. 36.

34. ILO: *Recovering from the crisis: A Global Jobs Pact*, International Labour Conference, 98th Session, Geneva, 2009, Part II(9)(2) and (9)(7).

35. Leaders' Statement, Pittsburgh G20 Summit, 24–25 Sep. 2009.

36. ILO: "El Salvador and Argentina adopt ILO Jobs Pact", ILO Policy Integration Department, 8 July 2010.

78 per cent male and 22 per cent female workforce.³⁷ The automotive industry, construction, laboratory and medical technologies, and financial intermediation, are all male-dominated sectors that have received significant financial support from the Government. While the packages have been successful in benefiting men in the targeted sectors, reducing their employment decline, a 2010 study has indicated that the neglect of female-dominated sectors, including most prominently the services sectors, poses a long-term risk to women's employment. As a consequence, a decline in female employment remains a long-term possibility, which could be harmful to national economies since female employment in the services sector was previously fuelling national employment.

34. In the United States, the stimulus package appears to have had a mixed impact on vulnerable groups in society. While 10 per cent of rural infrastructure grants must be targeted to counties with persistent poverty, and the Home Investments Partnership Program in the stimulus package calls for equitable distribution of resources between urban and rural communities, with a prioritized focus on areas with severe economic problems, a 2009 Ohio State University report notes that the substantial funding given to infrastructure projects could disadvantage racial minorities and women. African Americans represent 13 per cent of the population and women make up half of the population, but they hold only 6 per cent and 9.4 per cent of construction jobs respectively.³⁸

35. In order to protect all segments of society equally and prevent further marginalization of vulnerable groups, national governments should ensure that the disproportionate effects of stimulus measures are considered when they are developed and that any disproportionate effects of policies are monitored and corrected, thereby halting growing economic inequalities. With the aim of stimulating job creation and surmounting the crisis, in addition to calling for financial reform and sustainable job creation through the promotion of a closer link between wages and productivity gains in surplus countries,

the International Institute for Labour Studies has emphasized the need for further measures targeted at vulnerable groups such as young people, and for employment-oriented social protection.³⁹ The Institute's *World of work report 2010* expands on the Global Jobs Pact, which calls on national governments to develop income support systems, provide skills development programmes and improve enforcement of non-discrimination rights in order to help vulnerable groups to recover from the crisis and prevent increased poverty and social hardship, while at the same time stabilizing the economy and promoting employability.⁴⁰

Preventing harmful effects of fiscal consolidation

36. In the aftermath of the financial crisis, global attention has increasingly been paid to reducing large budget deficits and public debts in many countries. Yet many have urged caution in formulating fiscal consolidation policies – defined by tax increases and cuts in government spending – since the measures involved could jeopardize recovery efforts, propel countries into deeper recession and exacerbate inequalities in the workforce.⁴¹ A joint ILO–IMF paper in 2010 warned that a premature consolidation push could damage macroeconomic growth and subsequently lead to even larger deficits and debts.⁴² Nevertheless, fiscal consolidation plans have already been initiated in countries with particularly severe deficits, including Greece, Latvia and Ukraine. The Trade Union Advisory Committee to the Organisation for Economic Co-operation and Development (OECD) has estimated a total resource gap of US\$372 billion per year from 2012 to 2014 if deficit reduction plans proposed by the OECD to its member countries are implemented.⁴³

37. Certain groups may be particularly susceptible to the bulk of the effects of fiscal consolidation measures, as austerity policies in many countries could take the form of cuts in the welfare programmes that assist lower-income workers in access to employment

37. Information in this paragraph is based on European Industrial Relations Observatory On-line: "Gender impact of recovery packages investigated", 2010, p. 1.

38. Ohio State University Kirwan Institute for the Study of Race and Ethnicity: *Preliminary report of the impact of the economic stimulus plan on communities of color*, 25 Feb. 2009 update, pp. 1–2.

39. ILO: "World of work report 2010: ILO says long 'labour market recession' worsens social outlook in many countries", press release, 30 Sep. 2010.

40. ILO: *Recovering from the crisis: A Global Jobs Pact*, op. cit., pp. 6–7.

41. Global Unions Group: *A financial transactions tax for job creation and development goals*, statement by Global Unions to G20 Finance Ministers and the 2010 spring meetings of the IMF and the World Bank, Washington, DC, 23–25 Apr. 2010, pp. 3–5.

42. ILO–IMF: *The challenges of growth, employment and social cohesion*, discussion document for a joint ILO–IMF conference in cooperation with the office of the Prime Minister of Norway, 13 Sep. 2010, p. 8.

43. Global Unions Group, op. cit., pp. 4–5.

as well as direct job cuts. In Ireland, for example, the Government has called for a variety of austerity measures, including a €3 billion cut in capital expenditure, a reduction in public service programmes and welfare payments, an increase in students' contributions to tertiary education, and the introduction of a reformed pension scheme for new entrants to the public service as well as a reduction in their salaries.⁴⁴ The International Trade Union Confederation (ITUC) has also noted that the requirements of the International Monetary Fund (IMF) lending agreements in Latvia and Ukraine are eliminating investments in education and could leave a “lost generation” of young people without adequate skills for employment.⁴⁵

38. It is important to ensure that stimulus measures are not stopped prematurely and that basic social protection floors, which guarantee access to health, education, housing and a minimum income, are provided in all countries. Adequate social protection policies encompass unemployment benefits, health care, childcare and income security for vulnerable groups such as the elderly and persons with disabilities. The joint ILO–IMF paper referred to above noted the need for deficit reduction strategies to be well coordinated and linked with fairness in the sharing of the burdens and benefits of adjustment, in order to prevent a disproportionate impact of fiscal consolidation measures on the most vulnerable people in the labour market.

Institutional capacity to deal with non-discrimination

39. One lesson learned from the crisis is that the institutional safeguards for non-discrimination and equality should be strong enough to withstand changes in economic and social circumstances. Government policies are subject to change in response to economic fluctuations, prevailing hopes and fears, or perceived threats and promises. At times of crisis, when fears predominate, it is more important than ever to have robust institutional arrangements in place to safeguard fundamental rights and equality.

Box 1.1

Overview of competencies of specialized bodies dealing with non-discrimination

Legal work

- Recommendations on equality legislation and policies
- Investigative powers
- Legal assistance to victims of discrimination
- Adjudication of complaints and dispute settlement services

Promotional work

- Awareness raising and communication
- Cooperation with stakeholders
- Institutional capacity building
- Knowledge sharing

40. Recent announcements of cutbacks and austerity measures, in the budgets of labour administration and inspection services and of the specialized bodies that deal with non-discrimination and equality, may compromise the ability of those institutions to address what could be counted among the worst social consequences of the economic crisis: more discrimination, more inequality, and increased social instability and societal tension.

41. The role of such bodies has been increasingly recognized as indispensable for achieving real and sustainable change. This recognition has resulted in the establishment, expansion and restructuring of these bodies in some countries. The past four years have seen, for instance, the establishment of new ombudsman offices in Latvia⁴⁶ and Sweden⁴⁷ as well as new human rights commissions in Brazil⁴⁸ and the United Kingdom.⁴⁹

42. Countries have taken different paths in defining the composition, competencies, structures and ground covered by such bodies. Generally, the competencies of specialized bodies are divided into two areas: legal and promotional. Their specific areas of action vary greatly from one country to another, but generally encompass two or more of the specific competencies listed in box 1.1.

44. National Recovery Plan 2011–14, Stationery Office, Dublin, p. 11.

45. Global Unions Group, op. cit., pp. 3–4.

46. See the *History of the institution of the Ombudsman of the Republic of Latvia*, available at www.tiesibsargs.lv/eng/ombudsman/history/, accessed 9 Nov. 2010.

47. Equality Ombudsman (Sweden): “About the Equality Ombudsman”, available at www.do.se/en/About-the-Equality-Ombudsman/, accessed 9 Nov. 2010.

48. Ministry of Labour and Social Security, Brazil, Order (*Portaria*) No. 219 of 7 May 2008.

49. Equinet Europe: “GB Equality and Human Rights Commission”, Oct. 2007.

Box 1.2 Sectoral-level partnerships

The Belgian Centre for Equal Opportunities and Opposition to Racism signs a yearly agreement with the Football Cell of the Federal Department of Internal Affairs. The central point of this agreement is opposition to racism and discrimination and promotion of diversity in Belgian football. In 2007, as in preceding years, several concrete action points were defined such as developing awareness-raising campaigns, drawing up clear guidelines and procedures against verbal abuse, working with football clubs and developing an educational DVD and training package.

The Italian National Office against Racial Discrimination has entered into partnership with the Italian Banking Association (ABI) and organized study days to inform and raise awareness among people working in the credit sector.

The Irish Equality Authority has developed a partnership with the Department of Health and Children and the Health Service Executive to disseminate information on the application of equality legislation in this sector and to identify and promote initiatives to develop equality-competent health service provisions.

Source: Equinet Europe: *Promoting equality: Overview of positive measures used by national equality bodies*, Equinet Report (2008).

43. In deciding some of the most effective ways for specialized bodies to address discrimination and promote equality, previous experiences and lessons learned are instructive.⁵⁰ An independent and clear mandate lays the ground for their effective operation and gives them credibility. They should enjoy firm legal, financial and operational independence in order to be able to assist victims of discrimination, and to investigate, report and address discrimination in all its forms, in an impartial manner. Applicable procedures and mechanisms should be accessible to all potential victims. In addition, the continuous increase in the number of equality bodies dealing with several grounds of discrimination, instead of separate bodies dealing with single grounds of discrimination, suggests that this approach is conducive to a more effective use of resources and expertise.

44. In Sweden, for instance, the Ombudsman has emphasized that this broad approach allows resources to be used for identified priority needs and experts with knowledge of multiple grounds of discrimination to address them in an integrated way.⁵¹ The Ombudsman also sees in this approach a way to deal effectively with cases of multiple discrimination, which represented 40 of the 1,000 complaints received in the first six months of operation. The ability of equality institutions to deal with cases of multiple discrimination is of particular relevance, and this will be further developed later in this section.

45. Court cases on discrimination may redress specific situations on an individual basis but there

is a need to address widespread and structural discriminatory practices as well. Experience from the work of specialized bodies dealing with equality and non-discrimination reveals that a strategy combining litigation with a strong focus on promoting equality through a variety of measures can enhance their effectiveness. These promotional measures range from awareness-raising campaigns and training activities to practical guidance and research on how to implement equality and non-discrimination legislation. Some of these bodies have invested in their cooperation with social partners to achieve better impact.

Monitoring the impact of policies and measures

46. The implementation of anti-discrimination policies and measures needs to be monitored and assessed. For this purpose, appropriate follow-up mechanisms need to be in place to evaluate the impact of action taken. Such mechanisms have recently been created in Argentina, the Netherlands, South Africa and Sweden. In Argentina, the National Institute against Discrimination, Xenophobia and Racism (INADI) in 2008 established an organizational framework, the Federal Council for Anti-Discriminatory Public Policies, to implement, monitor and supervise the National Plan against Discrimination.⁵² In South Africa, the Commission for Gender Equality⁵³ monitors and evaluates policies

50. Based on Equinet reports *Promoting equality: Overview of positive measures used by national equality bodies*, Sep. 2008; and *Strategic role of equality bodies*, Dec. 2009.

51. Equinet Europe: "The Swedish Equality Ombudsman in the spotlight", Oct. 2010.

52. Information on the Federal Council available at INADI website.

53. See *Functions of the CGE*, available at www.cge.org.za/.

relating to gender equality to ensure compliance with equality standards.

47. In the Netherlands, the Equal Treatment Commission, which has been pursuing policies to combat discrimination, receives discrimination complaints, provides information and options for resolving the issues, and has instituted a follow-up mechanism to monitor progress. Results from the process show that 74 per cent of the recommendations made by the Commission were implemented by some sort of measure. Eight per cent of the measures adopted were individual in nature, 39 per cent were structural measures and 27 per cent included elements of both.⁵⁴ These figures indicate that in most cases there is a need for structural rather than individual measures.

48. In Sweden, the Equality Ombudsman, in addition to making decisions and mediating complaints, is responsible for supervising the pay surveys, now incorporated into the Discrimination Act, to determine whether any unjustified wage differentials exist between the sexes.⁵⁵ As a result of surveys conducted from 2001 to 2008, pay adjustments were made by 60 per cent of participating employers. Consequently, some 5,800 employees (90 per cent of them women) received a monthly pay increase of approximately €100. In addition, one third of the employers concerned undertook measures such as professional development of staff members, training for pay-setting managers and recruitment measures to place more women in senior positions.

Measuring discrimination

49. Over the past few years, new methods, such as the ILO decent work indicators and the EU framework for evaluating progress in equality and anti-discrimination, have been developed to measure discrimination. In spite of these advances, challenges persist, given the frequent unavailability of data and the absence of a clear definition of the grounds of discrimination at the national level.⁵⁶

50. The decent work indicators developed by the ILO in 2008 include the following two indicators

under the principle of “equal opportunity and treatment in employment”: (1) occupational segregation by sex; and (2) female share of employment in managerial and administrative occupations. These indicators are based on the categories established by the International Standard Classification of Occupations (ISCO-88).⁵⁷

51. The method developed for the EU distinguishes between three types of indicators: (a) indicators for the measurement of discrimination, which serve to establish and expose disadvantages, gaps, inequalities and other differentials affecting individuals and/or groups protected by anti-discrimination law and/or covered by equality policies; (b) indicators for the measurement of progress with anti-discrimination policies, which identify the degree of mobilization and implementation of legal tools and public policy instruments provided for by anti-discrimination laws; and (c) indicators for the measurement of the effects of anti-discrimination policies, which serve to evaluate how well these policies can effectively and efficiently combat the disadvantages and inequalities affecting individuals and/or groups protected by anti-discrimination law and/or covered by equality policies.⁵⁸

52. In this regard, good practices in gathering data have been recognized in countries such as Austria, where the Equal Treatment Body requires both private sector and public entities to report cases for publication, and Finland, which has undertaken a number of data collection projects under the Community Action Programme to Combat Discrimination.⁵⁹

53. The ILO “situation testing” methodology has been used in more than ten countries in Europe and North America to assess the extent and nature of discrimination actually taking place in access to employment. It is cited as the widely used measure of actual behaviour in labour markets and may be considered for wider use in the EU. The approach consists of sending pairs of equally qualified candidates differing only in migrant or ethnic situation, to apply for jobs and measuring the difference in outcomes over a large, statistically significant sample. Its

54. Equal Treatment Commission (CGB), Netherlands: *Annual report 2009*, pp. 13–14.

55. Information in this paragraph is based on Equality Ombudsman, Sweden: *Pay Surveys – Provisions and outcomes*, Series DO II ENG (2009), p. 13.

56. The absence of a clear definition of the grounds of discrimination is particularly problematic when comparisons between countries need to be made.

57. ILO: *Revised Office proposal for the measurement of decent work based on guidance received at the TME on the measurement of decent work*, Policy Integration Department, 14 Oct. 2009, p. 2.

58. European Commission (Employment, Social Affairs and Equal Opportunities DG): *The fight against discrimination and the promotion of equality: How to measure progress done* (Luxembourg, Mar. 2008), pp. 8–9.

59. European Commission (Directorate-General for Employment, Social Affairs and Equal Opportunities): *Multiple Discrimination*, report on the work carried out by Governmental Expert Group on Non-Discrimination 2008–09, p. 7.

Box 1.3 Collecting “sensitive data”

An EC-commissioned study on the collection of sensitive data (ethnic origin, religion or belief, disability, or sexual orientation) concluded that “contrary to widespread belief, international, European and national laws on protection of privacy and data do not categorically prohibit the collection of data in relation to discrimination”. The study points out that data protection laws cover personal information and that the statistical data enable consolidated and anonymous information about certain population groups to be produced. Once the data are rendered anonymous, e.g. when they are released in an aggregate form, they do not, as a rule, constitute personal data and are therefore not covered by data protection laws.

In the Netherlands, for example, the processing of data relating to racial and ethnic origin is allowed even without the consent of the subject, since the law establishes that such processing is necessary for the purpose of remedying existing inequalities, that the identification of the persons concerned is based on objective criteria, and that the persons concerned have not indicated any objection to such processing in writing. Other countries, such as Austria, Denmark, Hungary and Sweden, expressly allow the processing of sensitive data for statistical and scientific purposes, although processing for these purposes requires prior authorization from the national data protection body.

Source: T. Makkonen: *Measuring Discrimination. Data Collection and EU Equality Law*, European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G2, 2007.

utility and effectiveness lie in the fact that it measures actual behaviour rather than outcomes, which cannot determine whether differences are due to discrimination or to other factors, and it differs from attitude and opinion surveys, which are influenced by subjective factors.

54. If statistics are meagre, weak or unreliable, the extent of discriminatory practices will remain largely unknown. It is crucial that governments commit themselves to putting in place human, technical and financial resources to improve data collection at the national level. This important and complex first step will significantly contribute to the identification of the problem and thus to the measures needed to tackle it.

Recent legal developments

Ratification of core Conventions

55. Ratification levels of both ILO core Conventions on equality, namely Conventions Nos 100 and 111, have continued to increase. Since 2006, Lao People’s Democratic Republic, Montenegro, Namibia, Samoa and Vanuatu have ratified Convention No. 100, while China, Kiribati, Lao People’s Democratic Republic, Montenegro, Samoa and Vanuatu have ratified Convention No. 111, bringing the number of their ratifications to 168 and 169 respectively out of a total ILO membership of 183 States. This places the two non-discrimination Conventions among the five most ratified ILO Conventions.

Universal ratification is not far off and is an attainable objective.

56. The ILO member States that have not yet ratified Convention No. 111 are: Brunei, Japan, Malaysia, Maldives, Marshall Islands, Myanmar, Oman, Singapore, Solomon Islands, Suriname, Thailand, Timor-Leste, Tuvalu and United States. Convention No. 100 has not been ratified by Bahrain, Brunei, Kuwait, Liberia, Maldives, Marshall Islands, Myanmar, Oman, Qatar, Solomon Islands, Somalia, Suriname, Timor-Leste, Tuvalu or United States.

Legislative trends

57. Over the last four years, the global picture with respect to legal measures to protect the fundamental right of non-discrimination has been marked by both progress and persistent gaps. As Part II of this Report shows, progress has been particularly marked by the adoption, in many countries, of new or revised legal provisions aimed at non-discrimination and equality. As regards the thrust of the new legislation, two major trends are evident: equality and non-discrimination legislation is covering an increasingly broad set of grounds for discrimination; and it provides more comprehensive protection in employment and occupation. These two trends suggest a greater recognition, at the national level, of the importance of more effectively responding to the evolving and complex realities of discrimination with legislative measures.

58. Malaysia and Botswana recently included sex as one of the prohibited grounds of discrimination

in their Constitutions. This adds to the long list of countries whose Constitution provides for equality and non-discrimination on grounds of sex. More numerous have been the new labour provisions prohibiting discrimination on several grounds. In Belgium, for instance, following the 2007 General Anti-Discrimination Act, legislation now contains all the criteria enumerated by Convention No. 111. In Macau, China, the 2008 Labour Act provides for equal rights and obligations for all workers or candidates for employment. The Act also prohibits discrimination on additional grounds such as sexual orientation, age, civil status, language, membership of an association, education or economic situation. In Montenegro, following a 2008 amendment to the Labour Law, discrimination is prohibited on the additional grounds of language, age, pregnancy, health status, marital status, family duties and sexual orientation. In the Republic of Korea, the 2008 Act on Prohibition of Age Discrimination in Employment and Employment Promotion for the Aged introduced a ban on age discrimination.

59. Other countries have included prohibition of discrimination on additional grounds in more general legislation on equality and non-discrimination. In Albania, the 2010 Law on Protection from Discrimination, which also applies to employment, covers a list of 24 grounds, including pregnancy and family or marital status, and imposes obligations on employers “to implement, protect and encourage the principle of equality and the prohibition of every kind of discrimination”. In Sweden, the 2008 Anti-Discrimination Act is designed to combat discrimination and promote equality of rights and opportunities regardless of sex, ethnicity, religion or other belief, disability, sexual orientation or age. In Slovakia, the 2008 Amendment of the Anti-Discrimination Act provides, inter alia, for the adoption of compensatory measures in the field of employment and occupation to eliminate forms of social and economic disadvantages arising from age or disability.

60. Race and sex continue to be the two grounds of discrimination specifically included in equality and non-discrimination legislation in almost all countries. Less progress has been made with regard to explicit reference to other grounds listed in Convention No. 111, such as national extraction, social origin and political opinion. In contrast, rapid advances have been made on the adoption of legal provisions prohibiting discrimination on the basis of disability or age, which are not addressed by the Convention. Importantly, the increasing adoption of equality and non-discrimination legislation that covers several

grounds affords the possibility of addressing cases of multiple discrimination.

61. The ILO’s Committee of Experts on the Application of Conventions and Recommendations has considered that in most cases, comprehensive legislation is needed to ensure the effective application of the right of equality in treatment and occupation for all. This type of legislation is now more commonly found in the EU as a result of the transposition of the EU directives on equality into national legislation. Similar legislation has been adopted in an increasing number of countries in other regions, including Kenya, Montenegro, Mozambique, Serbia and United Republic of Tanzania. Particularly comprehensive is Kenya’s 2007 Employment Act. The Act provides for a prohibition of direct and indirect discrimination at all stages of employment on all grounds enumerated by the Convention and shifts the burden of proof to the employer in cases of alleged discrimination. It also requires employers with more than 20 employees to adopt and implement a policy statement on sexual harassment. The Act explicitly assigns supervisory responsibilities to competent national authorities on equality and non-discrimination.

Remaining challenges

62. A number of countries have not yet adopted legal provisions prohibiting all the well-recognized forms of gender discrimination. In many, legislation fails to prohibit sexual harassment and also lacks provisions ensuring equal remuneration for women and men for work of equal value, a right embodied in Convention No. 100. While that Convention has been widely ratified, the Committee of Experts noted in 2006 that the majority of countries that have ratified Convention No. 100 have not fully reflected the principle of “equal remuneration for men and women for work of equal value” in their national legislation. In a number of countries, national legislation continues to refer only to equal pay for equal work. Some countries have introduced the principle of “equal remuneration for work of equal value” in their law, but subsequently narrowed the scope of “work of equal value” to mean only “equal work.” In addition, the definition of “remuneration” in national laws does not always encompass all forms of compensation, including wages and all other benefits.

63. Recently, a number of countries have given effect to Convention No. 100 in their national legislation. Ecuador and Bolivia promulgated new Constitutions, in 2008 and 2009 respectively,

Box 1.4 Measuring work of equal value

Determining whether two jobs that differ in content are equal in value requires a method of comparison. Job evaluation methods are tools that help to establish the relative value of jobs and thus determine whether their corresponding pay is just. The process of developing job evaluation methods and the way they are applied are as important as the technical contents of those methods. Unintended gender biases may arise at any stage in their design and use. In 2008, the ILO published a step-by-step guide on conducting gender-neutral job evaluations, explaining the steps for an objective and fair assessment of jobs free from gender bias, including the following sequence of operations:

- developing a weighting grid free from gender bias;
- assigning points to jobs based on levels of sub-factors and identifying jobs of the same value;
- calculating the total points assigned to each job;
- grouping jobs into point intervals.

Source: ILO: *Promoting equity – Gender-neutral job evaluation for equal pay: A step-by-step guide* (Geneva, 2008).

expressly including the right of “equal remuneration for work of equal value”. Labour laws in Kenya and Romania have also recently given full legislative expression to that right.

64. In many countries, certain categories of workers continue to be excluded from legal protection on equality and non-discrimination in employment. Particular examples are casual workers, domestic workers or workers in the agricultural sector and export processing zones (EPZs), which are often excluded from the practical application of labour laws and therefore from their provisions on non-discrimination.

65. Provisions maintaining the burden of proof on the claimant in discrimination cases limit the effectiveness of protection in judicial proceedings and the possibility of seeking remedies for damages inflicted. Because of the difficulties of proving discrimination in courts, some countries have been shifting the burden of proof to the employer. This shift is a requirement of the European Council Directive 2000/78/EC, which most EU member countries have now transposed into national law and practice. In many other countries, however, this very important provision has not yet been introduced or applies only to some grounds of discrimination.

66. In some countries, getting a discrimination case heard before a court is very difficult, if not impossible, owing to inadequate complaints procedures. Particularly detrimental to the success of legal action on discrimination in many countries is the continued existence of unrealistic demands in terms of

providing credible evidence and, as a result, some countries have shifted the burden of proof to the employer, as we have already noted.

67. Victims of discrimination may be dissuaded from exercising their rights in court for fear of retaliation, or because of weak legislation, lack of faith in judicial settlements, or the complexity of procedures. Yet nothing can replace the role of courts in the enforcement of legislation. Even where there are legal provisions to protect individuals from reprisals, the proof requirements are often quite demanding, and evidence suggests that reprisals are still not uncommon in discrimination disputes.⁶⁰ Bringing a claim to court on the grounds of discrimination would appear futile in those countries where procedures are costly and time-consuming, and remedies uncertain.

68. However, successful prosecutions for discrimination, even if few in number, may be an important vehicle for wider change if they are sufficiently publicized. In fact, many of the potential benefits of pursuing discrimination cases are collective, while many of the costs of pursuing them are individual.⁶¹

Discrimination based on multiple grounds

69. Increasing attention is now being paid to the importance of considering and remedying multiple discrimination in the labour market.⁶² Groups such as women with disabilities, indigenous women and young people from minority racial or religious groups

60. OECD: *Ending job discrimination*, Policy Brief, July 2008, p. 5.

61. *ibid.*, p. 6.

62. For the purposes of this Report, “multiple discrimination” means discrimination on a number of grounds.

have been increasingly vocal about their experiences of disadvantage and exclusion and the ways in which this is affected by the multiple dimensions of their identity.

70. The debate on multiple discrimination is evolving as more studies are published. These studies show that those experiencing discrimination on several grounds register the highest levels of unemployment and are largely concentrated in poorly remunerated and precarious jobs.

71. A recent study undertaken by the Center for Labor Research and Education of the University of California, Berkeley, in the United States, indicates that in June 2010, unemployment for African Americans stood at 15.4 per cent, significantly higher than the 8.8 per cent unemployment rate for whites. When the data are disaggregated on the basis of age and gender, the unemployment rate rises to 43.2 per cent for young African American men and 36.5 per cent for young African American women (ages 16–19).⁶³

Addressing multiple discrimination

72. Two recent key developments in international human rights law reflect the growing attention given to multiple discrimination. The 2006 Convention on the Rights of Persons with Disabilities, in Articles 6, 7 and 24, explicitly recognizes the multiple discrimination facing women and girls with disabilities and the special needs of children with disabilities, particularly in terms of access to education. Furthermore, the 2007 United Nations Declaration on the Rights of Indigenous Peoples, in Article 21(2), calls on States to pay particular attention “to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities”.

73. The positive trend of placing responsibility for dealing with several grounds of discrimination with one body makes it possible to deal with discrimination on combined grounds. This also creates

economies of scale and makes optimal use of limited expertise and resources. However, caution is needed to ensure that such administrative integration is not simply a pretext for budget cuts resulting in lesser visibility and lesser accessibility.

74. The predominant approach in courts continues to involve a focus on single grounds of discrimination. This tendency is partially explained by the fact that institutional and evidentiary processes for seeking redress remain structured on the basis of single grounds of discrimination, even if the law encompasses protection against discrimination on several grounds.⁶⁴ Other significant barriers to addressing cases of multiple discrimination in courts arise from the lack of awareness and understanding of multiple discrimination, a situation closely linked to the scarcity of both quantitative and qualitative data and research on the subject.

75. Encouraging progress has been made through the adoption of proactive measures such as affirmative action, employment equity policies or awareness-raising activities, and training programmes that can deal with combined grounds of discrimination. In Lithuania, for instance, the 2009–11 National Anti-Discrimination Programme includes plans to carry out studies, overviews and reports, including on multiple discrimination.⁶⁵ In the Netherlands, several projects address the intersection of various grounds of discrimination, particularly gender and ethnic origin, such as “Thousand and One Strengths: Women and Voluntary Participation”, which encourages emancipation, participation and integration.⁶⁶ In Zambia, the Citizens Economic Empowerment Commission (CEEC)⁶⁷ aims to promote the economic empowerment of citizens whose access to economic resources and development capacity has been constrained as a result of various factors including age, sex, HIV status and disability. Other initiatives include campaigns and training to raise awareness of the existence of multiple discrimination in Austria, Czech Republic and Sweden.

63. See S. Allegretto, A. Amerikaner and S. Pitts: *Data brief: Black employment and unemployment in June 2010* (UC Berkeley Labor Center, 2 July 2010).

64. See S. Hannett: “Equality at the intersections: The legislative and judicial failure to tackle multiple discrimination”, in *Oxford Journal of Legal Studies* (2003, Vol. 23, No. 1), pp. 65–86. On the limitations in legal protections, the author cites equal pay protections, which are often limited to gender-based inequities. See also K. Abrams: “Title VII and the complex female subject”, in *Michigan Law Review* (1994, Vol. 92, No. 8), pp. 2479–2540.

65. European Commission: *Multiple Discrimination*, op. cit., p. 7.

66. *ibid.*, p. 9.

67. Further details of these activities are available at the CEEC website, www.ceec.org.zm/.





Part II

From principles to practice

76. This section highlights recent trends and developments with regard to different grounds of discrimination. Some grounds are specifically addressed by Convention No. 111, and some are covered by other ILO instruments. A few remain outside the scope of any ILO Convention. The key role of governments in demonstrating political commitment and providing an enabling environment, and the action taken by employers' and workers' organizations and other stakeholders, are reviewed. Legal frameworks and policies against discriminatory practices and the challenges faced in the light of the recent global economic crisis are also examined.

Discrimination based on sex

77. Women continue to suffer discrimination in almost all aspects of employment, including the jobs they can obtain, their remuneration, benefits and working conditions, and their access to decision-making positions. Research has shown that gender

pay gaps, occupational and vertical segregation, difficulties in balancing work and family life, the disproportionate concentration of women in part-time, informal and precarious work, sexual harassment, and discrimination based on maternity or marital status, all persist despite legislative and policy initiatives. In many cases, women's access to certain jobs is restricted on the basis of their reproductive role or the fact that women continue to bear the main responsibility for childcare and the care of other dependants. That does not mean that progress has not been made, but rather serves to underscore the fact that women are still a long way from achieving gender equality in the labour market.

Promoting gender equality through gender mainstreaming

78. Discrimination between men and women has deep social roots which cannot be removed simply by legislation or any one specific measure.

Box 2.1 **Discrimination starts in childhood**

The failure to address educational inequalities fuels a social system of uneven relationships in which discrimination is possible. Being born in a certain place or belonging to a disadvantaged group can restrict the basic human right of children to education on the basis of equal opportunity. In many regions, disadvantaged groups continue to be systematically excluded from, or disadvantaged in their access to, education. They include girls, children who belong to an ethnic or linguistic minority, children affected by HIV/AIDS, AIDS orphans, children of migrant families, child labourers, children living in rural areas and urban slums, and children affected by armed conflict.

Inclusive and targeted education policies that provide access to high-quality learning environments for those disadvantaged groups are powerful means of building inclusive societies free from the scourge of discrimination. Education systems also play a role in educating against discrimination. Teaching social values of respect, acceptance, tolerance and peace must be at the core of a comprehensive strategy to tackle discrimination early in the life of individuals.

Box 2.2 Female Future

Following the 2003 law requiring boards of all public limited companies in Norway to have at least 40 per cent female membership by July 2005, the Confederation of Norwegian Enterprises (NHO) surveyed Norwegian companies and found that whilst 84 per cent were positively in favour of increasing women's representation at management and at board levels, the same companies considered that there was a lack of female candidates for the leading positions.

Despite its earlier scepticism, the NHO established the internationally acclaimed Female Future, a unique 18-month training and networking programme to identify and fast-track talented women in the Norwegian workforce into leadership positions. Female Future followed a strategy of "pearl diving", where NHO member companies would nominate a minimum of three women candidates for further training and support to reach the NHO's network of boards.

Of the 600 women who have successfully completed the programme, 60 per cent have gone on to receive invitations to join Norwegian boards.

Source: R. Lewis and K. Rake: "Breaking the Mould for Women Leaders: Could boardroom quotas hold the key?", a Fawcett Society think piece for the Gender Equality Forum, Oct. 2008, p. 7.

Mainstreaming gender and non-discrimination across a whole range of national policies and programmes may prove to be more efficient.

79. Gender mainstreaming has been defined as the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and social spheres, so that women and men benefit equally and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.¹

80. Several policy initiatives implemented over the past few years have advocated gender mainstreaming as an effective way to promote gender equality. Examples can be found in the Solomon Islands' National Policy on Gender Equality and Women's Development (2010–15)² and Albania's National Strategy for Development and Integration (2007–13),³ which recognize that in order to redress gender inequalities, it is necessary to mainstream gender perspectives into national development strategies.

81. Gender mainstreaming has been much discussed throughout the world. Nevertheless, in the

European Union over the last decade, periodic reports on progress made indicate that much remains to be done in terms of translating this idea into practice.⁴ According to one analysis, successful mainstreaming requires "the establishment of a clear and transparent organisational infrastructure with a clear focus on gender equality", whether (as in Denmark, Germany and the United Kingdom) by means of legislative initiatives or (as in France, Iceland, Netherlands and Sweden) by the adoption of mainstreaming as a "general policy principle".⁵ Crucial to the success of gender mainstreaming is the availability of adequate gender-disaggregated statistics which "enable the description of the actual situation in order to assess actual gender (in)equality and to prioritise areas for attention."⁶

Affirmative action

82. Since 2007, a number of affirmative action programmes have been established. Spain, for example, has put in place requirements that companies must meet gender quotas of between 40 and 60 per cent for boards and executive-level positions by 2015, while Germany, where the Government had encouraged the use of voluntary company codes, has

1. Based on the definition given by the United Nations Economic and Social Council (ECOSOC), July 1997. See ILO: *Gender Equality Tool*, available at the website of the ILO's Bureau for Gender Equality.
2. Japan International Cooperation Agency: *Country Gender Profile: Solomon Islands*, 2010, p. 11.
3. Japan International Cooperation Agency: *Albania: Country Gender Profile*, 2010, p. 17.
4. See in particular J. Plantenga, C. Remery and J. Rubery: *Gender mainstreaming of employment policies: A comparative review of 30 European countries* (Luxembourg, European Commission, July 2007); P. Villa and M. Smith: *National Reform Programmes 2008 and the gender aspects of the European Employment Strategy*, coordinators' synthesis report prepared for the Equality Unit of the European Commission, 2009.
5. J. Plantenga, C. Remery and J. Rubery, op. cit., pp. 5–6.
6. *ibid.*, p. 6.

Box 2.3 EU Strategy for equality between women and men (2010–15)

In September 2010, the European Commission adopted the European Union Strategy for equality between women and men (2010–15). The Strategy describes actions to be undertaken in five priority areas identified in the Women's Charter issued in early 2010 by the EC and one area addressing cross-cutting issues.

The actions proposed follow the dual approach of gender mainstreaming and specific measures. The six priority areas are:

- (1) equal economic independence;
- (2) equal pay for equal work and work of equal value;
- (3) equality in decision-making;
- (4) dignity, integrity and an end to gender-based violence;
- (5) gender equality in external actions;
- (6) horizontal issues.

The actions to be taken include the promotion of female entrepreneurship and self-employment; the assessment of remaining gaps in entitlement to family-related leave; the promotion of gender equality in all initiatives on immigration and integration of migrants; the exploration of possible ways to improve the transparency of pay, to understand the impact on equal pay arrangements such as part-time work and fixed-term contracts, and to support equal pay initiatives at the workplace such as equality labels as well as the development of tools to enable employers to correct unjustified gender pay gaps. Actions will be also undertaken to improve the gender balance in decision-making.

Source: European Commission: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Strategy for equality between women and men 2010–15", Brussels, 21 Sep. 2010.

instituted voluntary quotas for gender equality.⁷ The EU Commission has promoted self-regulation of companies to achieve gender balances on company boards, but has reserved the option of developing quota regulations in the future if self-regulation does not improve current outcomes whereby women represent only 11 per cent of board members.⁸

83. In pursuing its quota system, Norway has seen an increase in female company board members from 7 per cent in 2003 to 39 per cent in 2008.⁹ Since 2008, the Norwegian quota system has required that the boards of public companies be composed of at least 40 per cent of people from each gender. Companies failing to meet these requirements can be dissolved by national courts.¹⁰ Elsewhere alternative mechanisms of affirmative action have been chosen.

Persistence in gender pay gaps

84. A report submitted to the International Labour Conference in 2009 noted: "In most countries, women's wages for work of equal value represent on average between 70 and 90 per cent of men's, but it is not uncommon to find much wider differences."¹¹ A 2009 International Trade Union Confederation (ITUC) report for 20 countries¹² detected an average gender pay gap of 22.4 per cent and a median gap of 20.4 per cent. Another study by the ITUC in 2010, which included an additional 23 countries, showed an overall median gender gap of 26 per cent in favour of men. According to the report, the gap is narrower for those without children (20 per cent) and wider for those with children (32 per cent). The gap is also more pronounced among respondents who work full time (24 per cent) than among those who do not (20 per cent).¹³

7. ITUC: *Gender (in)equality in the labour market: An overview of global trends and developments* (Brussels, Mar. 2009), p. 38.

8. EurActiv: "EU mulls gender quotas on company boards", published on EurActiv site, 15 July 2010.

9. A. Hole, Director-General, Ministry of Children and Equality, Norway: "Government action to bring about gender balance", available at www.20-first.com/406-0-a-personal-account-of-the-quota-legislation-in-norway.html, accessed 21 Jan. 2010.

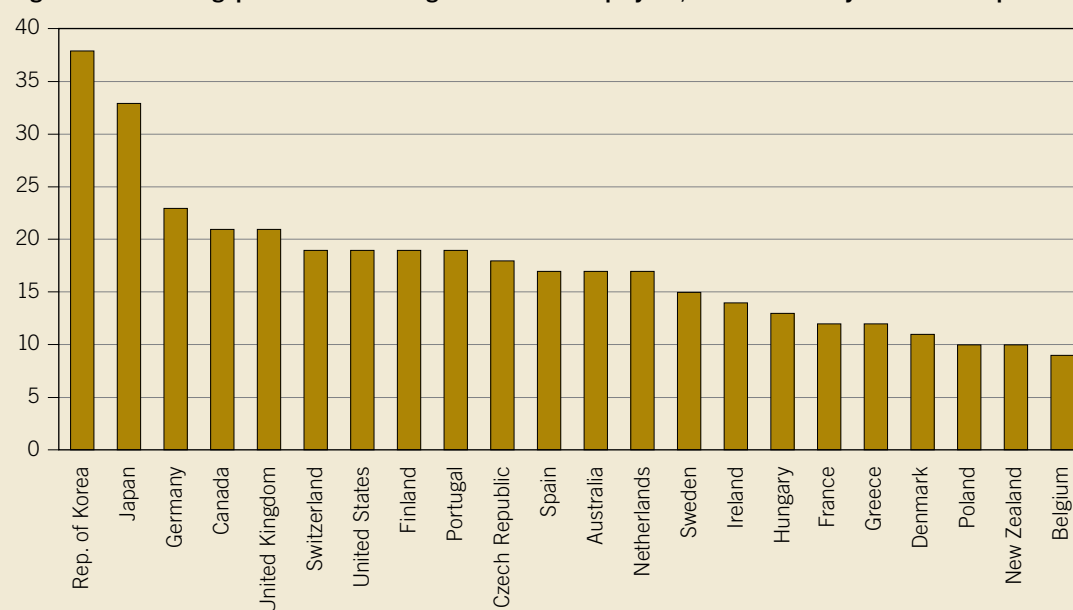
10. Mission of Norway to the EU: "Norway's mixed-gender boardrooms", 23 July 2010.

11. ILO: *Gender equality at the heart of decent work*, Report VI, International Labour Conference, 98th Session, Geneva, 2009, para. 294.

12. ITUC: *Gender (in)equality in the labour market*, op. cit.; the countries concerned were: Argentina, Brazil, Chile, Denmark, Finland, Germany, Hungary, India, Italy, Republic of Korea, Mexico, Netherlands, Paraguay, Poland, Russian Federation, South Africa, Spain, Sweden, United Kingdom and United States.

13. ITUC: *Decisions for work: An examination of the factors influencing women's decisions for work* (Brussels, 2010), pp. 21, 31.

Figure 2.1. Gender gap in median earnings of full-time employees, 2006 or latest year available (per cent)



Adapted from OECD: *Gender Brief*, OECD Social Policy Division, Mar. 2010, p. 13.
Source: OECD Family Database >LMF5 and OECD Earnings database. The OECD average in 2006 was 17.6 per cent.

85. In 2010, the OECD reported a gender wage gap in median full-time earnings of 17.6 per cent across its membership.¹⁴ In those countries whose details were reported, the gap ranged from almost 40 per cent in the Republic of Korea and over 30 per cent in Japan, through 20–25 per cent in Canada, Germany and United Kingdom, between 15 and 20 per cent in Australia, Czech Republic, Finland, Netherlands, Portugal, Spain, Sweden, Switzerland and United States, 10–15 per cent in Denmark, France, Greece, Hungary and Ireland, down to 10 per cent or less in Belgium, New Zealand and Poland. The OECD's findings are reproduced at figure 2.1.

86. Statistics on gender pay gaps often do not include the vast numbers of women worldwide (almost 25 per cent of the total workforce) who receive no direct pay for their involvement in family work. If these women, and the many others engaged in other forms of informal work, were included in the statistics, women's relative disadvantage in the labour market would be much starker, and their inability to benefit from labour market regulation including anti-discrimination and equal pay provisions clearer.

Estimates reported to the 2009 session of the International Labour Conference suggest that the value of unpaid care work (also called “unpaid household work”) can be equivalent to half of a country's GDP.¹⁵

87. A significant portion of the gender pay gap can be explained by occupational and sectoral segregation.¹⁶ In the United Kingdom, for example, data contained in the 2008 Labour Force Survey (LFS) revealed that women occupied two-thirds of jobs in low-paid occupations compared to two-fifths in other occupations. Furthermore, the LFS showed that women accounted for 76 per cent of all workers in part-time employment in the United Kingdom, which is of particular concern since part-time workers are twice as likely to be paid a minimum wage.¹⁷

Means to narrow the gender pay gap

88. Legislation based on the concept of equal pay for work of equal value is not as widespread as

14. OECD, op. cit., p. 13 (figures from 2006 or latest available).

15. ILO: *Gender equality at the heart of decent work*, op. cit., para. 298.

16. European Foundation for the Improvement of Living and Working Conditions (Eurofound): *Addressing the gender pay gap: Government and social partner actions* (2010), p. 24.

17. Low Pay Commission: *National Minimum Wage. Low Pay Commission Report 2009*, p. 98.

general non-discrimination legislation. Nevertheless, there has been progress. Across the EU, legislation on equal pay is mandatory and must be adopted by countries seeking accession. Comprehensive anti-discrimination legislation also exists in other countries, for example Canada and South Africa. In April 2009, legislation in Cyprus on equal pay for work of equal value was amended in a manner expected to reduce the gender pay gap. In 2007, Ecuador adopted a new Constitution which includes the concept of equal pay for work of equal value.

89. Clear legislative provisions against discrimination and for entitlements to equal pay for work of equal value, although necessary and welcome, are only a first step. In November 2008 a European Parliament resolution made recommendations to the Commission on the application of the principle of equal pay for men and women. These recommendations highlighted a set of integrated initiatives to tackle the gender pay gap, including analyses and calls for transparency, work evaluation and job classification, the role of equality bodies, the prevention of discrimination, gender mainstreaming, the use of sanctions and streamlining of EU regulations and policies.

90. Many governments are including reduction of the gender pay gap among priorities in action plans, including through initiatives aimed at combating occupational segregation, as in the case of Finland (2008–11) and The former Yugoslav Republic of Macedonia (2007–12). Similarly, a recent tripartite meeting in the United Kingdom to tackle the problem of the gender pay gap resulted in a Government Action Plan to increase the availability of quality part-time work, to introduce a “public sector gender duty”, and to ensure career guidance free from gender stereotyping.

91. One means of reducing the gender pay gap is through the introduction of minimum wages, which can have the effect of reducing pay differences by increasing salaries in primarily female-dominated sectors, as studies in Bulgaria and the United Kingdom have shown.¹⁸ In the United Kingdom, a minimum wage increase in 2008 impacted jobs held mostly by women, according to a Low Pay Commission study, affecting in total 5.6 per cent of women compared to 3.0 per cent of men.¹⁹ Since the introduction of

the National Minimum Wage in 1999, salaries at lower pay rates have become more equal between men and women, while the gender pay gap for high earners has remained unaffected by the minimum wage.²⁰

92. Countries such as Belgium and the Netherlands have recently introduced different systems of job classification with the aim of reviewing the gender pay gap. In Belgium, the Institute for the Equality of Women and Men was established under a federal project to reform the job classification system. In the Netherlands, the tripartite Labour Foundation (*Stichting van de Arbeid, STAR*) introduced a “check-list on equal pay for payment systems”, as an instrument for the social partners. While these initiatives have resulted in the availability of practical guides and tools for enterprises, implementation of the various methodologies is at different stages and information on progress and impact has yet to be developed.

93. The social partners have the potential to play a powerful role in narrowing pay gaps through their role in wage negotiations.²¹ In Sweden, for example, upon observing that sectors with the lowest minimum wage had the largest proportion of female employees, the social partners agreed to a raise in the minimum wage through collective bargaining.²² There are also provisions which require affirmative action by employers towards equality as in the case of Ontario’s Pay Equity Act²³ or the South African²⁴ or Namibian Affirmative Action legislation.²⁵

94. In general, trade unions address the gender pay gap through social dialogue, inclusion of the issue in collective bargaining, general awareness-raising campaigns, and creation of gender focal points or units within their structures. Where initiatives and events are developed, it is often in collaboration with national equality bodies and with governments, with the aim of drawing public and media attention to pay differentials. Examples of such initiatives include regular “Equal Pay Days”, as reported in Austria, Belgium, Czech Republic, Denmark, Estonia, Hungary and Netherlands. The adoption of indirect measures applies equally to employers, who sometimes implement a quota system to support women’s access to managerial positions, as is the case in companies such as Daimler in Germany.

18. Eurofound, op. cit., pp. 12, 24.

19. Low Pay Commission, op. cit., p. 98.

20. *ibid.*, p. 100.

21. Eurofound, op. cit., p. 29.

22. *ibid.*, p. 24.

23. Pay Equity Act, R. S. O. 1990, Ch. P.7.

24. Employment Equity Act, No. 55 of 1998.

25. Affirmative Action (Employment) Act, 1998.

Box 2.4 Addressing equal pay through collective bargaining in Denmark

The Danish Confederation of Trade Unions decided in 2007 to set equal pay as a main priority for the next four years. The Confederation has developed a two-pronged equal pay strategy comprising 12 components.

Seven of these are specifically identified as initiatives to be addressed through collective bargaining:

- greater transparency in wage determination;
- increased paternity rights;
- explicit inclusion of the principle of equality in all collective agreements;
- equal pay schemes;
- further development of the fund for parental leave;
- public sector employers firmly adhere to their obligation under Article 1b of the Danish Equal Remuneration Act;
- paid time off to care for sick children.

Source: The Danish Confederation of Trade Unions Equal Pay Strategy.

Maternity and paternity status

95. According to a 2010 ILO review on maternity legislation,²⁶ many countries worldwide provide insufficient benefits for pregnant women. In Africa, only 39 per cent of countries reviewed provided benefits in accordance with ILO standards, while in Asia, only two of the 23 countries reviewed met the same requirements. Some countries, including Lesotho, Papua New Guinea, Swaziland, and United States, provided no cash benefits for pregnant women. Among developed economies, including the European Union, 78 per cent of countries met ILO standards. It is vital that benefits are provided to ensure that women can maintain an adequate standard of living and health for themselves and their children, according to the Maternity Protection Convention, 2000 (No. 183). This will ensure that they are not being structurally disadvantaged in the labour market as a consequence of pregnancy.

96. New legal provisions continue to be introduced. For example, Mauritius included in its Employment Rights Act 2008 a special provision related to protection from discriminatory dismissal by

reason of pregnancy, marital status, family responsibilities or maternity leave. As a measure to protect pregnant women from the H1N1 pandemic, the Government of Costa Rica issued a decree²⁷ introducing teleworking depending on the nature of the job performed. In Europe, some companies are implementing policies which, for example, grant women additional weeks of maternity leave with wages fully paid by the company,²⁸ reduce working time for pregnant women who become sick without reducing their pay, and offer the option of teleworking.²⁹ Some countries include provisions in their maternity and paternity legislation for abnormal events. Nicaragua and Panama provide women with paid leave if they experience a miscarriage, stillbirth or other abnormal condition.³⁰ France gives fathers up to ten weeks of leave after the birth of a child if the mother dies during maternity leave.³¹

97. There have also been improvements with paternal leave legislation. In Finland, for example, since January 2010, fathers have been entitled to an additional 24 days of paternity leave.³² Similarly, Japan revised its Law for Childcare and Family Care Leave of 2010 to allow for a father to take leave on

26. ILO: *Maternity at work: A review of national legislation. Findings from the ILO's Conditions of Work and Employment Database*, second edition (Geneva, 2010), pp. 20, 21, 22, 36.

27. Decree No. 35434-S-MTSS, issued as a measure to protect pregnant women from the H1N1 pandemic.

28. European Alliance for families: *Good practice – L'Oréal (France)*, available at http://ec.europa.eu/employment_social/emplweb/families/index.cfm?langId=en&cid=5&pr_i_id=299 visited: 8 Oct. 2010.

29. European Alliance for families: *Good practice – Hewitt Associates (Poland)*, available at http://ec.europa.eu/employment_social/emplweb/families/index.cfm?langId=en&cid=5&pr_i_id=249, accessed 8 Oct. 2010; European Alliance for families: *Good practice – Commerz Bank, Germany*, available at http://ec.europa.eu/employment_social/emplweb/families/index.cfm?langId=en&cid=5&pr_i_id=294.

30. ILO: *Maternity at work*, op. cit., p. 16.

31. *ibid.*, footnote 24, p. 16.

32. *ibid.*, footnote 75, p. 44.

two separate occasions after his child's birth.³³ In Slovenia fathers are granted 90 days of paternity leave, while in Kenya fathers get two weeks' paid paternity leave.³⁴ In October 2010, the European Parliament recommended that men should be entitled to paid paternity leave on an equivalent basis to maternity leave except for duration, and that it should also be applicable to unmarried couples.³⁵

98. Meanwhile, some groups remain excluded under these provisions. For example, in Japan, employers do not have to pay health insurance premiums for non-regular workers, who typically work less than 35 hours per week and are not eligible for maternity leave.³⁶ In Ecuador, part-time workers, workers in the export processing zones (EPZs) and public sector employees do not receive cash maternity benefits from the Social Security Institute.³⁷

99. In spite of important and long-standing legislation, discrimination against women on grounds of maternity continues to exist and is on the increase, as witnessed by several equality commissions worldwide. In 2009, the United States Equal Employment Opportunity Commission (EEOC) received 6,196 cases, compared to 3,977 cases in 1997.³⁸ In the Dominican Republic, the number of cases received by the Secretariat of State for Labour (SET) increased from 91 in 2005 to 128 in 2009.³⁹ In Costa Rica, the Labour Inspectorate received 635 cases in 2009, almost three times the figure for 2008 (230 cases).⁴⁰ In Guatemala, the Labour Inspectorate of the Metropolitan Area received 15 per cent more complaints in 2009 compared to 2005. Most of the cases were related to dismissals for pregnancy, dismissal while nursing, failure to grant time for nursing, or non-payment of pre- and post-natal benefits.⁴¹ Denial of promotion during pregnancy and refusal to allow a woman to return to the post she held before becoming pregnant have also emerged as issues in need of attention.

Balancing work and family responsibilities

100. The ILO Workers with Family Responsibilities Convention, 1981 (No. 156), and its accompanying Recommendation (No. 165), provide considerable guidance in the formulation of policies that enable men and women workers with family responsibilities to engage and advance in employment without discrimination. Such policies include more flexible arrangements as regards working schedules from which, as research shows, a variety of benefits can be gained, including reduced absenteeism, increased ability to attract and retain skilled staff, and improvements in productivity and time management.⁴² Nevertheless, flexible arrangements are still uncommon. According to the US Bureau of Labor Statistics,⁴³ only 5 per cent of workers in the United States are given the option of flexible workplace arrangements by private employers.

101. On the other hand, alternative working time arrangements, such as job sharing and teleworking, are gradually being introduced as part of more family-friendly policies at the enterprise level, with the effect of reducing structural disadvantages in the labour market faced by workers with family responsibilities. The revised Law for Child and Family Care Leave 2010 in Japan, for example, allows employers to shorten a worker's working hours upon request, if the worker is responsible for the care of a child below 3 years of age but does not take childcare leave.⁴⁴

102. Some European companies have teamed up with outside childcare services where employees can leave their children while they are at work, or have established free hotlines to help employees find child-minders or emergency childcare services. In Chile, the number of free public nursery places for children aged 3 months to 2 years living in the poorest areas in the country has increased from 14,400 in 2005

33. Ministry of Health, Labour and Welfare: *Introduction to the revised Child Care and Family Care Leave Law*, p. 36.

34. ILO: *Maternity at work*, op. cit., pp. 46–47.

35. European Parliament: *Amendment 21 Proposal for a directive – amending act Recital 13 c (new)*.

36. ILO: *Maternity at work*, op. cit., p. 37.

37. ILO: CEACR, individual observation published in 2009 concerning the application by Ecuador (ratification: 1962) of the Maternity Protection Convention (Revised), 1952 (No. 103).

38. EEOC: *Pregnancy Discrimination Charges EEOC & FEPA's Combined: FY 1997 – FY 2009*, available at www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm, accessed 21 Jan. 2010.

39. ILO: *Informe de verificación de la implementación de las recomendaciones del libro blanco: Periodo: agosto 2009 – enero 2010*, Dominican Republic, San José, p. 47. Available at http://verificacion.oit.or.cr/images/pdf/inf_rd_ago09ene10.pdf, accessed 6 Oct. 2010.

40. *ibid.*, p. 32.

41. *ibid.*, p. 57.

42. See, for example, Queensland Government: *Benefits of working flexibly*, 2010.

43. Department of Labor: Testimony of Deputy Secretary of Labor Seth Harris before the Senate Subcommittee on Children and Families Committee on Health, Education, Labor and Pensions, 2009.

44. Ministry of Health, Labour and Welfare, op. cit.

Box 2.5**European case law: Towards gender equality in family responsibilities**

The European Court of Justice (ECJ) ruling of September 2010 in the case *Alvarez v. Sesa Start España* can have broad implications on work and family balance in Europe. The Court found that a Spanish law designed to provide parents with an hour off work each day to feed a baby less than 9 months of age was inconsistent with equal protection laws and an example of unjustified discrimination on grounds of sex, since fathers could only utilize the time off if the mother was also employed, while mothers were free to take time off regardless of the work status of the father. The Court noted that the Spanish law, which was earlier modified to include bottle feeding in addition to breastfeeding, was aimed at ensuring the proper nutrition and bonding time of children with their parents regardless of gender since the law no longer attached a biological role to the feeding. The Court broadly found that employment policies meant to reconcile work and family life for workers with children, such as the Spanish feeding law, must be provided equally to both parents in accordance with the European Council Directive on Equal Treatment. As a consequence, men will be free to share the baby feeding role with women more regularly, thereby increasing the ability of women and men to secure a healthy work and family balance. The ruling may also have an impact on ensuring that other work and life balance policies in the EU are shaped in a gender-neutral form.

Source: Court of Justice of the European Union: Press Release No. 94/10, 30 Sep. 2010.

to 64,000 in 2008.⁴⁵ The introduction of affordable, high-quality childcare can reduce structural barriers for many, particularly those who are low-paid and may be unable to afford alternative childcare options. In Hungary, the “Start Plusz” Programme, introduced in 2007, provides employers who employ women after a childcare break with a subsidy for social security contributions.⁴⁶

103. The lack of adequate paid leave in some countries can make sectors of the labour market inaccessible or unattractive for workers with family responsibilities. It forces workers to choose between employment and looking after their children or others under their care. Eligibility for paid leave is also correlated with income. While 54 per cent of the highest paid workers had access to paid leave for personal reasons in the United States, for example, only 17 per cent of the lowest paid workers had the same access, according to a 2008 Bureau of Labor Statistics survey.⁴⁷

Girls’ access to education

104. One factor significantly affecting the nature and quality of women’s labour market participation is their access to education. In many developing countries girls are at a disadvantage as regards access to education. There has, however, been considerable

progress. According to the *2010 World Development Indicators* published by the World Bank, 64 developing countries have achieved gender parity in enrolment at primary level, and another 20 are on track to do so by 2015. However, 22 countries are seriously off track, the majority of them in sub-Saharan Africa.⁴⁸ In secondary education, 73 countries, mainly in Latin America and the Caribbean, Europe and Central Asia, have achieved gender parity, and another 14 are on track. Twenty-nine countries, more than two-thirds of them in sub-Saharan Africa, are seriously off track and unlikely to achieve parity if current trends continue. Data for tertiary education are not widely reported. Most countries with data have made progress toward gender parity, but countries in South Asia and sub-Saharan Africa lag behind.

Legislation on marital status

105. Several countries have been expanding the scope of their provisions related to discrimination in employment based on marital status.⁴⁹ In 2007, Namibia expanded the scope of its legislation to prohibit dismissal on grounds of marital status. Rwanda included marital status as a protected ground in a 2009 Act expanding protection against discrimination.⁵⁰ In 2008 and 2009,

45. ILO: *Work and Family: The way to care is to share!*, online brochure, p. 7.

46. C. Hein and N. Cassirer: *Workplace solutions for childcare* (ILO, Geneva, 2010), p. 248.

47. Department of Labor, op. cit.

48. Information in this paragraph is based on World Bank: *2010 World Development Indicators*, p. 10.

49. Labour Act, 2007.

50. Law No. 13/2009 of 27 May 2009 regulating labour in Rwanda.

Box 2.6 Bangladesh High Court issues guidelines on sexual harassment

In 2008, the Bangladesh National Women Lawyers Association (BNWLA) initiated proceedings before the High Court against the Government of Bangladesh. The BNWLA complained about the absence of legislative provisions to address sexual harassment of women and girls demanding effective legislation and/or alternative mechanisms to tackle the problem. In 2009, the High Court issued directives in the form of guidelines to be followed and observed at all workplaces and educational institutions until adequate and effective legislation is adopted in this field. The objective of these guidelines is to raise awareness about sexual harassment and its consequences. They highlight the duties of employers and authorities concerning the maintenance of mechanisms for preventing or deterring sexual harassment, providing effective measures for prosecution of the offences of sexual harassment and initiating appropriate disciplinary action when it is needed. The creation of complaint committees in all work places and educational institutions in both public and private sectors is contemplated in the guidelines; these committees will receive complaints, conduct investigations and make recommendations.

Source: *Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh and others*. W.P.5916.08 jt.14.5.09.

the 1977 Anti-Discrimination Act of New South Wales in Australia was amended to increase the maximum compensation for acts of discrimination to 100,000 Australian dollars and altered the term “marital status” to “marital or domestic status” in order to include and protect individuals in same-sex relationships.⁵¹

Complaints of sexual harassment

106. Surveys have shown significant rates of sexual harassment in the workplace, with between 40 and 50 per cent of women in the European Union reporting some form of sexual harassment or unwanted sexual behaviour in the workplace. Small surveys in Asia-Pacific countries indicate that 30 to 40 per cent of women workers report some form of verbal, physical or sexual harassment.⁵² In New South Wales, Australia, it was the largest single category of work-related complaints for 2009.⁵³ It is unclear whether this is a result of increasing sexual harassment, better use and knowledge of specialized bodies dealing with non-discrimination and equality, or because of the

higher proportions of women in employed populations. As more women enter precarious employment as a result of the effects of the economic crisis, they may encounter higher incidences of harassment.

107. More complaints are also being received from men.⁵⁴ The US Equal Employment Opportunities Commission reported that 16 per cent of sexual harassment complaints were reported by men in 2009, compared to only 12.1 per cent in 1999.⁵⁵ A 2007 survey conducted in Hong Kong, China, found that 25 per cent of workers interviewed had encountered sexual harassment, one third being men, of which only 6.6 per cent reported their experience.⁵⁶ The persistence of sexual harassment at work may be due to a lack not only of legislation but also of substantial preventative programmes.

Discrimination based on race and ethnicity

Alarming trends worldwide

108. The fight against racism is as relevant today as it has ever been in the past.⁵⁷ In 2009, the Durban

51. Anti-Discrimination Board of New South Wales: *Annual Report 2008–09*, 26 Oct. 2009, pp. 2, 12.

52. UN General Assembly: *In-depth study on violence against women*, Report of the Secretary-General, prepared for the 61st Session of the General Assembly, 6 July 2006, A/61/122/Add.1.

53. Anti-Discrimination Board of New South Wales, op. cit., p. 16.

54. D. McCann: *Sexual harassment at work: National and international responses*, Conditions of Work and Employment Series No. 2 (Geneva, ILO, 2005), p. 5.

55. EEOC: *Sexual Harassment Charges EEOC & FEPA's Combined FY 1997 – FY 2009*.

56. ILO: *Sexual harassment at work*, fact sheet, 2007, available at www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_decl_fs_96_en.pdf, accessed 25 Jan. 2011.

57. Speech by Mr Githu Muigai, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance at the occasion of the High-Level Panel to celebrate the International Day for the Elimination of Racial Discrimination, 19 Mar. 2009, available at www.un.org/durbanreview2009/stmt19-03-09.shtml.

Box 2.7 European Court of Justice ruling

In July 2008, the European Court of Justice ruled against a Belgian employer who had declared that he did not want to hire workers from foreign origins because his customers would only want to deal with workers from Belgian origins. The court specified that an employer who publicly indicates his intention not to hire workers from foreign origins is guilty of discrimination. This ruling has further contributed to European jurisprudence on the topic.

Source: Centre pour l'égalité des chances et la lutte contre le racisme: *Discrimination/Diversité: Rapport annuel 2009*.

Review Conference, which was held as a follow-up to the 2001 UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, expressed concern that “challenges and obstacles identified in the Durban Declaration and Programme of Action remain to be addressed and overcome in order to effectively prevent, combat and eradicate racism, racial discrimination, xenophobia and related intolerance and that there are still many areas where achievements have not been gained or further improvements have to be attained.”⁵⁸

109. In 2009, 45 per cent of all employment discrimination complaints received by the Centre for Equal Opportunities and Opposition to Racism in Belgium were race-related; of these, 36.5 per cent concerned access to employment and 56.1 per cent concerned conditions of work.⁵⁹ Similarly, the Australian Human Rights Commission reported that 44 per cent of its race-related complaints concerned employment.⁶⁰ New Zealand’s Race Relations Commission also reported that 40 per cent of complaints received concerned securing or retaining employment. A common type of complaint is bullying in the workplace because of a person’s race. In France, the main body responsible for combating discrimination and promoting equality, the HALDE, reported that race discrimination remained the main reason for discrimination complaints, which included both direct discrimination cases, such as openly discriminatory job advertisements, and indirect cases involving the refusal to recognize foreign diplomas.⁶¹

110. Correspondence testing, that is, the sending of multiple matched applications for real job vacancies

with the variable of ethnicity through the random assignment of names widely associated with ethnic groups, also highlights the extent of race discrimination in access to employment. One such study,⁶² carried out in 2009 in the United Kingdom, concluded that net discrimination⁶³ in favour of “British-sounding” names over equivalent applications from ethnic minority candidates was 29 per cent. The results of a similar study in Sweden suggest that there is a large difference in call-backs between applicants with Swedish names and names that are Arabic- or African-sounding. For the 3,552 jobs included in the sample, the net discrimination rate was 40.3 per cent. Expressed in terms of a real job-seeking situation, this means that if a person with a Swedish-sounding name had to apply for ten jobs before being contacted by an employer, a person with the same qualifications but with an Arabic- or African-sounding name would have to apply 21 times to be contacted.⁶⁴

Little progress for people of African descent

111. In an information note on people of African descent, the Durban Review meeting recalled that “for centuries, people of African descent living in the African Diaspora, were marginalized as part of the legacy of slavery and colonialism”. It recognized “that racism and racial discrimination have caused people of African descent to be relegated in many aspects of public life” and that, as a result, “they have suffered exclusion and poverty”. It also emphasized that although progress has been made, the situation persists

58. Outcome document of the Durban Review Conference, Geneva, 20–24 Apr. 2009.

59. Centre pour l'égalité des chances et la lutte contre le racisme, op. cit., pp. 80, 81.

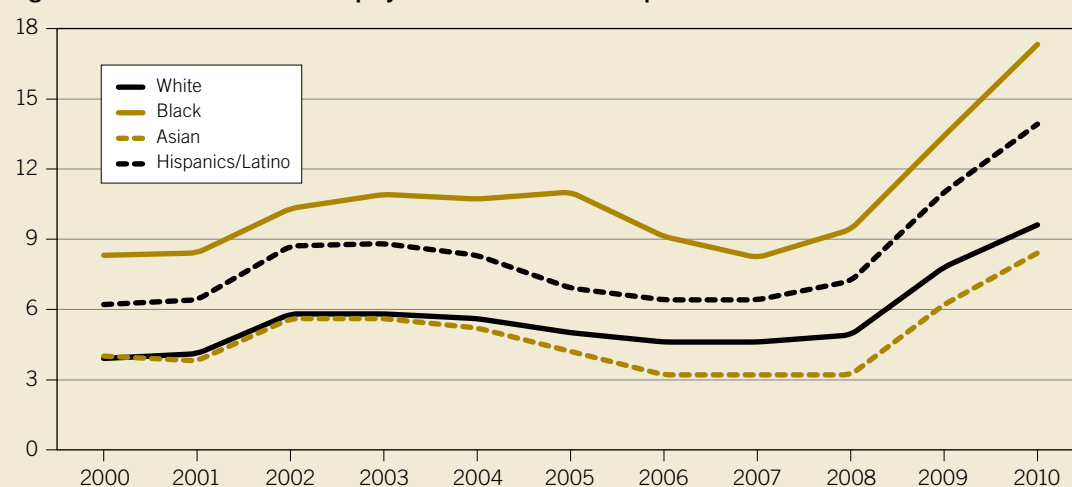
60. Australian Human Rights Commission: *Annual report 2009–10*, p. 77.

61. Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE): *Rapport annuel 2009*, p. 39.

62. M. Woods et al.: *A test for racial discrimination in recruitment practice in British cities*, Department for Work and Pensions, Research Report No. 607, 2009, p. 3.

63. Net discrimination in this case means the number of instances of discrimination against a particular ethnic group that exceeds the number of instances of discrimination in its favour.

64. Stockholm University Linnaeus Center for Integration Studies (SULCIS): *What's in a name? A field experiment test for the existence of ethnic discrimination in the hiring process*, Working Paper 2007, p. 7.

Figure 2.2. United States: Unemployment trends 2000–10 (per cent)

Source: United States Department of Labor. Unemployment rates (percentages by race and ethnic group). Retrieved 10 May 2010 from <http://data.bls.gov/PDQ/servlet/SurveyOutputServlet>.

in many parts of the world. It recognized that “factors that lead to poverty among people of African descent are mainly structural”.⁶⁵

112. Figure 2.2 shows a sharp increase in unemployment in the United States since the economic crisis of 2008. A close look at the figures shows that since 2008, unemployment has increased among the white population by 4.7 percentage points (from 4.9 to 9.6 per cent), among the African American population by 7.9 percentage points (from 9.4 to 17.3 per cent), and among the Asian population by 5.2 percentage points (from 3.2 to 8.4 per cent). The unemployment rate among the black population remains almost twice as high as among the white population, and the gap has widened since the beginning of the crisis.

113. A similar unemployment gap exists in Europe. A recent analysis from the British Institute for Public Policy Research showed that almost half (48 per cent) of black people aged 16–24 were unemployed at the time of the survey (in 2009), compared to the rate of unemployment among young white people which stood at 20 per cent. Mixed ethnic groups have seen the biggest overall increase in unemployment, from 21 per cent in March 2008 to 35 per cent in November 2009.⁶⁶

114. In Brazil, a country where race categories are self-reported, data showed (see figure 2.3) that the unemployment rate among “black” and “brown” workers, at 10.1 per cent, was higher than among white workers (8.2 per cent). Although “black” or “brown” people account for 45.3 per cent of the active age population in the six metropolitan areas, they made up 50.5 per cent of the unemployed population.

115. In South Africa also, the unemployment rate differs among population groups. In the second quarter of 2010, the unemployment rate among black Africans stood at 29.5 per cent; for people of mixed race defined as “coloured” 22.5 per cent; for people of Indian and Asian origin 10.1 per cent; and for the white population 6.4 per cent. The national unemployment rate stood at 25.3 per cent.⁶⁷ This may indicate the importance of historical and social factors even in a context of legal non-discrimination and affirmative action.

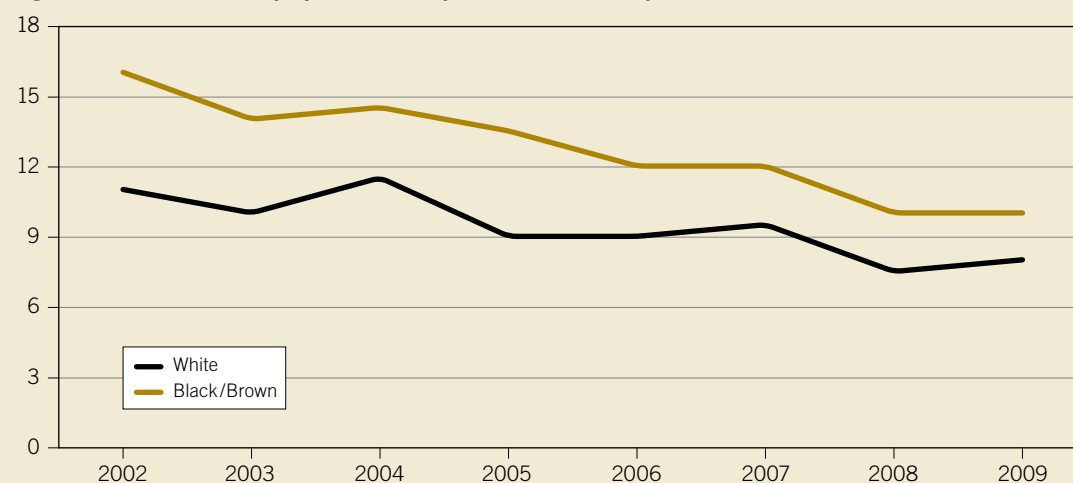
116. South African enterprises with more than 50 employees are required to ensure that previously disadvantaged groups legally defined as “blacks” occupy adequate positions at all levels. Nonetheless, blacks remained under-represented, according to the 2008–09 Employment Equity Analysis. The small number of African men and women, and coloured women in top management positions compared to

65. Office of the High Commissioner for Human Rights: *People of African descent: Progress and challenges*, information note for the Durban Review Conference, 20–24 Apr. 2009, Geneva.

66. Institute for Public Policy Research: “Recession leaves almost half young black people unemployed, finds ippr”, published on ippr home page, 20 Jan. 2010.

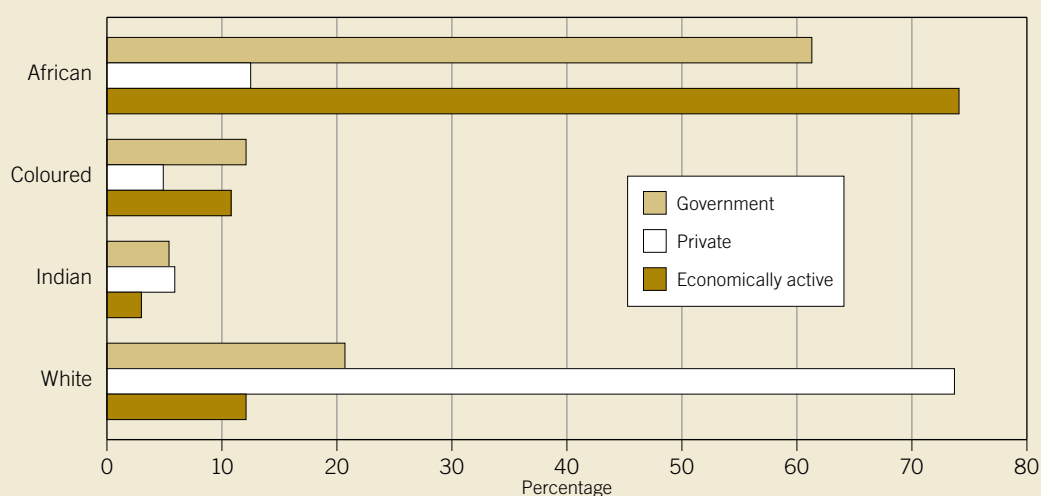
67. Statistics South Africa: *Quarterly Labour Force Survey, Quarter 2, 2010*, Statistical release P0211, p. 13.

Figure 2.3. Brazil: Unemployment rates (per cent), six metropolitan areas



Source: Instituto Brasileiro de Geografia e Estatística; retrieved 7 May 2010 from: http://www.ibge.gov.br/english/presidencia/noticias/noticia_visualiza.php?id_noticia=1370&id_pagina=1

Figure 2.4. Top management workforce profile in South Africa, by sector and ethnic group



Source: Based on analysis of South Africa Labour Force Surveys 2001 – First quarter 2010.

their share in the economically active population, is an example of vertical job segregation. Blacks are also disproportionately employed in low-skilled jobs, many of them informally. In private employment, whites are over-represented in top management compared to other ethnic groups. In government employment, black African and coloured employees do much better (figure 2.4).⁶⁸

117. The impact of affirmative action programmes in achieving their objectives is still being debated, but much evidence points to their utility. A 2009 Oxford University study revealed that voluntary agreements were more effective in ensuring fair employment outcomes, including at high levels of management, than legally enforceable agreements.⁶⁹ The study also found that the tone and policies set by

68. Commission for Employment Equity (Department of Labour, Chief Directorate of Communication): *Annual Report 2008–09*, p. 26.

69. C. McCrudden et al.: “Affirmative Action without Quotas in Northern Ireland”, in *The Equal Rights Review* (2009), Vol. 4, p. 11.

Box 2.8 Recognizing the rights of people of African descent

The protection of the rights of people of African descent has been included in national and international agendas over the past few years. At the international level, the UN General Assembly proclaimed the year 2011 as the International Year for People of African Descent, with a view to strengthening national actions and regional and international cooperation for the benefit of people of African descent in relation to the full enjoyment of their rights and their participation and integration in all aspects of society. At the national level, in Ecuador, for example, people of African descent participated in the elaboration of the new 2008 Constitution, which, for the first time, recognizes Afro-Ecuadorians as a part of the multiracial State. Their collective rights are also recognized under the new Constitution. In Colombia, following recommendations of the Inter-sectoral Commission for the Advancement of the Afro-Colombian, Palenquero and Raizal Population in 2009, the Colombian Government has undertaken different measures to guarantee access for people of African descent to the labour market, including the implementation of vocational training programmes and the creation of an observatory to prevent racial discrimination in the labour market.

Source: UN General Assembly, Report A/HRC/14/18 (Geneva, 2010); J. Antón et al.: *Afrodendientes en América Latina y el Caribe: Del reconocimiento estadístico a la realización de derechos*, UN Economic Commission for Latin America and the Caribbean (Santiago, 2009); UN Economic and Social Council, Report E/C.12/COL/Q/5/Add.1 (Geneva, 2009).

top leaderships and organizations can serve a critical role in determining diversity outcomes, with lower level employees following the lead of management.⁷⁰ Making the job advertisement effectively available to under-represented groups and assigning a staff member to ensure compliance with diversity obligations particularly increased the likelihood of organizations meeting legal requirements.⁷¹

118. The effect of affirmative action in reducing long-term racial inequalities may even be more gradual. In 2010 the South African Commission for Employment Equity underlined the very slow progress on transformation and the potential to erode the insignificant achievement made to date.⁷² It also noted that the demand for the “sunset clause” (which would decide on a specific date to put an end to affirmative action policies) was “premature”. Slow progress has also been registered in the United States. According to the Equal Employment Opportunity Commission (EEOC), although some progress has been made in the composition of the federal workforce over the last ten years, there has been little overall change.⁷³

Indigenous peoples: The case of Latin America

119. The ILO estimates at around 370 million the number of indigenous persons living in the world today. They represent more than 5,000 distinct peoples in more than 70 countries.⁷⁴ Although representing only 5 per cent of the world’s population, indigenous peoples make up 15 per cent of the world’s poorest people.⁷⁵

120. Statistics of the Latin American and Caribbean Demographic Centre (CELADE)⁷⁶ show relatively little difference in unemployment rates between indigenous and non-indigenous people. However, the lack of significant differences in employment rates does not tell us much about the types of jobs or income levels. Indigenous workers and those of African descent make up a smaller proportion of wage and salaried employees compared to other workers in six of the countries in the region concerned, reflecting the relative reliance of indigenous peoples on precarious, informal types of work. As a consequence of the inability to acquire jobs in formal activities, indigenous people are more likely than non-indigenous people to hold jobs in which workers may be denied ordinary workplace

70. C. McCrudden et al., op. cit., p. 13.

71. *ibid.*, p. 14.

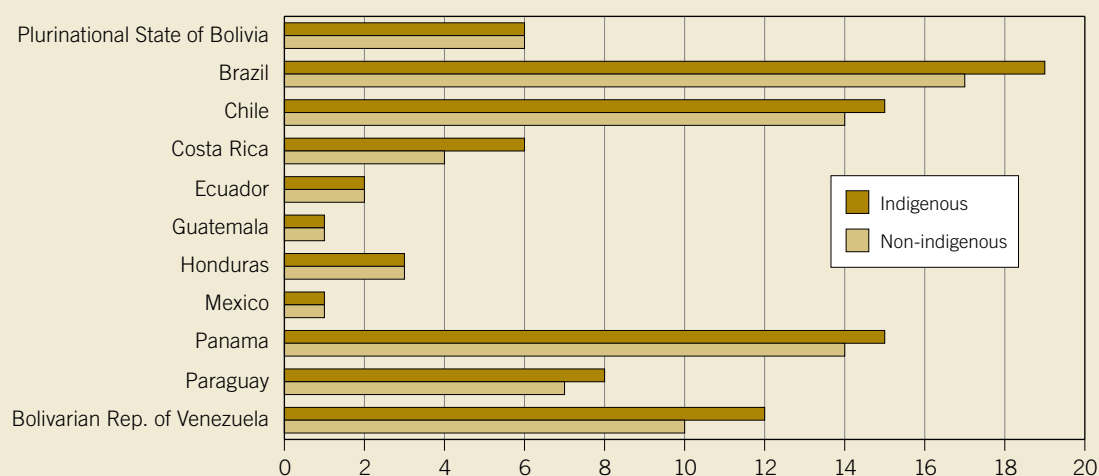
72. Department of Labour: *10th CEE Annual Report, 2009–10*, p. iv.

73. EEOC: *Annual Report on the federal work force*, fiscal year 2009.

74. ILO: *Eliminating discrimination against indigenous and tribal peoples in employment and occupation: A guide to ILO Convention No. 111* (Geneva, 2008), p. 3.

75. Office of the High Commissioner for Human Rights: *Combating discrimination against indigenous peoples*, information note, Durban Review Conference, Geneva, 20–24 Apr. 2009.

76. See ILO: *2007 Labour Overview: Latin America and the Caribbean*, Regional Office for Latin America and the Caribbean (2007), pp. 39–46.

Figure 2.5. Unemployment rates in Latin America (per cent)

Source: CELADE. Retrieved 12 May 2010 from <http://celade.cepal.org/redatam/PRYESP/SISPP/>

benefits, stable sources of decent income, appropriate time off, and decent working conditions. In total, independent work arrangements, including domestic and family work, represent up to 46.3 per cent of employment for indigenous and African-origin workers in Bolivia and 45.2 per cent in Peru.

121. In contrast to the similarities in unemployment rates, the remuneration gap between indigenous and non-indigenous people is substantial. In Bolivia, for example, the average hourly earnings of indigenous workers amount to only 34 per cent of those of non-indigenous workers. Indigenous workers also enjoy significantly lower levels of health and pension coverage in Bolivia, Ecuador, Guatemala and Peru. While structural discrimination in the form of geographic residency and educational differences may explain part of the employment segregation and salary gap faced by indigenous peoples in Latin America, the differences are also likely to be explained by some degree of social discrimination, particularly since wage inequality remained even when education levels or geographic residency were similar.

Policies and measures targeting indigenous peoples

122. Discrimination faced by indigenous peoples is not only related to access to formal employment but also to access to the resources such as land required to carry out their traditional occupations. A variety of policies and measures have been adopted in some countries to address both issues. In Chile, for example, a programme has been designed to promote better living conditions for the Aymara, Atacaman and Mapuche communities, thereby aiding in the elimination of structural barriers to decent work for indigenous peoples.⁷⁷ El Salvador has also implemented initiatives such as the promotion of family micro-enterprises in rural areas in the country's north-east to benefit indigenous peoples and to facilitate access to the labour market and entrepreneurial activities.⁷⁸ Similarly, the Salvadorian Institute of Agrarian Reform has initiated land transfer programmes with equal access provided to indigenous communities and other populations.⁷⁹

123. The lack of effective implementation procedures may explain persistent discrimination in many countries despite the existence of anti-discrimination laws. In Brazil, the UN High Commissioner for Human Rights pointed to the country's "impressive" array of laws and policies designed to promote human rights and improve the socio-economic

77. ILO: *2007 Labour Overview*, op. cit., p. 49.

78. ILO: CEACR individual observation published 2009 concerning the application by El Salvador (ratification: 1995) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

79. *ibid.*

Box 2.9 Some progress for indigenous peoples in Latin America

Governments of several Latin American countries have taken steps to enhance the economic and social participation of indigenous peoples. El Salvador hosted the first National Indigenous Congress in October 2010, during which different aspects of indigenous peoples' rights were discussed and six representatives of indigenous peoples were selected to form a National Commission to facilitate permanent dialogue with the Government. Similarly, in Chile, the 2008–2010 Action Plan “Re-Conocer” is focusing on three main areas: rights, development, and diversity of indigenous populations. In Panama, a 2008 Act on Communal Lands makes provision for land ownership by indigenous communities who do not live in an indigenous region.

Sources: Presidency of El Salvador: *Finaliza Primer Congreso Nacional Indígena con la elección de representantes a Comisión Nacional de pueblos indígenas*, 2009; Government of Chile: *Re-conocer: Pacto social por la multiculturalidad*, 2008; UN General Assembly, Report A/65/18 (2010).

Box 2.10 An employer's initiative for Roma workers

In Slovakia, U.S. Steel Kosice, s.r.o., a subsidiary of United States Steel, has developed a project focused on employment support for citizens of the village Velka Ida, where 40 per cent of the population is Romani. In cooperation with the village authorities, 150 jobs have been created since 2002 for Romani people and marginal group members. The project also involves the schooling of the workers' children, from kindergarten to high school and vocational training, after which the company is also offering employment.

Source: U.S. Steel Kosice, s.r.o. website: www.usske.sk/citizenship/rom-e.htm, accessed 15 Oct. 2010.

situation of indigenous peoples, but also to the need for their proper implementation, in order to tackle discrimination, injustice and violence.⁸⁰

Europe and the Roma people

124. The European Roma Rights Centre (ERRC) has noted that “racial discrimination against Roma is still a common and persistent problem all around Europe. Roma may face discrimination in all areas of life, which contributes to exclusion and poverty. Many Roma remain uneducated and unemployed, living in segregated, substandard housing, and facing much lower life expectancy than that of non-Roma.”⁸¹

125. According to a World Bank Survey, low labour market participation by the Roma in the Czech Republic can be attributed to low educational attainment. Only two Roma in ten have some formal vocational training or secondary education.

Actual literacy and numeric skills are also low. Only 12 per cent of working-age Roma can be considered functionally literate, that is, able to answer most of the relatively simple questions that require primary school-level knowledge.⁸²

126. The report points out that although systematic discrimination probably plays a role in explaining the low labour market participation of Roma, available data suggest that absence of skills and prior work experience are an even bigger barrier. Employers interviewed for the report highlighted lack of skills as the main reason for not hiring Roma.

127. An array of labour market measures has been adopted in an effort to improve the inclusion of Roma people. The Council of Europe Committee of Experts on Roma and Travellers presented, in June 2009, examples of best practices of labour market policies for Roma in Europe.⁸³ Among those presented were incentives for promoting generic skills and economic activity in Bulgaria and Ireland, microcredit schemes in Spain, vocational training programmes

80. Office of the High Commissioner for Human Rights: “Brazil’s indigenous and Afro-Brazilian populations face serious discrimination: UN Human Rights Chief”, published online 13 Nov. 2009.

81. ERRC: Statement on the occasion of Human Rights Day, 10 Dec. 2009.

82. World Bank: *Czech Republic: Improving Employment Chances of the Roma*, 21 Oct. 2008, Human Development Sector Unit Europe and Central Asia, pp. 7, 42.

83. Council of Europe: *Employment Policies for Roma in Europe*, PowerPoint presentation made at the Employment Workshop, Zagreb, 15–16 June 2009.

Box 2.11
Finland's national policy on Roma

In December 2009, the Finnish Government launched a National Policy on Roma, which was drafted by a working group appointed by the Ministry of Social Affairs and Health. The objective of the policy is to mainstream the inclusion and equal treatment of the Roma in different spheres of life. The policy promotes the participation of Roma in vocational education and training and supports their access to the labour market.

The vision of the Government is that by 2017, Finland will be a front-runner in Europe in promoting the equal treatment and inclusion of the Roma population.

Source: Ministry of Social Affairs and Health: *The Proposal of the Working Group for a National Policy on Roma: Working Group Report*, Reports of the Ministry of Social Affairs and Health (2009), p. 57. Available at www.stm.fi/c/document_library/get_file?folderId=39503&name=DLFE-11164.pdf.

such as the Gypsy Development Programme in Spain, the START programme in Hungary, or the Traveller Internship Programme in Ireland.

128. In Serbia, 140 Roma participated in programmes to acquire elementary education and vocational skills, while some 300 Roma participated in public works. Subsidized employment and training for the Roma has been offered under the Programme for the Roma Community in Poland. The number of Roma who have benefited from subsidized employment decreased from 74 in 2006 to 63 in 2007, whereas 35 received vocational training in 2007. Despite these measures at the national level, recent developments in the EU show that addressing discrimination and the vulnerability of Roma would benefit from stronger coherence and cooperation between the different national initiatives.

Discrimination based on nationality and the case of migrant workers

129. Discrimination based on nationality is one aspect of the multiple discrimination often suffered by migrant workers. It is indeed difficult in many circumstances to determine whether discriminatory treatment faced by a migrant worker is exclusively based on his or her nationality or perceived nationality status, on racial, ethnic, religious or other visible grounds, or a combination of these factors.

130. International and regional human rights instruments contain open-ended non-discrimination clauses, which may be extended to outlaw unjustifiable distinctions between persons based on nationality.⁸⁴ For example, Article 14 of the European Convention on Human Rights (ECHR), 1950,⁸⁵ while not explicitly referring to nationality as grounds for discrimination, has been interpreted by the European Court of Human Rights as prohibiting discrimination based on nationality. The Court has ruled that denial of social security benefits to migrants solely because of their foreign nationality is unlawful, and added that “very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the ground of nationality as compatible with the Convention”.⁸⁶

131. The Human Rights Committee monitoring the application of the International Covenant on Civil and Political Rights (ICCPR), 1966, has expressed the view that precluding the election of a lawfully employed foreign national to a private company's work-council on the grounds that he or she was not a national of the country concerned or of another European Economic Area (EEA) State constituted unlawful discrimination on the basis of nationality because there was nothing in the function of a member of a work-council (namely, to promote staff interests and to supervise compliance with work conditions) that could reasonably justify a distinction between persons solely on the basis of their different nationalities.⁸⁷

84. See, for example, the Universal Declaration of Human Rights, 1948, Article 2; and the International Covenant on Civil and Political Rights, Articles 2(1) and 26. See also American Convention on Human Rights, 1969, Articles 1 and 24; and African Charter on Human and Peoples' Rights, 1981, Article 2.

85. Article 14 has no independent status as such and has to be read in conjunction with other provisions in the European Convention on Human Rights (ECHR). However, a stand-alone non-discrimination clause has also been introduced in Protocol No. 12 to the ECHR, 2000 (Article 1), which, as at 15 October 2010, has been ratified by 18 Council of Europe Member States.

86. *Gaygusuz v. Austria*, European Court of Human Rights, judgment of 16 September 1996, para. 42; *Koua Poirrez v. France*, judgment of 30 September 2003, para. 46. In both of these judgments, Article 1 of the First Protocol to the ECHR, 1952, concerned with the protection of property, was interpreted as encompassing access to social security benefits for the non-nationals concerned.

87. Human Rights Committee: Communication No. 965/2000 concerning the case *Karakurt v. Austria*, 4 Apr. 2002, UN Doc. CCPR/C/74/D/965/2000, para. 8.4.

132. Within the EU free movement regime, discrimination based on nationality between nationals of EU Member States is explicitly prohibited under Article 18 of the Treaty on the Functioning of the European Union.⁸⁸ Moreover, this provision should in principle be applicable so as to outlaw unjustifiable differences in treatment based on nationality applied between different groups of non-EU nationals, given that it also covers the part of the Treaty addressing the “Area of Freedom, Security and Justice”, which is concerned with the formulation and development of the EU’s immigration and asylum policy. The Charter of Fundamental Rights of the EU, which became legally binding on 1 December 2009, contains an open-ended anti-discrimination clause and reiterates the prohibition on discrimination based on nationality: “Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.”⁸⁹

133. Migration today is largely linked to labour and employment. According to ILO 2010 estimates, there are about 105.4 million economically active migrants (including refugees) globally, among the total estimated population of 214 million people living outside their country of birth or citizenship.⁹⁰ This represents most working-age adults in this population and, together with their dependants, perhaps 90 per cent of the global “migrant” population. Challenges imposed by economic, demographic and technological changes make the presence of foreign workers indispensable in industrialized countries. The increasing number of jobs that cannot be filled by national workers, and factors such as the ageing of national workforces, create the need for hiring migrant workers.⁹¹ Nevertheless, migrant workers encounter a variety of barriers to fair employment, which may be manifested throughout the employment life cycle.

Manifestations of discrimination in employment

134. Discriminatory practices may arise from legislation, policies or practical measures. In Italy, for example, lawfully resident non-EU migrants have been prevented from holding public sector jobs, including in the nursing field.⁹² A 2008 law on EPZs in Madagascar includes provisions for lower wages and inferior social security coverage for migrant workers.⁹³ A 2009 UNDP report concluded that in Thailand, policies towards migrant workers had widened the gap between them and Thai citizens. The report points to the Provincial Decree on Migrant Workers, adopted in 2006 by Phuket and some other provinces, which inhibits the free movement and basic rights of migrant workers from Myanmar, Cambodia and Lao People’s Democratic Republic.⁹⁴

135. Discriminatory job advertisements were noted in countries such as Austria, Germany and Spain. In Germany, for example, a job advertisement explicitly requested that only national citizens or German mother tongue speakers need apply.⁹⁵

136. Once in employment, migrant workers may face everyday discriminatory attitudes. In Flanders, Belgium, for example, an internal rule of an automobile components company in which 70 per cent of the employees are of foreign origin, stated that workers using languages other than Dutch on three consecutive occasions were liable to be dismissed. The justifications of this rule were “security reasons” and “respect for other workers”.⁹⁶

Working conditions

137. Unfair conditions of work faced by migrants are found in developed as well as in developing countries. In the European Union, reported cases of exploitation of migrant workers have included harassment, long working hours under unhealthy conditions, sick leave denial, and low wages.⁹⁷ In Israel, in

88. Consolidated Version of the Treaty on the Functioning of the European Union, *Official Journal of the European Union*, 2010, C 115/56, Article 18.

89. Charter of Fundamental Rights of the European Union, *Official Journal of the European Communities*, 2000, C 364/13, Article 21(1) and (2).

90. ILO: *International labour migration: A rights-based approach* (Geneva, 2010), p. 18.

91. See P. Taran: *Increasing Equality in Employment*, presentation at the panel discussion on “The workplace: Addressing racial discrimination and promoting diversity”, Durban Review Conference, Geneva, 20–24 Apr. 2009, p. 2.

92. European Union Agency for Fundamental Rights: *Annual Report 2010, Conference Edition* (Vienna, 2010), p. 55.

93. ITUC: *Internationally recognized core labour standards in Madagascar*, p. 5.

94. J. Crush and S. Ramachandran: *Xenophobia, international migration and human development*, *Human Development*, Research Paper 2009/47 (UNDP, 2009), p. 31.

95. European Union Agency for Fundamental Rights: *Annual Report 2010*, op. cit., p. 50.

96. European Union Agency for Fundamental Rights: *Annual Report 2008*, Vienna, 2008, p. 46. Available at www.fra.europa.eu/fraWebsite/attachments/ar08p2_en.pdf, accessed 10 June 2010.

97. European Union Agency for Fundamental Rights: *Annual Report 2010*, op. cit., p. 56.

Box 2.12**ILO Committee of Experts calls for greater protection of migrant workers**

For a number of countries, the Committee of Experts on the Application of Conventions and Recommendations has expressed concern that legislation that does not allow migrant workers to change employers may raise their vulnerability to discrimination and abuse. Moreover, fear of retaliation and deportation may make them reluctant to lodge complaints. In the Republic of Korea, for example, the Act on Foreign Workers' Employment grants migrants a work transfer only in the case of cancellation of the employer's permit to engage foreign workers. The law states that authorities may cancel such a permit if employers breach labour contracts or violate labour legislation. The Committee has called on the Government to adopt measures to provide migrant workers with greater flexibility to change workplaces in order to avoid situations of discrimination and abuse, as well as ensuring effective labour inspections.

In Qatar, the sponsorship system requires a sponsor for every migrant who wishes to be admitted or to reside in the country to work, making migrant workers legally dependent on their sponsor to remain in the country. According to the National Human Rights Committee of Qatar, the system has led to arbitrary practices by sponsors, including the non-payment of wages, withholding workers' passports, lack of adequate accommodation, involuntary long hours of work, and sexual harassment. The Committee of Experts expressed concern regarding the possibility for employers under the sponsorship system to exert disproportionate power on migrant workers, leading to discrimination against them on the basis of race, sex, religion and national extraction with respect to their conditions of work, and has called for information concerning actions taken to address reform of the sponsorship system and for an investigation on the extent of the discriminatory impact on migrant workers resulting from the sponsorship system.

Source: CEACR: individual observation 2009 concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Republic of Korea (ratification: 1998); and individual observation 2009 concerning the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Qatar (ratification: 1976).

2007, the average monthly wage of a foreign worker in the caregiving sector was 2,200 new Israeli shekels (NIS) for six days of work, which was NIS 1,200 less than the minimum wage, with no payment for overtime.⁹⁸

138. Migrant workers may also face barriers in obtaining social security benefits equal to those provided to nationals. Some countries completely exclude participation of migrants in social insurance programmes. For example, many Gulf Cooperation Council countries only allow access for migrants to short-term benefits such as health-care programmes, and deny access to long-term portable benefits such as old-age pensions. Other countries may allow access to long-term benefits but disallow portability of the benefits between countries, thereby discouraging return migration.⁹⁹

Measures aimed at limiting migration and expelling migrant workers

139. Measures and practices that “push out” migrant workers, perhaps selectively, have been adopted in some countries against the backdrop of the crisis. The Governments of Malaysia¹⁰⁰ and Singapore, for example, have initiated policies that encouraged companies to dismiss foreign workers before terminating employment contracts for nationals. The Government of the Republic of Korea took steps to reduce the employment of foreign workers by dramatically cutting the quota of foreign workers from 100,000 in 2008 to 34,000 in 2009. The policy change came about against a background of slightly rising unemployment and an increase in the number of immigrants in the workforce in recent years.¹⁰¹

140. Attitudes are of crucial importance. In circumstances of significant distress on labour markets and heightened social tensions, it is important that

98. Information cited in A. Kemp: *Reforming policies on foreign workers in Israel*, OECD Social, Employment and Migration Working Papers No. 103, 2010, p. 25.

99. See R. Holzmann, J. Koettl and T. Chernetsky: *Portability regimes of pension and health care benefits for international migrants: An analysis of issues and good practices*, paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, September 2005.

100. M. Abella and G. Ducanes: *The effect of the global economic crisis on Asian migrant workers and governments' responses*, technical note presented during the High-Level Regional Forum on Responding to the Economic Crisis – Coherent Policies for Growth, Employment and Decent Work in Asia, Manila, 18–20 Feb. 2009, p. 9.

101. M. Fix et al.: *Migration and the global recession: A report commissioned by the BBC World Service*, Migration Policy Institute (2009), p. 55.

Box 2.13 Ireland's "Migration Nation" Policy

In April 2008, the Irish Government launched a new policy entitled "Migration Nation", a statement on integration strategy and diversity management. This policy establishes rights and duties for migrants who reside, work and aspire to become Irish citizens. The policy emphasizes the important role of the Government, public bodies and society in achieving integration of migrant workers. Different actions including the establishment of specific government funding to support diversity management in local authorities, as well as the enhancement of institutional and legislative measures to combat exploitation or discrimination against migrants workers are envisaged. Moreover, the policy establishes new integration structures such as the Commission on Integration responsible for reviewing progress on integration.

Source: T. Dobbins: *Ireland: The occupational promotion of migrant workers*, European Working Conditions Observatory, 2009, available at www.eurofound.europa.eu/ewco/studies/tn0807038s/ie0807039q.htm.

policies and statements do not stereotype or scapegoat migrant workers. Policies to meet labour market challenges should not impinge upon the principle of non-discrimination or detract from efforts to achieve equality. Moreover, the long-term contribution of migrant workers to growth and development in the countries in which they work needs to be kept constantly in mind.

Integration versus assimilation

141. In recent years, progress has been made by governments regarding the integration of migrants in labour markets and in society in general. Some European countries, such as Austria, Ireland, the Netherlands, Norway and Portugal, have adopted different policies and measures in the form of national integration plans, legislation and integration and diversity strategies.

142. At the same time, a debate is taking place in a number of countries with significant migrant populations about their experience of multiculturalism and the policies that have been implemented in respect of it. The complexities of these debates, touching as they do on fundamental questions of identity and values, may lead to a shift in emphasis from approaches which focus on labour market integration to others which stress assimilation and cultural conformity. It is, however, essential that fundamental principles of non-discrimination at work be respected and that no one suffer discrimination because of his or her identity. In one of its publications,

the Institute for Race Relations based in the United Kingdom describes the drift away from traditional indicators of integration, such as participation in the labour market, income levels, inequality and poverty, educational achievement, and home ownership, towards new and less well-defined indicators that relate to values and identity.¹⁰² Such measures can indirectly or inadvertently discriminate against certain minority groups.

Xenophobia and violence

143. Violence against migrant workers is not new, but it appears to be occurring more widely and visibly in a greater number of countries. Abuses may occur within the employment cycle and outside it, as has been seen with a number of violent attacks targeting foreigners and their homes and businesses. Such incidents have continued in spite of government policies to prevent and stop them. The UN Committee on the Elimination of Racial Discrimination has, for example, expressed concern about the alarming increase in the incidence and severity of racially motivated violence in the Russian Federation.¹⁰³ In South Africa, in 2008, more than 60 foreign migrants were killed and more than 10,000 were left homeless in violent anti-foreigner riots in a number of cities. One of the reasons given by perpetrators of violence was that foreigners had taken their jobs.¹⁰⁴ In Italy, two days of unrest led to 53 migrant workers being injured and 1,000 sent to deportation centres.¹⁰⁵

102. L. Fekete: *Integration, Islamophobia and civil rights in Europe*, Institute of Race Relations (London, 2008), p. 57.

103. Committee on the Elimination of Racial Discrimination (CERD): Concluding observations of the Committee on the Elimination of Racial Discrimination, CERD/C/RUS/CO/19, 20 Aug. 2008, pp. 5–61.

104. I. Awad: *The global economic crisis and migrant workers: Impact and response* (Geneva, ILO, 2009), p. 37.

105. Office of the High Commissioner for Human Rights: "UN experts urge Italian authorities to curb xenophobic attitude towards migrant workers", media statement, 12 Jan. 2010.

Box 2.14

A model trade union agreement on migrant workers' rights

In May 2009, three separate bilateral cooperation agreements on the protection of the rights of migrant workers were signed in Colombo (Sri Lanka). The signatories were the leaders of three national trade union centres in Sri Lanka and their counterparts in Bahrain, Jordan, and Kuwait. These agreements were based on a "model trade union agreement on migrant workers' rights" developed by the ILO's Bureau for Workers' Activities and the international trade union movement.

Signatories to the agreement committed themselves to promote the ratification and respect of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and to actively campaign against racism and xenophobia in society and combat discrimination and misleading propaganda in both the countries of origin and countries of destination of migrant workers. The agreement stresses that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equal treatment, equal opportunity, and gender equity.

The model has since been used in bilateral and multilateral agreements in Asia and Africa and was promoted at a meeting of the ITUC Americas regional organization (TUCA) in December 2009.

Box 2.15

New Zealand helping migrant workers to integrate into the job market

The School of Linguistics and Applied Language Studies in New Zealand is helping migrants to develop appropriate communication skills in professional workplaces and to gain workplace experience. The Workplace Communications for Skilled Migrants Course benefits the New Zealand community and workplaces by ensuring a speedy and positive entry of migrants into productive work. A cost-benefit analysis has shown that the programme returns NZ\$98 to the country's economy for every dollar spent. Conservative estimates indicate a productivity improvement of \$30,000 per graduate per year of employment in 2009. The programme has also been positively received by the New Zealand Rights Commission.

Source: New Zealand Human Rights Commission: *Race Relations Report 2009*.

Box 2.16

The new Swedish labour migration policy

In December 2008, Sweden introduced reforms to its labour migration policy which significantly opened possibilities to recruit from abroad. The main change is in the process for authorization of employer requests. Swedish employers – as before – can request authorization to bring in a foreign worker. As before, they must have advertised the job in Sweden and on EURES, the EEA public employment service clearing-house, prior to approval of the application. The difference in the new policy is that Swedish trade unions no longer have veto power over the application and the Swedish Labour Market Board does not have to find a "shortage". This has opened recruitment possibilities for low-skilled jobs. The relevant union is given the opportunity to review the offer and provide an opinion as to whether wages, insurance protection and other terms of employment are equivalent to the collective agreement or what is customary for the occupation or the industry. The trade unions, however, cannot reject the application. Verification of job listings is now done by the Swedish Immigration Board rather than the public employment service, accelerating the process. Sweden has also created a shortage list of critical occupations for which foreign workers visiting Sweden on a visa can receive a work permit without having to return home first. This list is meant to make it more practical for foreign workers to come for job interviews and, if a job is offered, to start work as soon as possible and without additional expense. Migrants admitted to Sweden are given equal rights and full access to social benefits. Family reunification is permitted immediately (family members may accompany the worker and, if the work permit is for at least six months, are also granted labour market access). Unemployed immigrants with a work permit have three months (from the date on which they become unemployed) to find a new job. International students are also allowed to change status and obtain a work permit.

Source: OECD: *International Migration Outlook 2009* (Paris).

Limited awareness of rights

144. Migrants' lack of knowledge of rights and legal channels of redress in the event of discrimination can impede efforts to eliminate discrimination. Research conducted by the European Union Agency for Fundamental Rights (EU-FRA) has revealed differences between groups of migrants regarding their rights awareness. In Ireland, for example, 34 per cent of Central and East European and 57 per cent of sub-Saharan African respondents were not aware of anti-discrimination legislation when applying for a job.¹⁰⁶ Another study on Filipino migrants found that they were unwilling to file cases out of fear of retaliation, lack of trust in judicial systems and lack of knowledge regarding judicial possibilities.¹⁰⁷

145. The "right to accurate information" for migrant workers exists at the international level under the Migration for Employment Convention (Revised), 1949 (No. 97), and the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. An obligation to provide effective, accurate and timely information needs to be an integral part of implementation and enforcement of anti-discrimination legislation.

Legal developments and proactive measures

146. There have been several ratifications of the ILO Conventions on migrant workers since 2006: Albania, Armenia, Kyrgyzstan, Republic of Moldova, Montenegro, Philippines and Tajikistan have ratified the Migration for Employment Convention (Revised), 1949 (No. 97), and Albania, Armenia, Montenegro, Philippines and Tajikistan have ratified the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

147. Several countries have adopted explicit and comprehensive national plans of action addressing racism and xenophobia. Finland and Ireland provide examples of such plans which are based on wide consultations among government, social partner and civil society stakeholders.

148. In 2009, Bahrain adopted the strongest sponsorship reform in the region by permitting migrant

workers to change employment without their employer's consent and in the absence of allegations of non-payment of wages or abuse. The reform allows migrant workers to change employment after meeting certain notice requirements and provides a 30-day grace period to remain in the country legally while they seek new employment. These positive changes do not, however, apply to domestic workers.¹⁰⁸

149. In France, the railway company SNCF announced that it was seeking applications from low-income neighbourhoods principally inhabited by immigrants, and the Defence Minister unveiled an action plan to give priority to the entry of working-class young people, including young people of immigrant descent, into the military academies. In Germany, the North-Rhine Westphalia (NRW) State Ministry of Education developed a policy consisting of a range of awareness-raising and encouragement measures aiming to increase the number of teachers with a migration background.¹⁰⁹

150. The employers' group Business in the Community (BITC) in Northern Ireland has developed the Voluntary Code of Practice on Employing Migrant Worker/Overseas Staff, which is sustained by consultation with companies. Forty companies have signed the code of practice, including those which employ the great majority of migrant workers in Northern Ireland. Their commitment stems from a belief that they have a social responsibility to treat people well. While not legally binding, the code is intended to reinforce best practices as well as providing a guide for employing migrant workers.¹¹⁰

Diversity policies

151. At the workplace level, "diversity policies" provide a promising perspective for the fight against discrimination. Many companies have recently come to see diversification of their workforce as providing a competitive advantage and business opportunity. A visibly diverse workforce allows companies to tap into new and diverse customer markets. In addition, corporate social responsibility (CSR) plays an important role within an increasing number of enterprises and in the allocation of projects by governments, international institutions and multinational enterprises

106. European Union Agency for Fundamental Rights: *Rights awareness and equality bodies: Strengthening the fundamental rights architecture in the EU III*, EU-MIDIS Data in Focus Report 03 (Vienna, 2010), p. 5.

107. United Nations: Report of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Ninth and Tenth Sessions, General Assembly, 2009, A/64/48, p. 37.

108. Decision No. (79) for 2009, *Regarding the mobility of foreign employee from one employer to another*.

109. European Union Agency for Fundamental Rights: *Annual Report 2008*, op. cit., p. 54.

110. Based on information available at the BITC website, www.bitc.org.uk/.

Box 2.17 Diversity charters

In 2009, Spain joined countries such as Belgium, France, Germany, Italy and Sweden in implementing a “Diversity Charter”. Diversity charters are among the latest in a series of initiatives aimed at encouraging a diverse workforce. By voluntarily signing the Charter, companies commit themselves to promoting and adhering to the fundamental principles of equality and to respect the right to inclusion of all people within the workplace, by implementing specific policies to promote inclusive working environments free of prejudice and discrimination against minority groups.

Source: European Commission Employment, Social Affairs and Equal Opportunities, Diversity Charters. Available at <http://ec.europa.eu/social/main.jsp?catId=915&langId=en>; and European Institute for Managing Diversity, Diversity Charter, available at www.iegd.org/englishok/charter.html, accessed 9 Nov. 2010.

down the supply chain. Benefits can also be gained at the national level. Diversity in workplaces would mean more social cohesion, gains in welfare and productivity, and would prevent marginalization and exclusion of any category of the population.

152. Another potential benefit of diversification is increased innovation. Companies need to adapt to increasingly dynamic environments, not least as a result of economic globalization. A diverse workforce comes with a broader vision and set of ideas and can enhance flexibility and adaptation. A study by the European Business Test Panel (EBTP) notes that companies today increasingly recognize the link between diversity and innovation. Sixty-three per cent of the companies surveyed in 2008 recognized the link between diversity and innovation compared to 26 per cent in 2005.¹¹¹

Discrimination based on religion

Increasing visibility of religious discrimination

153. Over the last four years, the number of women and men suffering religious discrimination appears to have grown. Systemic religious discrimination, where it exists, usually concerns all aspects of life and is not limited to employment and occupation. This section does not cover such situations, where relatively little change has taken place. What can be reported as a trend over the last four years is an increase in religious discrimination in

employment combined with anxieties over labour migration, occurring within a context of economic and social insecurity. Little has been done to tackle those fears and discriminatory attitudes.

154. Another trend is the general rise in the number of cases of religious discrimination reported to equality commissions. In the United States, the Equal Employment and Opportunity Commission (EEOC) registered an increase in the number of religious discrimination claims from 2,880 in 2007 to 3,386 in 2009.¹¹² The number of religious discrimination claims made to the French authority responsible for combating discrimination and promoting equality, the HALDE, increased from 79 in 2007 to 303 in 2009.¹¹³ A recent study by the Department for Work and Pensions in the United Kingdom shows that Muslim groups are in a disadvantaged employment position irrespective of the ethnic group to which they belong.¹¹⁴ A 2009 European Union Minorities and Discrimination survey of 14 Member States also depicts a high incidence of discrimination for the same population group.¹¹⁵

Manifestation of religion in the workplace

155. Many countries have specific legislation protecting religious beliefs at work. In some countries, such as Canada,¹¹⁶ New Zealand,¹¹⁷ Peru,¹¹⁸ and United States,¹¹⁹ employers have a duty to accommodate employees’ religious beliefs and practices.

111. European Commission: *Diversity Management in 2008: Research with the European Business Test Panel* (Brussels, 2008), p. 4.

112. EEOC information available at www.eeoc.gov/eeoc/statistics/enforcement/religion.cfm, last accessed 21 Jan. 2011.

113. HALDE, op. cit., p. 15.

114. R. Berthoud and M. Blekesaune: *Persistent employment disadvantage*, Department for Work and Pensions and the Equalities Review, 2007.

115. European Union Agency for Fundamental Rights: *European Union Minorities and Discrimination Survey: Data in Focus Report: Muslims*, 2009.

116. Canadian Human Rights Act and Employment Equity Act.

117. New Zealand Human Rights Act, section 28(3).

118. A. Bronstein: *International and comparative labour law: Current challenges* (Geneva, ILO and Palgrave Macmillan, 2009), p. 154.

119. Civil Rights Act of 1964, Title VII (see EEOC Compliance Manual).

Box 2.18
Discriminatory practice in Lao People's Democratic Republic
in access to political parties and public service

According to the Special Rapporteur on Freedom of Religion and Belief of the Office of the UN High Commissioner for Human Rights, religious minorities in the Lao People's Democratic Republic are discouraged from joining the State's only political party.

Christians who wished to join this political party were asked to sign a declaration renouncing their faith.

According to the Rapporteur, such a practice places "a glass ceiling on access to, and promotion in, public service for religious minorities and their effective participation in decision-making".

Source: Special Rapporteur on Freedom of Religion and Belief, A/HRC/13/40/Add.4, 2010.

In several European countries, including Belgium, Denmark, Germany and Italy, manifestation of religious beliefs is protected through provisions that prohibit discrimination. In other countries, however, such as Mexico and Turkey, employers are not obliged to accommodate workers' religious beliefs, leaving decisions regarding time off work for prayer or permission to wear religious clothing to the individual employer.¹²⁰

Freedom not to disclose one's religion

156. The right to freedom from discrimination on the basis of religious faith includes the right not to disclose one's religious faith to employers or to the authorities. Access to employment may be impeded if job applicants are obliged to disclose their religion. If religious considerations weigh on decisions concerning promotion, pay, retention, and other employment decisions, certain workers can be disadvantaged and even stigmatized. Recent legal developments in Europe protect the right of non-disclosure of religious faith. For example, in the case *Alexandridis v. Greece*, the European Court of Human Rights ruled that Greece was violating the principle of religious freedom by requiring new lawyers to disclose their religion as part of the accreditation process. In 2010, the same Court declared that it was a violation of Article 9 of the European Convention on Human Rights for Turkey to include a box for religion on identification cards, even if their holders were allowed to petition to leave the space blank.¹²¹

Managing a religiously diverse workplace

157. While the right to non-disclosure should be respected, there are many situations in which workers wish to exercise their faith-related rights. Some equality bodies provide guidance in this regard. In the United States, the Equal Employment and Opportunity Commission in 2009 published section 12 of its Compliance Manual which consolidates national case law and the Commission's own position on the issue.¹²² In addition, the EEOC has published a "best practices" guide which provides advice for both employers and employees on the issue of religion in the workplace.

158. The guide advises that it is essential to clearly define, and consistently apply, policies on time off for religious observances. It also advises employees to state their religious practices at the beginning of the employment relationship so that advance notice is given of any time needed for religious observance. It emphasizes that constant dialogue can go a long way towards minimizing any difficulties that might arise.

159. Similarly, the Equality and Human Rights Commission in the United Kingdom has published a series of guides for employers and workers explaining the 2010 Equality Act.¹²³ These guidelines address the issue of dress codes, underlining the need for an objective justification of their application.¹²⁴ The guidelines explain that the Equality Act does not require reasonable accommodation for religious observance, but if an employer decides to arrange the working time of some employees for the purposes of

120. Information contained in *Ius Laboris: Religious Discrimination in the Workplace*, Jan. 2010.

121. European Court of Human Rights: *Alexandridis v. Greece*, Application No. 19516/06, press release 21 Feb. 2008; and *Sinan Isik v. Turkey*, Application No. 21924/05, press release 2 Feb. 2010.

122. EEOC: Directives Transmittal No. 915.003, 22 July 2008, concerning section 12 of the new Compliance Manual on "Religious Discrimination".

123. Equality and Human Rights Commission: Equality Act guidance downloads, available at <http://equalityhumanrights.com/advice-and-guidance/new-equality-act-guidance/equality-act-2010-guidance>, last accessed 21 Jan. 2011.

124. Equality and Human Rights Commission: "What equality law means for you as an employer: Managing workers", Vol. 5 of 7, July 2010, p. 22.

Box 2.19

Multiple discrimination: Discrimination based on political belief and religious discrimination

Complaints of political discrimination are often filed together with religious discrimination and thus amount to a form of multiple discrimination. In the case of *Andrews and others v. WA McDonald* (Local Government Auditor), the only case of the three cases from Northern Ireland that were reviewed for which an appeal was granted, the judge stated during his final remarks:

“For the reasons set out below, I find as a fact that the decision to appoint Mr Connor as Chief Executive was influenced by an irrelevant consideration, i.e. actual or perceived religious belief or political opinion. There is clear evidence of party voting. As recorded above, no member with a perceived Protestant religious belief and/or Unionist political affiliation voted for Mr McSorley in the final round of voting on 3 February 2000. All members with a perceived Protestant religious affiliation and/or Unionist political affiliation voted for Mr Connor in the third (final) round of voting.”

religious observance, that must then be applied in an equal manner to employees of all religions.¹²⁵

160. In 2009, the French employer organization IMS Entreprendre pour la Cité published a guide for managing religious diversity in the workplace. The guide begins by explaining the French legal framework on religious discrimination in the workplace, and goes on to explain the dietary restrictions of various religions, provides a calendar of religious holidays, as well as descriptions of various forms of religious dress. This quick reference guide is a useful tool for employers to assist them in understanding certain religious practices and restrictions and managing effectively a diverse workplace.¹²⁶

Discrimination based on political opinion

161. Protection against discrimination based on political opinion generally covers people in respect of their activities opposing established political principles, or simply demonstrating a different opinion.¹²⁷ This right is inextricably linked to the protection of freedom of expression which is considered to cover the expression of political views so as to enable individuals and groups to influence decisions on political economic and social issues.

162. The Gallup International Millennium Survey suggests that political discrimination persists worldwide, in addition to increasing levels of gender and racial discrimination. Most formal complaints appear to concern political allegiance, including patronage,

in the case of hiring or discontinuing employment. It may occur in individual cases or in a more systematic manner. Individual cases related to access to or termination of employment are sometimes difficult to prove. Some laws, however, such as the 1991 Screening Act in the Czech Republic, which was still in force in 2009, require job applicants to satisfy certain political prerequisites in order to attain certain jobs and occupations in the public service.¹²⁸

163. In some political parties, support and membership are closely linked to ethnic, linguistic or religious identity. In such instances, discrimination based on political opinion may also coincide with those other grounds. One example of this is a case brought before an appeals court in Northern Ireland (see box 2.19).

164. Discrimination on grounds of political opinion may also be combined with anti-union discrimination. In such cases, trade unionists are typically accused of engaging in unacceptable political activities. The ILO Committee on Freedom of Association (CFA) has dealt with several cases in which governments have argued that workers and their representatives were undertaking illegal political action, when in reality they were exercising their legitimate trade union rights.

Legislative measures

165. Many countries have legislation prohibiting discrimination based on political opinion. Most of

125. Equality and Human Rights Commission: “What equality law means for you as an employer: Working hours, flexible working and time off”, Vol. 2 of 7, July 2010, p. 30.

126. IMS Entreprendre pour la Cité: *Gérer la diversité religieuse*, Guide pratique, Mar. 2009.

127. ILO: *Equality in employment and occupation*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 75th Session, Geneva, 1988, para. 57.

128. Act of 4 October 1991 determining some further prerequisites for certain positions in state bodies and organizations of the Czech and Slovak Federative Republic, the Czech Republic and the Slovak Republic.

Box 2.20
Political and anti-union discrimination in Fiji

In 2010, the Committee on Freedom of Association (CFA) addressed a case regarding the government dismissal in 2008 of a school principal who was also the President of the Fijian Teachers' Association (FTA). In response to a speech in support of the launch of the Movement for Democracy, given at FTA headquarters by the principal in his capacity as FTA President, the Government terminated his employment contract and charged him with three offences for violating Fiji's Public Service Code of Conduct under the Public Service Act. The Government argued that the dismissal was necessary as the Code of Conduct stipulates that political participation is not allowed unless the Secretary for the Public Service gives approval. However, in its decision, the CFA noted that workers and trade union officials enjoy the right to protection from acts of anti-union discrimination, including dismissal, demotion, transfer, and other prejudicial measures.

Furthermore, the Committee noted that trade union officials should be protected from dismissal in order to protect the right of workers' organizations to elect their representatives in full freedom. The Committee broadly concluded that trade union organizations may not be banned from political activities, since there is an intersection between the interests of trade unions and government policies, while the right to freedom of expression should be guaranteed in order for workers' and employers' organizations to be able to exercise freedom of association. As it is the duty of the Government to prevent acts of anti-union discrimination, and the school principal was expressing views that fall within protected speech outside the employment relationship, the Committee called on the Government to reinstate the school principal.

Source: ILO: 358th *Report of the Committee on Freedom of Association*, Governing Body, 309th Session, Nov. 2010, GB.309/8, paras 523–558.

these provisions make reference to political opinion or beliefs, while others refer to political affiliation. In Canada, for example, political belief is defined as belief in the tenets of a registered political party as demonstrated by membership, contribution, or open and active participation in that party.¹²⁹ In Croatia, the Anti-Discrimination Act of May 2009 provides for the protection and promotion of equality as the highest value of the constitutional order of the Republic of Croatia, and regulates protection against discrimination on the grounds of political or other belief, *inter alia*.¹³⁰

166. In Mauritius, the Equal Opportunities Act 2008 prohibits discrimination on grounds of political opinion, although it recognizes the validity of political considerations when appointing ministerial advisers or staff members of a political party. In Serbia, article 25 of the 2009 law on the Prohibition of Discrimination prohibits discrimination against an individual or a group of individuals on the grounds of political beliefs or of membership or non-membership of a political party or trade union.¹³¹

Discrimination based on social origin

167. The problem of discrimination on the basis of social origin arises when an individual's membership of a class, socio-occupational category or caste determines or influences his or her occupational situation either by denying access to certain jobs or activities or, on the contrary, by assigning that person to certain jobs. Although nowadays such situations are less frequently encountered in a pronounced form, prejudices and preferences based on social origin may persist even where rigid stratification has disappeared. Even in open societies, where social mobility is common, a number of phenomena continue to impede complete equality of opportunity for various social categories, despite measures adopted to increase mobility and opportunities.¹³²

Caste-based discrimination

168. Caste-based discrimination remains most widespread in the case of the Dalit population in South Asia. This includes limited access to certain

129. Human Rights Act, Ch. H-12.

130. Anti-Discrimination Act, 2009.

131. See Ministry of Labour and Social Policy of the Republic of Serbia/UNDP: Law on the Prohibition of Discrimination, unofficial translation solicited by UNDP Serbia in the framework of the project "Support to the Implementation of Anti-discrimination Legislation and Mediation in Serbia", available at ILO NATLEX database.

132. ILO: *Equality in employment and occupation*, op. cit., Ch. I: Scope of the Convention as regards individuals, definition and grounds of discrimination.

types of jobs, and wage gaps in comparison with other population groups.¹³³ There are also considerable differences between castes in terms of educational attainment.¹³⁴

169. In 2008, the Ministry of Finance of Nepal acknowledged the cultural and economic discrimination experienced by Dalits and Madhesi.¹³⁵ While at work, at least in rural areas, Dalits must maintain a physical distance from upper-caste co-workers, and the two groups may not eat or drink water from the same pitcher to prevent “contamination”.¹³⁶ Social perceptions about certain castes limit employment opportunities and subject members of those castes to humiliation in their everyday lives and at work.

170. A field study conducted by the Indian Institute of Dalit Studies demonstrated discrimination against low-caste individuals in hiring practices in the Indian private sector. The chances of a qualified applicant with a Dalit name being invited for an interview was about two-thirds of that of a high-caste Hindu applicant. The chances of an equally qualified Muslim applicant being invited for an interview were found to be about one third of that of a high-caste Hindu applicant.¹³⁷

171. Although a formal caste system does not exist in Bangladesh, individuals who are confined to certain occupations and typically live in extreme poverty in isolated areas experience treatment similar to those in untouchable castes.¹³⁸ Examples of specific groups include the Mymal, who work as fishermen, the Kulies, who work in tea gardens, and the Bede, who are engaged in snake charming.¹³⁹

Legislative and policy developments

172. India has various schemes such as education grants, subsidies and loans, with the goal of improving the education and economic situation of scheduled

castes. A new Five-Year Plan (2007–12) includes the aim of further elimination of discrimination based on social origin. Furthermore, the plan recognizes the role of comprehensive legislation protecting rights to education and employment and the possibility of affirmative action in the private sector. The country also has a quota system for individuals in scheduled castes in the public sector as a further means to eliminate discrimination. In addition, the Self-Employment Scheme for the Rehabilitation of Manual Scavengers was developed to eliminate caste confinement to menial jobs.¹⁴⁰

173. Another example of differential treatment based on social origin relates to people coming from rural communities. In China, new laws have been implemented over the past four years to improve the situation of internal rural migrant workers. The law on employment promotion was introduced in January 2008 to end discrimination against internal migrant workers. For the first time, the law states that rural migrant workers should have the same rights to employment as urban workers, and that workers who have been in the city for more than six months will be entitled to unemployment benefits and services from the local government.¹⁴¹

Discrimination based on HIV status

174. The Joint United Nations Programme on HIV/AIDS (UNAIDS) estimates that in 2009 about 33.3 million people around the world were living with HIV and AIDS, with an average of 2.6 million new infections annually.¹⁴² The majority of working-age people living with HIV (90 per cent) are engaged in some sort of employment.¹⁴³

133. ILO: *Discrimination at Work in Asia*, DECLARATION fact sheet, 2007.

134. T. Ito: “Caste discrimination and transaction costs in the labour market: Evidence from rural North India”, in *Journal of Development Economics* 88 (2009), pp. 292–300.

135. Ministry of Finance: Budget Speech of fiscal year 2008–09, delivered to the Legislature-Parliament, 19 Sep. 2008, p. 5.

136. ILO: *Dalits and labour in Nepal: Discrimination and forced labour* (ILO Nepal, 2005), p. 41.

137. S. Thorat, P. Attewell and F. F. Rizvi: *Urban labour market discrimination*, Indian Institute of Dalit Studies, Working Paper Series Vol. III, No. 1 (2009), p. 1.

138. Government of People’s Republic of Bangladesh, General Economics Division: *Bangladesh: Unlocking the potential – National Strategy for Accelerated Poverty Re-education*, 16 Oct. 2005, p. 160.

139. *ibid.*

140. ILO: Information cited in CEACR individual observation published 2010 concerning the application by India (ratification: 1960) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

141. ITUC: *Internationally recognised core labour standards in the People’s Republic of China*, Report for the WTO General Council Review of the trade policies of the People’s Republic of China, Executive Summary, Geneva, 21 and 23 May 2008, p. 12.

142. Joint United Nations Programme on HIV and AIDS (UNAIDS): *UNAIDS report on the global AIDS epidemic* (Geneva, 2010), pp. 16, 23.

143. ILO: *Saving lives, protecting jobs: International HIV and AIDS Workplace Education Programme*, SHARE (Strategic HIV and AIDS Responses in Enterprises) (Geneva, 2008), p. 3.

Box 2.21**Why should I employ someone with HIV?**

A 2008 UNDP study from Estonia, Georgia, the Russian Federation, Ukraine and Uzbekistan found that participants with HIV and AIDS showed a high level of sensitivity to the potential for discrimination in the workplace. Almost all participants said that obtaining a job would be impossible if they disclosed their status during the application process. Many participants lacked the motivation to seek work owing to fear of rejection, and resigned themselves to unemployment or to participation in the informal sector. One well-educated woman living with HIV said that her status would either prevent her from being hired altogether or would relegate her to low-level, manual labour. Participating employers disclosed that, when choosing between an applicant with HIV and one without, their inclination would be to hire the non-infected person.

A Georgian employer asked, “Why should I employ someone with HIV and spend more on an infected person when I can employ someone else?” As a result of this discrimination, many PLHIV revealed that they would conceal their status, provide falsified documents attesting to their health when required by an employer, or pay bribes to keep their status secret.

Source: ILO AIDS and UNDP [Bratislava Regional Centre]: *Living with HIV in Eastern Europe and the CIS: The Human Cost of Social Exclusion* (Bratislava, 2008).

Marginalization of persons living with HIV and AIDS

175. Stigma and discrimination against persons living with HIV (PLHIV) are key human rights and development issues that have a direct impact on the workplace. Discrimination on the basis of real or perceived HIV status can result in workers being unable to access employment and may lead to those in employment losing their livelihoods. Discrimination also deters individuals from accessing prevention measures such as voluntary HIV testing, as well as treatment, care and the support services needed to halt the spread of the pandemic and mitigate its impact.¹⁴⁴

176. In India, for example, employment is often denied at the time of recruitment if the applicant is HIV-positive, and employment may be terminated if the applicant’s status is discovered after hiring. Discrimination is also common in less explicit forms such as gradual demotions, ostracism or physical separation, and/or employers asking HIV-positive workers not to report to work despite being kept on the payroll.¹⁴⁵ Changes in job requirements may be made to impose additional burdens on PLHIV and force them into leaving their jobs.¹⁴⁶ HIV-positive workers may be denied both compassionate employment (flexible working arrangements) and benefits granted to individuals suffering from other illnesses, such as payments to surviving spouses.

HIV testing and screening

177. Discrimination against PLHIV in the workplace often takes the form of mandatory HIV testing, which is carried out to determine the HIV status of job applicants and workers. Other forms of discriminatory testing would include testing under conditions which are not genuinely voluntary and are therefore not based on informed consent, or which do not guarantee the confidentiality of test results. Discriminatory screening may also be used, often taking the form of questions aimed at determining the propensity of workers to engage in high-risk behaviours or lifestyle choices that could lead to an HIV infection. Such screening can result in HIV-related discrimination based on stereotyping. An ILO-commissioned study in East Asia revealed that some employers conducted “voluntary” testing yet at the same time did not hire those individuals who refused to participate “willingly”.

178. The HIV and AIDS Recommendation, 2010 (No. 200), provides that HIV testing should always be voluntary, with pre- and post-test counselling, and that testing or screening should never be carried out for employment purposes. All HIV-related information should be kept confidential. Moreover, all HIV testing programmes should respect international guidelines on confidentiality, counselling and consent, and HIV testing should not endanger access to jobs, tenure, job security, or opportunities for advancement. Where a medical examination is carried out, its purpose should be to assess an individual’s

144. OHCHR and UNAIDS: *Handbook on HIV and Human Rights for National Human Rights Institutions* (Geneva, 2007), p. 10.

145. See N. Maske and S.M. Khare: *HIV and AIDS and human rights: An Indian perspective*, Social Science Research Network eLibrary (2009), p. 9.

146. OHCHR and UNAIDS, op. cit., p. 10.

medical fitness to carry out the tasks associated with the position in question.

Recent legal developments and remaining gaps

179. The Namibian Parliament included HIV status as a prohibited reason for discrimination in amendments to its Labour Code in 2007. Laws in the Bahamas, Malawi, South Africa and Zimbabwe prohibit the use of mandatory HIV testing of job applicants by employers.¹⁴⁷ The Government of Fiji adopted the Employment Relations Promulgation (No. 36) on 2 October 2007. This expressly prohibits discrimination in the workplace on the basis of real or perceived HIV status and makes it an offence either directly or indirectly to screen for HIV or require HIV testing, testing for sexually transmitted infections (STIs), and/or screening for risky behaviours as a condition for employment. Despite these encouraging legal developments, 33 per cent of countries that reported to UNAIDS in 2008 said that they had no legal protection in place against HIV-related discrimination.

180. Before the adoption of Recommendation No. 200, significant advances were made on the protection of the rights of PLHIV in the workplace through the 2001 ILO code of practice on HIV/AIDS and the world of work, which establishes ten key principles, including non-discrimination, the right to continuation of the employment relationship, and a ban on mandatory HIV testing and screening for employment purposes. Since 2007, countries such as India and Sri Lanka have adopted national policies incorporating these principles.

Role of the social partners

181. Employers' associations, supported by the International Organisation of Employers (IOE), provide leadership and advocacy in addressing HIV and AIDS-related issues as well as offering guidance and practical support for their members. For example, the Barbados Employers' Confederation has helped the Ministry of Labour to draft a national code for the workplace, and has provided training materials and guidance for its members.

182. Workers' organizations are also emphasizing the important role of the workplace in the struggle against HIV and AIDS. The ITUC has coordinated the Global Unions AIDS Program, which has strengthened global advocacy efforts and local affiliate initiatives for dealing with HIV and AIDS. A delegation of trade unionists, supported by the ITUC, encouraged the 2008 International AIDS Conference to address workplace and labour market dimensions of the pandemic.¹⁴⁸ The ITUC 2nd World Congress in Vancouver (21–25 June) also adopted a resolution on fighting HIV/AIDS.

183. Initiatives by social partners include the ITUC–AFRO/IOE joint capacity-building meeting on HIV/AIDS for employers' and workers' organizations, hosted by the Ugandan employers' and workers' organizations. In Ghana, the social partner organizations jointly implemented an HIV/AIDS project. In cooperation with the Canadian Labour Congress, the ITUC's regional organization in Asia and the Pacific, ITUC–AP, carried out a survey among its affiliates on trade union responses to HIV/AIDS and held a conference to agree on a regional strategy that includes promotion of the ILO code of practice.

Discrimination based on disability

Pervasive inequalities in employment

184. Approximately 650 million people worldwide, or about 10 per cent of the world's population, have physical, sensory, intellectual or mental impairments of one form or another. Over 470 million of them are of working age.¹⁴⁹ In the United States, a monthly survey by the Department of Labor found that persons with disabilities had an unemployment rate of 16.2 per cent, compared to a 9.2 per cent rate for persons without disabilities.¹⁵⁰ In Sweden, in 2008, 62 per cent of persons with disabilities were employed compared to 75 per cent of non-disabled persons.¹⁵¹ Because of national differences in definitions and statistical methods, it is difficult to draw comparisons, but the employment gap appears consistently across countries.

185. Persons with disabilities are also more likely to earn lower wages. Figures from the United States

147. UNAIDS, op. cit., p. 77.

148. ITUC: *Report on activities of the Confederation for the period 2006 to 2009*, 2nd World Congress, Vancouver, 21–25 June 2010, p. 88.

149. Based on the World Health Organization's estimate and the United Nations *World Population Prospects: The 2006 Revision*.

150. European Commission: *Report of the EU–US Seminar on Employment of Persons with Disabilities*, Brussels, 5–6 Nov. 2009.

151. Based on B. Danermark: *Report on the employment of disabled people in European countries: Sweden*, Academic Network of European Disability experts (ANED) VT/2007/005, 2009, p. 4.

Box 2.22**Reasonable accommodation under the Americans with Disabilities Act**

The Equal Employment Opportunity Commission (EEOC) filed a lawsuit against Sears, Roebuck & Co. which was resolved in September 2009 and resulted in the largest Americans with Disabilities Act (ADA) settlement in a single lawsuit in EEOC history. The EEOC had alleged that Sears maintained an inflexible workers' compensation leave exhaustion policy and terminated employees instead of providing them with reasonable accommodations for their disabilities, in violation of the ADA. Under the terms of the ruling, the EEOC provided claim forms to certain Sears employees who had been terminated under Sears workers' compensation leave policy. The claimants were asked to report to the EEOC, among other things, the extent of their impairments, their ability to return to work at Sears, and whether Sears had made any attempt to return them to work. Based on these criteria, the EEOC found that 235 individuals were eligible to share in the settlement. The average award was approximately \$26,300.

Source: EEOC: "Court Approves \$6.2 Million Distribution in *EEOC v. Sears Disability Settlement*", press release, 5 Feb. 2010.

show that, in 2007, the median earnings of working-age persons with disabilities who worked full time all year round were US\$34,200, as compared to \$40,700 for persons without disabilities.¹⁵² In the Republic of Korea, persons with disabilities earn an average of \$18,888 per year, compared to \$28,800 for people without disabilities.¹⁵³

186. Generally, persons with disabilities are more prone to poverty. According to the World Bank, around 20 per cent of the world's poor have a disability¹⁵⁴ and the United Nations estimates that 80 per cent of persons with disabilities in developing countries live in poverty, many of them in rural areas.¹⁵⁵

Limited access to education and vocational training

187. Persons who are born with disabilities may face exclusion from an early age. According to the United Nations Educational Scientific and Cultural Organization (UNESCO), children with disabilities face many challenges in education, including institutionalized discrimination, stigmatization and neglect, in the classroom, the local community and their own homes. Available figures suggest that approximately 150 million children worldwide live with disabilities

and around four in every five children with disabilities are in developing countries.¹⁵⁶ Since education is a key determinant of future job prospects, limited education may lead directly to future difficulties in the labour market.

188. Furthermore, even if many persons with disabilities have the potential to earn decent livelihoods, they frequently do not have equal access to vocational training opportunities.¹⁵⁷ In Viet Nam, for example, there are approximately 1 million persons with disabilities who could benefit from vocational training, but providers are scarce and most are located in urban areas. As a result, each year only 5,000–6,000 persons with disabilities are able to receive appropriate skills development.¹⁵⁸ Additionally, in many countries, workers who acquire disabilities do not always have access to vocational rehabilitation and return-to-work programmes.

Failure to provide reasonable accommodation

189. Failure to make reasonable adjustments at work and the workplace, also known as "reasonable accommodation", is increasingly considered to be an unacceptable form of employment discrimination.¹⁵⁹ Reasonable accommodation includes adjustment and

152. W. Erickson and C. Lee: *2007 Disability Status Report: United States* (Ithaca, NY, Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics, 2008), p. 30.

153. Ministry of Labour: *Statistics on employment for persons with disabilities*, 2007, p. 75.

154. ILO: *Facts on disability and decent work* (Geneva, 2009).

155. *ibid.*

156. UNESCO: *Reaching the marginalized* (UNESCO and Oxford University Press, Paris/United Kingdom, 2010), p. 182.

157. Based on ILO: *Strategies for skills acquisition and work for people with disabilities in Southern Africa*, Synthesis Report (Geneva, 2007), p. 1.

158. Based on ILO–OHCHR: *Report of the Sub-regional Meeting on Disability Legislation: Decent Work for Persons with Disabilities in Asia*, Bangkok, 23–24 June 2008, p. 25.

159. ILO: *Achieving equal employment opportunities for people with disabilities through legislation: Guidelines* (Geneva, 2007), p. 30.

modification of machinery and equipment, modification of job content, working time and work organization, and adaptation of the work environment to provide access to the place of work, in order to facilitate the employment of individuals with disabilities.¹⁶⁰

190. Many discrimination complaints filed by persons with disabilities arise when employers fail to provide reasonable accommodation for employees. During 2008–09, the Australian Human Rights Commission received 980 complaints related to disabilities, representing 43 per cent of all complaints received; 40 per cent of these were employment-related.¹⁶¹ The New Zealand Human Rights Commission indicated that 26.8 per cent of all complaints received in 2008 were related to disability, with over 27.7 per cent of these being employment-related.¹⁶² Between 2007 and 2009, 102 out of a total of 206 cases of discrimination in employment presented to the Canadian Human Rights Commission (CHRC), almost 50 per cent, were related to disabilities.¹⁶³

Recent efforts to provide adequate legal protection

191. An important advancement in terms of disability legislation has been the entry into force in 2008 of the United Nations Convention on the Rights of Persons with Disabilities. In recent years, countries such as Mozambique and Kazakhstan have also adopted or amended their labour legislation to include measures addressed to persons with disabilities. In 2007, Chile and the Republic of Korea adopted disability legislation prohibiting discrimination. Other countries, such as Thailand (2007), Jordan (2007), Spain (2007), Ethiopia (2008), Malaysia (2008), Cambodia (2009) and Viet Nam (2010), have adopted specific laws on the rights of

persons with disabilities. Existing disability legislation in countries such as Cyprus (2007) and China was amended and improved. In the case of Cyprus, the Law on Persons with Disabilities was amended to harmonize it with European Directive 2000/78/EC. The burden of proof and the employer's obligation to provide reasonable accommodation in the workplace are the main changes in this amended law.¹⁶⁴ In China, the amendment to the Law on the Protection of Disabled Persons added details about stable financial support, better medical care and rehabilitation for persons with disabilities, along with favourable jobs and tax policies.¹⁶⁵

Enhancing the employability of persons with disabilities

192. Numerous initiatives have been adopted by governments in this area. In Jamaica, for example, during 2008 and 2009, the Government allocated 20 million Jamaican dollars to a project intended to provide small loans for persons with disabilities wishing to start up their own businesses.¹⁶⁶ In the United Kingdom, the Government guaranteed places on the Access to Work programme for 2,000 people with learning disabilities and 1,500 people with mental health conditions in 2008.¹⁶⁷ In Slovenia, in 2007, 27 per cent more people were included in vocational rehabilitation programmes than in 2006.¹⁶⁸ In China, the Government operated 3,713 vocational education and training schools in 2008, providing training and job-placement services for 774,000 persons with disabilities.¹⁶⁹

193. Social partners have also been active in producing guidelines or implementing good practices regarding accommodation for employees with disabilities. In 2010, the Public Service Alliance of Canada (PSAC) produced a guide to help union representatives better understand the issue of accommodation

160. See ILO: *Code of practice on managing disability in the workplace* (Geneva, 2002).

161. Australian Human Rights Commission: *Annual Report 2008–09*, pp. 53–67.

162. New Zealand Human Rights Commission: *2008 Annual Report of the Human Rights Commission and the Office of Human Rights Proceedings for the year ended 30 June 2008*.

163. Based on Canadian Human Rights Commission: “Resolving Disputes: Settlement Examples”, available from www.chrc-ccdp.ca/disputeresolution_reglementdifferends/se_ee-en.asp, last accessed 21 Jan. 2011.

164. European Network of Legal Experts in the Non-Discrimination Field: “Cyprus: Legislative developments”, in *European Anti-discrimination Law Review*, No. 6/7 (2008), p. 81.

165. ILO: *Inclusion of people with disabilities in China*, fact sheet (Geneva, 2009).

166. Economic Commission for Latin America and the Caribbean (subregional headquarters for the Caribbean): *A further study on disability in the Caribbean: Rights, commitment, statistical analysis and monitoring* (2009), p. 11.

167. Based on “Measures to help people with mental health conditions into work”, in *Equal Opportunities Review*, Issue No. 199 (2009).

168. ILO: CEACR direct request submitted in 2010 concerning the application by Slovenia (ratification: 1992) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

169. ITUC: *Internationally recognised core labour standards in the People's Republic of China*, Report for the WTO General Council Review of the Trade Policies of the People's Republic of China, Geneva, 10 and 12 May 2010, p. 11.

and to understand the respective roles and responsibilities of the employer, the individual worker and the union in the accommodation process.¹⁷⁰

194. Denmark's Creativ Company A/S has been offering flexible working hours, adapting tasks depending on ability and running a training centre for persons with disabilities.¹⁷¹ Similarly, McDonald's Latvia, in cooperation with one non-governmental organization, seeks the integration of persons with intellectual disabilities and mental illness into the labour market. Shorter working periods and the assistance of a social worker have proven useful for this initiative.¹⁷²

Discrimination based on age

An increase in age-related complaints

195. Against a background of widespread labour market measures seeking to increase the participation of workers at higher ages, for example, by revising retirement age provisions, there is evidence of increased awareness and reporting of age-related discrimination. Within the first 13 months of implementing the Age Regulations in Northern Ireland, the Equality Commission received 277 inquiries regarding age discrimination, making up 9 per cent of total inquiries during that period.¹⁷³ In the United Kingdom, statistics from the Employment Tribunal Service show a considerable increase in age discrimination claims, from 972 in 2006–07 to 2,949 in 2007–08 and 3,801 in 2008–09. This increase may suggest greater awareness of age discrimination and workers' rights.¹⁷⁴ In France, the HALDE received

599 claims related to age discrimination in 2009, compared to only 78 in 2005.¹⁷⁵ In the United States, the figures for the same years for charges under the Age Discrimination in Employment Act were 22,778 against 16,585 respectively.¹⁷⁶ In Australia during the period 2009–10, 174 age-related complaints were received by the Human Rights Commission, compared to 106 during the period 2005–06.¹⁷⁷ In Belgium, the Centre for Equality of Opportunities and Fight against Racism received 40 cases in 2009 compared to 27 in 2006.¹⁷⁸

196. In a November 2009 survey conducted by the European Commission, 58 per cent of Europeans consider age discrimination to be widespread in their country, compared to 42 per cent in 2008. There is a clear link with the current economic situation, with 64 per cent of people expecting the financial crisis to lead to more age discrimination in the labour market.

Measures to achieve equality for older workers

197. Increasingly, countries are making efforts to enact legislation on age discrimination. Some 29 countries¹⁷⁹ have legislation explicitly prohibiting direct and indirect age discrimination.¹⁸⁰ Although Canada has no federal legislation regulating age discrimination at the national level, almost all the provinces address age discrimination in employment.

198. One advantage of having age-specific legislation is that its provisions can be clearly identified by employers and workers alike.¹⁸¹ In some countries, the law does not distinguish between direct and indirect discrimination. Such laws can, however, still be effective as long as the different manifestations

170. PSAC–AFPC: *Duty to accommodate: A PSAC guide for local representatives*, 25 May 2010, available online at http://psac.com/what/humanrights/Duty_to_accommodate-e.shtml.

171. E. Heckl and I. Pecher: *Providing reasonable accommodation for persons with disabilities in the workplace in the EU – good practices and financing schemes – Contract VC/2007/0315* (Vienna, Austrian Institute for SME Research, 2008), p. 92.

172. *ibid.*, p. 11.2.

173. Equality Commission for Northern Ireland: *Awareness of the age regulations and attitudes of the general public in Northern Ireland towards age-related issues*, June 2008, p. 51.

174. Tribunals Service: *Employment Tribunal and EAT Statistics (GB) 1 April 2008 to 31 March 2009*, p. 6.

175. HALDE, *op. cit.*, p. 15.

176. According to information published by the Equal Employment Opportunity Commission.

177. Australian Human Rights Commission: *Annual report 2009–10*, p. 77.

178. Centre pour l'égalité des chances et la lutte contre le racisme: *Rapport annuel 2006*, p. 20, and *Rapport annuel 2009*, p. 81.

179. Australia, Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Guyana, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Saint Lucia, Slovakia, Slovenia, South Africa, Spain, United Kingdom and United States.

180. In order for age anti-discrimination legislation to be fully effective, it is important to distinguish between direct and indirect age discrimination. Direct discrimination based on age is defined as less favourable treatment of one person than another which would not occur if two people of the same age were compared. Age-limited employment advertisements are an example of the forms that direct discrimination can take. Indirect age discrimination goes beyond what is directly observable and covers potentially discriminatory practices such as job advertisements that over-emphasize physical qualities that are not actually required by the job.

181. N. Ghosh: *Age discrimination and older workers: Theory and legislation in comparative context*, Conditions of Work and employment Series, No. 20 (Geneva, ILO, 2008), p. 19.

Box 2.23
British Telecom and older workers

British telecom (BT) in the United Kingdom has introduced several policies to help its older employees, including flexible working arrangements, encouraging people of all ages to improve their mental and physical well-being, and the career-life planning tool, which helps employees to develop their careers at every stage of their life. BT's own research shows that employees who take advantage of flexible work arrangements (14,000 of them working from home) have increased their productivity by, on average, around 20 per cent and are 7 per cent happier at work. Workers aged over 50 make up 5 per cent of BT's new recruits.

Source: *Human Resources Management International Digest*, Vol. 17, No. 2 (2009).

of direct and indirect discrimination are addressed: in the same legislation, in other laws, or in judicial decisions.¹⁸²

199. Policies at the national and enterprise level can complement legislation and play a major role in addressing myths and overcoming stereotypes concerning older workers. A number of countries, such as Australia, Finland, Netherlands, Norway and the United Kingdom, have conducted large-scale government-sponsored information campaigns aimed at overcoming employer reluctance to hire and retain older workers. For instance, the United Kingdom's Age Positive campaign seeks to promote and raise awareness of the benefits of an age-diverse workforce through research and publications, the press, special events, awards and its own website.¹⁸³

200. In recent years, bipartite and tripartite agreements on lifelong learning have been on the increase. Collective bargaining and social dialogue with governments have led in many countries, such as Malaysia and Singapore,¹⁸⁴ to the establishment of training funds that finance lifelong learning programmes. Similarly, the European social partners have identified lifelong learning as a priority in their work programmes.

201. The Republic of Korea has enacted affirmative action legislation under which businesses are required to ensure that at least 3 per cent of their workers are aged 55 years or older. Furthermore, its Aged Employment Promotion Law identifies types of jobs, such as parking lot attendant and bus ticket seller, for which hiring priority should be given to older workers.¹⁸⁵

The situation of younger workers

202. According to the European Commission,¹⁸⁶ young people (people aged from 15 to 24 years) have been proportionally worst affected by the current downturn, experiencing a decline in employment of 7.3 per cent between 2008 and 2009. In both industrialized and developing economies, young people are more likely to find themselves working longer hours in informal employment, intermittent work and insecure arrangements, which tend to be characterized by low productivity, low wages and limited labour protection.¹⁸⁷

203. Difficulties faced by young people in the labour market cannot all be attributed to discrimination. Economies struggle to absorb the growing number of highly educated, highly skilled graduates emerging in increasing numbers from education systems each year. This situation is generally worse still for those who enter the labour market with no or low qualifications. Another factor is the relatively lower level of generic and job-specific work experience compared to older applicants.

204. The European Union has undertaken the "new start" initiative for young people, which provides a tailor-made programme for every young person who has been unemployed for six months, offering training, retraining, work practice or a job, combined – where appropriate – with ongoing job search assistance. Initiatives in the United Kingdom include the New Futures Fund (NFF), which provides intensive support and help for young unemployed people aged between 16 and 34 years.

182. N. Ghosheh, op. cit., p. 23.

183. www.dwp.gov.uk/age-positive/, last accessed 21 Jan. 2011.

184. ILO: *Lifelong learning in Asia and the Pacific*, report for the ILO Regional Tripartite Meeting, Bangkok, 8–10 Dec. 2003, p. 14.

185. United Nations: *World economic and social survey 2007: Development in an ageing world*, Department of Economic and Social Affairs (New York, 2007), p. 62.

186. European Commission: *Employment in Europe 2009* (Luxembourg, Office for Official Publications of the European Communities, 2009).

187. ILO: *Employment and social protection in the new demographic context* (Geneva, 2010), p. 65.

Discrimination based on sexual orientation

205. Human rights violations against lesbian, gay, bisexual, and transgender (LGBT) persons include violence, harassment, discrimination, exclusion, stigmatization and prejudice. This is particularly true in countries where homosexuality is criminalized. Meanwhile, this group in most countries faces barriers to employment or at the workplace. Some studies have identified discrimination as being responsible for a salary gap of 3 to 30 per cent between gay and non-gay employees. A study in the United Kingdom based on data from the Labour Force Survey found that gay men were paid around 5 per cent less on average than non-gay counterparts.¹⁸⁸

206. LGBT workers with partners do not always acquire the same benefits as married couples, particularly since gay marriages are not recognized in much of the world. Often LGBT workers lack the right to include partners in company health insurance plans, medical leave guarantees, and other benefits shared by non-LGBT workers.¹⁸⁹ As a consequence, they may be financially penalized indirectly in the workplace or society on the grounds of their sexual orientation.

207. The health and well-being of LGBT workers who remain closeted owing to fear of discrimination may also be adversely affected, reducing workplace productivity of LGBT staff. Workplaces that dismiss employees because of their perceived or actual sexual orientation may also lose skills and waste resources on recruiting and training replacements. LGBT workers are more likely to perceive their workplace as inclusive if management prioritizes equal treatment and diversity policies in the workplace. According to some available evidence, effective employment legislation with protection against discrimination has the potential to empower LGBT workers to complain formally about discrimination or mistreatment at the workplace.

Progress on anti-discrimination measures

208. In 2009, the Charter of Fundamental Rights of the European Union came into force with the ratification of the Lisbon Treaty. The Charter, which strengthens and widens the non-discrimination provisions of the Employment Equality Directive of 2000, is the first international human rights instrument to completely prohibit discrimination based on sexual orientation (Article 21.1). A number of EU countries are amending their legislation in order to bring it into compliance with the EC directives.

209. In 2009, Argentina, the Philippines and Uruguay ended their bans on gays serving in the armed forces, while in 2010 a district court in the United States declared the country's "don't ask, don't tell" policy unconstitutional and ordered the military to put an end to its implementation. A study released in late 2010 revealed a widespread attitude among service members that the repeal of "don't ask, don't tell" would not negatively impact their ability to conduct military missions.¹⁹⁰ The policy was repealed by the President in December 2010.

210. Meanwhile, some more countries are now allowing partnership rights, civil unions or same-sex marriages and, as a consequence, extending related employment benefits to same-sex partners.¹⁹¹

Trade unions taking action

211. Trade union confederations and their affiliates in Europe have become increasingly active in combating discrimination on grounds of sexual orientation. A 2008 European Trade Union Confederation (ETUC) survey revealed that several European trade union affiliates are making the issue a priority, while the four-year action programme adopted by the ETUC in 2007 includes a specific commitment to addressing LGBT workers' rights.¹⁹²

188. N. Drydakis: "Sexual orientation discrimination in the labour market", in *Labour Economics*, Vol. 16 (2009), p. 366.

189. This and the following paragraphs are based on European Union Agency for Fundamental Rights: *Homophobia and discrimination on grounds of sexual orientation and gender identity in the EU Member States: Part II – The Social Situation* (Vienna, 2009), pp. 3–4.

190. Department of Defense: *Report of the comprehensive review of the issues associated with a repeal of "Don't Ask, Don't Tell"*, 30 Nov. 2010, p. 3.

191. See, for example, PewResearchCenter: *Gay Marriage Around the World*, report published online on the Pew Forum on Religion and Public Life, 9 July 2009.

192. European Trade Union Confederation: *ETUC actions and activities on promoting equal rights, respect and dignity for workers regardless of their sexual orientation or gender identity*, adopted 4 Dec. 2008.

Box 2.24**Greek study reveals discrimination in low-skill jobs**

Despite the adoption of new legislation (Greek Law 3304/2005) banning sexual orientation discrimination at the workplace, in response to EU Directive 2000/78, a 2009 Greek study indicated that discrimination is still occurring in lower skill jobs. The study compared job response rates for two equally productive fictitious job applicants for 1,714 low-skill job openings in Athens, the only significant difference being a mention of volunteering for a homosexual community in one of the CVs to indicate sexual orientation, and found that gay orientation had a largely negative effect on chances of being hired. The study revealed that heterosexual applicants were invited for interview in 40.08 per cent of cases, while gay applicants were invited in only 13.94 per cent of cases.

Source: N. Drydakis, op. cit., p. 369.

Discrimination based on genetics

212. Scientific advances in genetic screening and mapping have resulted in a growing potential for discriminatory workplace practices based on genetic information acquired through mandatory screening or as a result of access to confidential genetic information. However, genetic testing and family history reveal only the potential to develop a medical condition and are not indicative of present or future capacities and merits.

213. The fear of genetic discrimination has work-related implications and real human costs. It has been shown that individuals with high levels of concern are less likely to consider meeting with health-care professionals to discuss or undergo testing. This in turn means that they may not have access to disease-prevention methods, such as preventative surgeries or dietary and lifestyle choices. Moreover, shielding genetic information from both employers and insurance companies may distort medical records and undermine treatment, and can result in late detection of terminal illnesses.¹⁹³

Legislative developments

214. Some countries have amended or enacted legislation to prevent and punish genetic discrimination. In 2009, for example, Serbia adopted a Law on the prohibition of discrimination which protects against both direct and indirect discrimination in

employment on grounds that extend beyond those specified in Convention No. 111. Both genetic characteristics and disability were expressly included in the Law.¹⁹⁴ Armenia expressly included genetic characteristics as a prohibited reason for discrimination in its Constitution of 1995.

215. Other countries have adopted separate and more comprehensive legislation prohibiting this reason for discrimination. In the United States, for example, the Genetic Information Nondiscrimination Act (GINA) was passed by Congress in May 2008.¹⁹⁵ GINA is the first federal law to prohibit employers and health insurers from denying employment or insurance coverage to healthy individuals based on a genetic predisposition to a particular disorder or disease. With a few narrowly defined exceptions, employers in particular are barred from using, purchasing or requesting genetic information for the purposes of making personnel decisions regarding hiring, firing or promotion. Violations are punishable with severe financial penalties of up to US\$300,000, with reinstatement of the employee concerned.

216. In Canada, a bill similar to GINA was introduced in Parliament in April 2010. The bill proposes to prohibit discrimination on the grounds of genetic characteristics, and will update the Canada Human Rights Act. As science develops, legislation will also have to evolve in order to protect people from discrimination that is based purely on speculation.

193. National Partnership for Women & Families and the Coalition for Genetic Fairness (CGF): *Faces of genetic discrimination: How genetic discrimination affects real people* (Washington, DC, July 2004).

194. An unofficial translation solicited by UNDP Serbia in the framework of the project "Support to the Implementation of Anti-discrimination Legislation and Mediation in Serbia" is available at www.ilo.org/dyn/natlex/docs/ELECTRONIC/82285/89990/F632707265/SRB82285.pdf, accessed 15 Nov. 2010.

195. W.J. McDevitt: "I dream of GINA: Understanding the employment provisions of the Genetic Information Nondiscrimination Act of 2008", in *Villanova Law Review*, Vol. 54, Rev. 91 (2009).

Box 2.25 Workplace Health Promotion programmes

Employers in the United States elect to provide Workplace Health Promotion (WHP) programmes to improve the well-being and health of their employees, and occasionally their dependants, as a result of the correlation between good employee health and well-being and optimal employee performance. Another important factor is the increasing cost of health care for employees. Studies have found that over a six-year period, employees in both the public and private sector with risk factors such as smoking, high stress and low physical activity, among others, cost employers almost 228 per cent more in health-care costs compared to employees with none of those factors.

A 2007 study to assess the effectiveness of WHP programmes found that they were highly effective in reducing tobacco use (median of 1.5 percentage points), high blood pressure (median reduction of 4.5 percentage points), total serum cholesterol levels (median prevalence reduction of 6.6 percentage points), and decreasing the number of days off work due to illness or disability (median reduction of 1.2 days per year). In spite of these findings, more comprehensive information and accurate, complete data are required to determine the actual return on investment from WHP programmes.

Source: R. Goetzel and R. Oxminkowski: "The Health and Cost Benefits of Work Site Health Programs Promotion", in *Annual Review of Public Health*, Vol. 29 (2008).

Discrimination based on lifestyle

217. Discrimination based on lifestyle is a topical issue in some regions and relates to employment and occupation, especially in the cases of smoking and obesity. The limited data available are concentrated around a few countries. Further monitoring and research will undoubtedly shed more light on emerging patterns and provide a basis for considering appropriate policies by governments and social partners. In the meantime, there is already a basis for discussion on how to balance public health strategies and the right to non-discrimination. Although the term "lifestyle discrimination" can refer to a wide range of issues, this Report will only address discrimination based on body weight and on smoking.

Discrimination based on body weight

218. A 2008 self-report study published in the *International Journal of Obesity* found that in the United States, perceived weight/height discrimination has prevalence rates among women close to the prevalence of race discrimination and in some cases occurs even more frequently than age or sex discrimination. Currently in the United States, only one state (Michigan) prohibits discrimination based

on an individual's weight.¹⁹⁶ In some cases, the lack of specific legislation has meant that overweight individuals have depended on the American Disability Act (ADA) for legal protection. A study in Sweden based on fictitious applications with portrait photographs found that obese applicants receive 20 per cent fewer callbacks for an interview than applicants of normal weight, about the same level as the minority of Middle Eastern origin in Sweden.¹⁹⁷

219. In Europe, although the EU Equal Treatment Directive covers only gender, race and ethnicity, age, sexual orientation, religion or belief, and disability, as grounds of unlawful discrimination, some countries, such as Belgium and France, have adopted legislation which covers physical appearance. The Republic of Korea has also included "appearance" in its anti-discrimination legislation.¹⁹⁸ The Equal Opportunity Act of the State of Victoria, Australia, revised in April 2010, includes physical attributes among the grounds for unlawful discrimination, making it illegal to treat someone unfairly because of physical appearance, including height, weight, body shape, disfigurement, skin condition, scar or birthmark.

196. See R.M. Puhl, T. Andreyeva and K.D. Brownell: "Perceptions of weight discrimination: Prevalence and comparison to race and gender discrimination in America", in *International Journal of Obesity* (2008, No. 32), pp. 992–1000.

197. D-O. Rooth: *Evidence of unequal treatment in hiring against obese applicants: A field experiment*, IZA discussion paper No. 2775 (Institute for the Study of Labor, May 2007).

198. The National Human Rights Commission Act of 24 May 2001.

Discrimination based on smoking

220. If obesity is recognized as dangerous for one's own health, the evidence that smoking is also potentially harmful to fellow workers is well documented and smoking is therefore prohibited in the workplace in many countries. Some researchers, however, have drawn attention to what they call a shift from "smoke-free workplaces" to "smoker-free workplaces", emphasizing the risk of discrimination against smokers. The debate around this issue is ongoing. Opponents of such policies have pointed out that nicotine addiction is not a choice, that evidence has shown that only a small proportion of smokers actually manage to stop smoking,¹⁹⁹ and that these policies may simply push smokers

to other workplaces, or worse, to unemployment, which in turn could have further adverse effects on their health. They also point out that these policies treat smokers differently from fellow employees who may engage in other high-risk behaviours such as drinking or drug abuse.

221. There are many examples of companies barring employment to smokers. Policies range from the non-recruitment of smokers to firing workers who do not stop smoking within a given period. Some companies make their policies clear by stating "tobacco-free candidates only" in their job advertisements. In one extreme case, a company went further by making smoking off premises and outside working hours a ground for dismissal and expanded the no-smoking policy to spouses of employees.²⁰⁰

199. B. Houle and M. Siegel: "Smoker-free workplace policies: Developing a model of public health consequences of workplace policies barring employment to smokers", issued as NIH Public Access Author Manuscript, p. 4; published in final edited form Feb. 2010.

200. *ibid.*, p. 2.





Part III

The ILO's response

Decent work for all

222. Recognizing that discrimination represents a significant barrier to the attainment of decent work for all, the ILO is implementing a wide range of activities and developing a variety of tools aimed at promoting non-discrimination in employment and occupation. In order to address new challenges, including those arising from the global crisis, the ILO response has sought to strengthen efforts to combat all grounds of discrimination.

223. The ILO Strategic Policy Framework, which is an application of results-based management, has identified a number of overall outcomes to guide the work of the Office over the coming years. The elimination of discrimination in employment and occupation has been adopted as one of those outcomes. The ILO programme and budget documents for the current and coming biennia therefore include a strategy and a separate indicator to measure attainment of the objectives of this outcome.

224. Decent Work Country Programmes (DWCPs) have become a main vehicle for the delivery of ILO support to member States.¹ A number of DWCPs have included outcomes related to non-discrimination. In the current biennium, a total of 44 countries² have implemented activities to promote

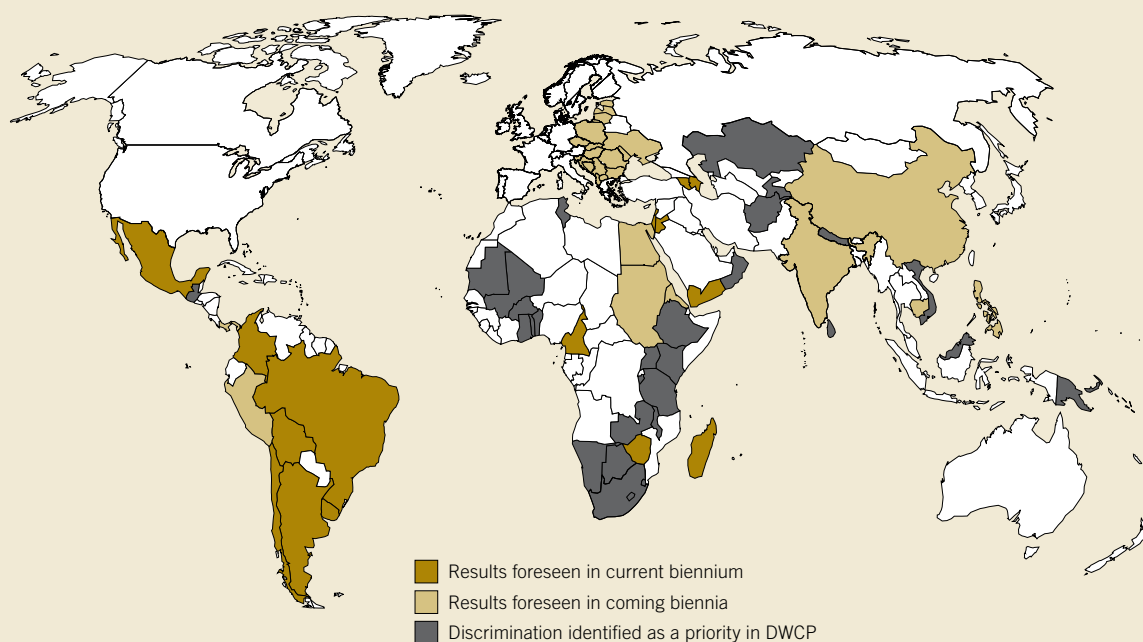
gender equality: these include mainstreaming gender equality, promoting female entrepreneurship, improving working conditions for women, and advancing equal employment and equal remuneration. Twelve countries³ have identified the need to address discrimination against people living with HIV and AIDS as a priority. Fourteen countries and territories⁴ as well as the subregion of Central and Eastern Europe are focusing on general non-discrimination issues through policy improvements and strengthened application of international labour standards. Three countries⁵ have included the promotion of the rights of indigenous and tribal peoples, while two⁶ have identified the elimination of discrimination against persons living with disabilities as a priority.

225. The Action Plan on non-discrimination adopted by the Governing Body in 2007 advocated better enforcement of legislation and non-regulatory initiatives by governments and enterprises. It also pointed to the need to improve the capacity of governments and social partners to effectively promote and implement the principles of equality at work. Two priority areas were identified: better enforcement of legislation and equal remuneration for men and women.⁷

226. Non-discrimination has been identified as a cross-cutting issue in the ILO Declaration on Social

1. ILO Decent Work Country Programmes website: www.ilo.org/public/english/bureau/program/dwcp/index.htm, accessed 3 Feb. 2011.
2. Afghanistan, Argentina, Armenia, Azerbaijan, Bahrain, Bolivia, Burundi, Chile, China, Colombia, El Salvador, Eritrea, Ethiopia, Fiji, Guatemala, Jordan, Kazakhstan, Kiribati, Kuwait, Lesotho, Malawi, Malaysia, Mali, Marshall Islands, Mauritania, Oman, Panama, Peru, Philippines, Samoa, Solomon Islands, Sri Lanka, Swaziland, Syria, United Republic of Tanzania, Timor-Leste, Togo, Tunisia, Tuvalu, Ukraine, Vanuatu, Viet Nam, Yemen, Zimbabwe.
3. Botswana, Egypt, Kenya, Lesotho, Madagascar, Malawi, Moldova, Samoa, Sudan, United Republic of Tanzania, Uganda, Zambia.
4. Benin, Brazil, France, Lebanon, Mauritius, Nepal, Occupied Palestinian Territories, Papua New Guinea, Peru, Seychelles, South Africa, Tajikistan, Timor-Leste, Uruguay.
5. Cambodia, Cameroon, Mexico.
6. Eritrea, Mauritius.
7. ILO: *Report of the Committee on Technical Cooperation*, Governing Body, 300th Session, Geneva, Nov. 2007, GB.300/TC/4.

Figure 3.1. DWCPs worldwide: Country outcomes under the elimination of discrimination



Source: ILO Programme for the Promotion of the ILO Declaration on Fundamental Principles and Rights at Work.

Justice for a Fair Globalization.⁸ Programmes have been designed and implemented in close cooperation with the Bureaux for Employers' and Workers' Activities, and have benefited from inputs provided by relevant headquarters and field units, including the ILO's International Training Centre in Turin. Technical cooperation projects have included a range of components such as awareness raising, capacity building, information gathering and sharing, research, technical advice, and training. At the national level, this has led to significant results such as the adoption of new policies, modification of existing legislation, and implementation of national action plans.

Promoting action on non-discrimination

227. In spite of the high rate of ratification of the two core Conventions on equality, concerns linger about the general level of their implementation. Among activities designed to address this challenge, technical cooperation projects were developed to

assist constituents in effectively implementing the equality Conventions, and a series of national tripartite workshops on more general themes including the "Realization of the Fundamental Principles and Rights at Work" were organized in several countries.

228. Training workshops and online distance learning packages were delivered by the ILO's International Training Centre. Courses have been offered to promote the application of Convention No. 111, focusing on how to define, detect and tackle discrimination in employment and occupation. The curriculum has a practical orientation: exposing participants to national and international good practices and encouraging exchanges of experiences from different regions.

229. The following paragraphs review ILO assistance to constituents since the adoption by the Governing Body of the action plan regarding the elimination of discrimination in employment and occupation in 2007.⁹ They highlight programmes and activities undertaken by field offices and headquarters units at the national, regional and global levels.

8. ILO: *ILO Declaration on Social Justice for a Fair Globalization*, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008.

9. ILO: *Report of the Committee on Technical Cooperation*, op. cit.

Box 3.1 Implementation of Convention No. 111 in China

Since the ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in 2005, China has promulgated three laws that came into effect on 1 January 2008. These laws – the Employment Promotion Law, the Regulations on Employment Service and Employment Management Law, and the Labour Contract Law – have expanded the protection against discrimination for workers, especially in recruitment, and have prohibited additional grounds of discrimination, for example against rural workers in urban areas. To assist in the development of strategies to effectively implement the Convention, with financial assistance from the Government of Norway, the ILO implemented the “Equality at Work in China” project.

With awareness raising as one of the primary channels through which this project operated, materials were published and a website was established (www.equalityatworkinchina.org). The project published quarterly issues of the *Equality at Work in China* newsletter, highlighting recent events with regard to discrimination, and paying particular attention to legislative developments, discrimination cases, and new publications. The project culminated with the development of a complete training guide on different forms of discrimination including gender, migrant workers and people living with disabilities.

Better design and enforcement of legislation

230. In order to help with the drafting of effective legislation, the Office provides advice to governments and the social partners in the form of technical comments on proposed labour legislation. It also promotes good practice through its labour legislation guidelines.¹⁰ Together with the ILO's International Training Centre, the Office delivers annual training on participatory labour law design and process, with particular attention to discrimination. In support of these practical services, the Office maintains an active research programme.

231. In order to create strong institutions and effective mechanisms to ensure enforcement, the ILO, in close collaboration with its International Training Centre, has developed training tools on labour inspection, gender equality and non discrimination in the workplace through two technical cooperation projects funded by the Government of Norway. These are: “Enhancing labour inspection effectiveness in selected countries in Europe and Central Asia” and “Strengthening labour inspection services in Angola, Brazil, China, India and South Africa”. These tools are being used for training activities at the national level, not only in countries currently covered by the two projects, but also in others such as Albania, Lebanon, Oman, The former Yugoslav Republic of Macedonia, and Yemen. In addition, guidelines concerning the role of labour inspection and the gender dimension in the workplace are being developed. Within the framework of these two projects, some 100 labour inspectors have so far received training on discrimination issues. In Oman and Bahrain, a total of 200 labour inspectors

received training through a US Government-funded project on “Promoting Fundamental Principles and Rights at Work and Social Dialogue”. The project focused on building the capacity and skills to better enforce national legislation, inspection techniques and dispute resolution. One of its objectives was to reduce workplace discrimination against migrant workers through routine labour inspection.

232. National and subregional training workshops for judges, lawyers, labour law professors and labour inspectors were organized in a number of countries including Chile, the Democratic Republic of the Congo, Rwanda, and Trinidad and Tobago. These workshops provided participants with the tools needed to apply international labour law in their daily work.

233. A joint ILO/Inter-American Development Bank (IDB) programme on “Fostering a culture of compliance in relation to labour laws” included a specific module on equal opportunities at the workplace. Within the framework of this programme, four training activities were organized in cooperation with local universities in Costa Rica, the Dominican Republic, Guatemala and Nicaragua. A total of 156 people from the Ministry of Labour, Supreme Court, judiciary, employers’ and workers’ organizations and law faculties received training.

Gender equality

234. Phase III of the Women’s Entrepreneurship Development and Gender Equality project (WEDGE) in Cambodia, Ethiopia, Kenya, Lao People’s Democratic Republic, United Republic of Tanzania,

10. See ILO: *Labour Legislation Guidelines*, last updated 10 Dec. 2001, available at www.ilo.org/public/english/dialogue/ifpdial/llg/index.htm, accessed 3 Feb. 2011.

Box 3.2
PAMODEC (Support Programme for the Implementation
of the Declaration on Fundamental Principles and Rights at Work)

Within the framework of the French-funded technical cooperation project PAMODEC, national studies were undertaken in Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Madagascar, Mauritania, Niger and Senegal. Upon completion of the studies, national tripartite validation workshops were organized to review the findings, recommendations and conclusions of the studies and to develop national plans of action to combat discrimination and promote equality at work.

Countries	Challenges	Action plan
Benin	Lack of enforcement of legislation; inadequate sanctions; inadequate resources for the labour inspectorate.	Reinforcement of the legal framework; capacity building for labour administrators, labour inspectors, social partners, judges and magistrates; creation of a coordination framework for all actions regarding equality in the public and private sectors.
Burkina Faso	Limited awareness of rights among workers; statistics unavailable; inadequate resources for the labour inspectorate.	Elaboration of a national policy to combat discrimination in work and employment; creation of a national institute to monitor discrimination; compilation of data and studies; implementation of pilot projects to promote equality; revision of the labour code; awareness raising; capacity building for social partners.
Cameroon	National legislation only partially in conformity with Conventions Nos 100 and 111; limited grounds of discrimination covered by the Labour Code.	Reinforcement of the legal framework; revitalization of the institutional framework; support of the social partners through social dialogue; and creation of a national institute to monitor the evolution of the labour market in the context of globalization.
Côte d'Ivoire	The Labour Code provides for a medical check on recruitment, which might lead to discrimination against workers with HIV and AIDS and other chronic diseases; limited awareness of rights among workers; lack of interest on the part of labour inspectors; lack of knowledge of international labour standards among magistrates.	Review of national legislation, including the Labour Code; capacity building for magistrates, lawyers, labour inspectors, trade unions, workers' representatives and employers' organizations on the enforcement of international labour standards; awareness raising.
Madagascar	No institution in place to control the application of provisions; contribution of women's work not fully recognized.	Further research on the various forms of discrimination in the world of work, including the public sector; regular evaluation of the situation regarding discrimination; creation of a national policy document promoting equality at work; and promotion of social dialogue on the issue of discrimination.
Mauritania	Limited awareness of human resources managers in private sector of obligations related to non-discrimination; lack of awareness of workers' rights; women are still largely discriminated against; women, day labourers, migrant and domestic workers need special protective measures; general lack of knowledge of the principle of equal pay for work of equal value.	Improvement of the legal framework; reinforcement of the role of the labour inspectors in the fight against discrimination, through awareness-raising seminars; creation of a national advisory body in charge of the fight against discrimination and the promotion of equality; awareness-raising campaigns aimed at company managers.
Niger	Inadequate knowledge of laws; insufficient labour inspection; lack of resources for the supervisory bodies.	Increasing the knowledge base, awareness raising, and reinforcement of the legal and institutional frameworks.
Senegal	Lack of financial and material support for labour inspection and the collection of data; lack of or insufficient sanctions; lack of workers' knowledge of their rights regarding discrimination.	Creation of a national body responsible for the fight against all forms of discriminations at work; revision of national legislation in conformity with international labour standards; awareness-raising campaigns; integration of discrimination issues into the strategies of unions and employers' organizations.

Box 3.3 Court rulings based on Convention No. 111

Following training workshops for judges organized by PAMODEC, a court in Burkina Faso and another in Benin in 2009 invoked the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), in conjunction with domestic legislation to rule in favour of two employees who had been dismissed as a result of discriminatory behaviour by their employers.

In the first case, a primary school teacher working at a Protestant church-run orphanage claimed that his contract had not been renewed because he was not a member of the Protestant Church. The Labour Appeal Court of Koudougou found the employer guilty of having unjustifiably dismissed the employee on religious grounds. The Court stated that even though, according to Convention No. 111, religion could be considered as an inherent requirement for a particular job, the teacher's position did not require any particular religious affiliation. Moreover, the Court argued that the employer's preference to hire Protestant Christian members of the Church goes against the principle of equality of opportunities reflected in the Labour Code of 2008 and Convention No. 111.¹

In the second case, the Court of First Instance (Social Chamber) of Cotonou ruled that a company was guilty of discrimination for unfair treatment of a female employee once she became pregnant. According to the plaintiff, her weak health did not allow her to return to work during her pregnancy. Despite this, the company did not pay her for six months – including her maternity leave period – and she was dismissed. The Court argued that Benin has ratified Convention No. 111 and that both the Labour Code and the General Collective Convention of Labour reflect the principles of Convention No. 111. On the basis of these instruments, the Court held that the employer's attitude was an act of discrimination based on sex, which also covers pregnancy, marital status and family situation.²

¹ Case No. 05/2005 *Alice Segbo v. Etablissement Royal Photo*.

² Judgment No. 003 of 5 February 2009, *Jean Baptiste K. Sankara v. Orphelinat Pègd Wendé*.

Uganda, Viet Nam and Zambia, continues to foster women's entrepreneurship, support female entrepreneurs in creating decent employment, and promote women's empowerment, gender equality and poverty reduction. The WEDGE programme aims to remove socio-cultural, legal and political barriers, and to advocate for an enabling environment for business development and gender equality, which recognizes that gender equality is not only a key goal in itself, but also a business opportunity that is essential for economic growth and the well-being of families and communities.

235. In partnership with the International Finance Corporation, the Better Work Programme operates at both the global and national levels to promote economic development through compliance with labour standards, with operations in the first instance in Haiti, Jordan, Lesotho and Viet Nam. Each Better Work project document includes a gender equality and non-discrimination plan setting out policies, processes and targets concerning staff recruitment, training, information resources, compliance assessments, and monitoring and evaluation to ensure equality and non-discrimination.

236. With funding from the US Government, a pilot programme which aims to promote equality in the workplace was developed in Morocco. This was based on a bottom-up approach, with six private and

semi-public sector workplaces in the tourism, pharmaceutical and agro-food sectors being invited to participate in a baseline survey aimed at comparing the effects of employment policies and practices on women and men. To complement training activities undertaken, a "good practices" guide on promoting equal employment rights and opportunities at the workplace was produced and launched in Arabic and French in 2008.

237. The ILO has conducted 11 national studies on gender equality in social dialogue and collective bargaining for Armenia, China, India, Indonesia, Jordan, Nigeria, Rwanda, South Africa, The former Yugoslav Republic of Macedonia, Ukraine, and Uruguay. A comparison of good practices on gender equality in tripartite social dialogue and collective bargaining is being prepared on the basis of these studies.

238. Activities and outputs under the BASIC¹¹ Gender Equality in the World of Work project, now being implemented in Angola, Brazil, China, India, and South Africa, include the adoption of gender-sensitive workplace policies; training for constituents on non-discrimination; organizing participatory gender audits; building capacity of labour statisticians to provide sex-disaggregated data; and mapping policy options for the organization of women workers in the informal economy.

11. The title "BASIC" is derived from the first letter of each of the countries in which the project is being implemented.

Box 3.4 Promoting Decent Work and Gender Equality in Yemen

The ILO Regional Office for the Arab States and the Directorate General of Women Workers (DGWW) of the Ministry of Social Affairs and Labour (MOSAL) joined forces to implement a technical cooperation project entitled “Promoting Decent Work and Gender Equality in Yemen”, funded by the Government of the Netherlands.

Important stepping stones of the project included:

- Policy Advocacy Networks for Women Workers in the Health, Education and Agriculture sectors to advocate for policy and legislative changes reaching 3,000 workers, both women and men, through sharing of information and knowledge and policy dialogue.
- An information management and knowledge-sharing desk to address negative stereotypes and attitudes towards women workers and to encourage positive public and media perceptions.
- Training of 18,000 women and men workers in the public and private sectors on their right to decent terms and conditions of work.
- Conducting participatory gender audits in two ministries for gender mainstreaming in national policies and programs.

Today, the DGWW plays a central role in shaping the national agenda on gender equality in the world of work in Yemen. Its work under the ILO/MOSAL project on “Promoting Decent Work and Gender Equality” has contributed to compliance with international labour standards, achievement of gender equality and strengthening tripartism and dialogue.

239. In 2009, a tripartite seminar in Indonesia on the prevention of all forms of harassment in the workplace was co-organized in 2009 by the ILO and the Ministry of Manpower and Transmigration. The goal of the seminar was to create an open dialogue on harassment and to discuss an acceptable definition of the term and the role of social partners.

240. In March 2010, the ILO Governing Body adopted a Gender Equality Action Plan (2010–15). The plan reflects the cross-cutting nature of gender equality and is based on six main elements of the UN strategy on gender mainstreaming for achieving equality and the empowerment of women.¹² In this context, institutions in 15 countries and territories¹³ and three international workers’ organizations¹⁴ have undergone participatory gender audits.

Equal remuneration for men and women

241. In 2008, the ILO published its *Gender-neutral job evaluation for equal pay: A step-by-step guide*. This has been translated into Albanian, Arabic, Chinese, English, French, Portuguese, Spanish and Ukrainian,

and has been disseminated and used in training workshops.

242. Within the framework of a technical cooperation project on “Combating inequalities and discrimination in the world of work”, funded by the Government of Norway, a workshop was held in Chile in 2008 for members of national tripartite equality commissions from Argentina, Brazil, Chile, Paraguay and Uruguay. Another workshop, held at the ILO Training Centre in Turin, on national mechanisms for the promotion of equal opportunities, targeted tripartite constituents, managers and HRD specialists in multinational enterprises (MNEs), university professors and training experts from 25 countries.

243. The ILO and the Egyptian Ministry of Manpower and Migration held a round-table discussion on pay equity in July 2007. The round table, attended by representatives of the relevant ministries and social partners, addressed the comments made by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) concerning the application of the Equal Remuneration Convention, 1951 (No. 100), and discussed the issue of “equal remuneration for work of equal value”.

12. United Nations Chief Executives Board (CEB) for Coordination: *United Nations system-wide policy on gender equality and the empowerment of women: Focusing on results and impact*, CEB/2006/2, 15 Dec. 2006, available at www.un.org/womenwatch/ianwge/gm/UN_system_wide_P_S_CEB_Statement_2006.pdf, accessed 7 Feb. 2011.

13. Albania, Angola, Cape Verde, Ethiopia, Kyrgyzstan, Liberia, Malawi, Mozambique, Nigeria, Occupied Palestinian Territories, Rwanda, Sri Lanka, United Republic of Tanzania, Yemen, Zimbabwe.

14. International Confederation of Free Trade Unions (ICFTU), Education International, and Public Services International.

Box 3.5 Increased maternity benefits for workers

Maternity benefits scheme for informal workers in India

The Government is set to provide women with maternity benefits during pregnancy and for six months after childbirth while they are breastfeeding. The benefits scheme extends to women not currently entitled to maternity leave benefits, who register at their local Anganwadi centre during pregnancy. The scheme is intended to promote health and partly offset the wage loss women may incur while caring for themselves and their children, and is part of a larger effort to reduce maternal and infant mortality.

Development of a maternity insurance scheme in Jordan

The ILO assisted in the development of a maternity insurance scheme in Jordan, currently under discussion in Parliament, beginning with a feasibility study on the implementation of a maternity cash benefits scheme. The full cost of maternity leave, which was being borne by employers, had given rise to discrimination against women workers, because of the perception that they cost more than men. The study pointed to the need for a fair and affordable maternity protection scheme for Jordan that would benefit women workers, labour markets and society as a whole. The findings showed that such a scheme in Jordan appeared to be feasible and financially sustainable.

244. A Decent Work and Gender Equity project in Jordan produced a national policy brief on pay equity following consultations with the Government and social partners. This was presented and discussed at a national round table in 2010. Recommendations from the round table form the building blocks of a national action plan on pay equity.

Reconciling work and family responsibilities

245. A new ILO book, *Workplace solutions for childcare*, was published recently.¹⁵ It reviews the key childcare concerns and challenges facing working parents and employers, ways in which those concerns are addressed in different national policy approaches, the reasons for different actors to step in to develop childcare solutions at the workplace and the forms those interventions take. Another promotional booklet, on combining work and family responsibilities, was published in 2008, as well as a series of country-specific fact sheets for Armenia, Georgia, Kyrgyzstan and the Russian Federation.¹⁶

246. Research led to an ILO–UNDP report on work and family in Latin America and the Caribbean, *Towards new forms of reconciliation with social responsibility*. It shows that the work–family balance agenda is also likely to have positive results in terms of economic performance and productivity.

247. “Work Improvement in Small Enterprises” (WISE) training modules covering work–family and maternity protection issues were pilot-tested in

Mozambique and the United Republic of Tanzania in 2009. These were developed within the framework of an ILO/DANIDA project on “Improving job quality in Africa through concerted efforts by government, employers and workers”. A training package containing a wide range of information, activities, examples of good practices and other resources to guide action and initiatives on work and family was also published.

Equality with respect to race and ethnicity

248. Within the framework of a technical cooperation project on “Combating inequalities and discrimination in the world of work”, funded by the Government of Norway, the ILO organized an inter-regional meeting for 24 countries entitled “Towards a strategy for trade unions in the fight against racial discrimination and xenophobia”. Subsequently, the ILO worked with trade unions in Brazil, Nepal, Romania and South Africa on the implementation of Action Plans to combat racial discrimination and xenophobia (see box 3.6).

249. A partnership agreement was signed in 2008 between the ILO and the French authority responsible for combating discrimination and promoting equality (HALDE), with a view to developing research, studies and exchanges to evaluate and compare the practices of French companies in the field of non-discrimination and the promotion of equality. In order to assess the level of awareness and knowledge

15. C. Hein and N. Cassirer: *Workplace solutions for childcare* (Geneva, ILO, 2010).

16. These are available at www.ilo.org/public/english/region/eurpro/moscow/info/publ/index.htm, accessed 4 Feb. 2011.

Box 3.6**Elements included in Trade Union Action Plans to combat racial discrimination and xenophobia**

- Nepal Trade Union Congress: the design, publication and dissemination of awareness-raising materials, for distribution and display at the main departure points for migrant and potential migrant labour.
- National Trade Union Congress Cartel Alfa of Romania: a national study on the situation of the Roma population with the aim of developing a database to monitor the situation; and research regarding the inclusion of Romanian emigrants in the Italian and Spanish labour markets.
- Confederation of South African Workers' Unions: two national workshops, in two different provinces, for affiliates of CONSAWU and their members who serve on employment equity forums and committees at the workplace, with special emphasis on national and international instruments that promote equality of treatment and opportunity, using ILO and UN standards as an entry point. Participants received training on the interpretation and implementation of employment equity and skills development law.
- Single Central Organization of Workers (CUT) of Brazil: a national three-day residential awareness-raising workshop organized jointly with the National Commission against Racial Discrimination.

in this field, an extensive opinion survey, the third in a series, was carried out in December 2009 and published in 2010. A major media campaign against racial discrimination in the workplace was launched with posters in the metro and commuter trains in Paris and six other major cities and on ferries to the United Kingdom and Ireland.

250. On indigenous peoples, a wide range of activities have been carried out at the national level particularly in Bangladesh, Cambodia, Cameroon, Indonesia, Kenya, Namibia and Nepal. In Cameroon, particular attention has been directed towards the inclusion of indigenous peoples' rights in the national poverty reduction strategy, as well as training, capacity building and dialogue with government officials and key social actors. In Cambodia, continued efforts were made to promote the implementation of legislation on indigenous communities' land rights and the elaboration of local development plans. In Nepal, a large-scale national programme is in place to assist the implementation of the principles set out in the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

251. The conclusions of an ILO study on the situation of indigenous peoples in 24 African countries were adopted by the African Commission on Human and Peoples' Rights at its 45th Session in 2009. A database containing background information, legislation, judicial decisions and other relevant materials underlying the study was created. A major publication, *Indigenous and Tribal Peoples' Rights in Practice – A guide to ILO Convention No. 169*, and a

casebook, *Application of Convention No. 169 by domestic and international courts in Latin America*, were produced and disseminated in several languages.

252. The Office made substantial contributions to the UN Durban Review Conference in 2009, including holding a side event on "Combating racism in the world of work" with the participation of trade union representatives from a number of countries.

Protecting migrant workers

253. In 2008, the ILO published the results of nationwide situation testing in the area of employment discrimination in France¹⁷ and Sweden.¹⁸ The report for France was widely covered in national and international news media and some business groups in the country, notably Casino Supermarkets Group and Adecco, the world's largest temporary employment agency, subsequently conducted internal discrimination testing using the ILO methodology.

254. Over the last four years, policy advice and technical assistance on the treatment of migrant workers have been provided for constituents in 36 member States. Among other outcomes, this work contributed to 12 ratifications of the relevant ILO Conventions and the drafting or adoption of comprehensive national labour migration policy frameworks or laws in 11 countries.

255. A training module was developed on migrant integration in workplaces for executives of

17. E. Cediey and F. Foroni: *Discrimination in access to employment on grounds of foreign origin in France: A national survey of discrimination based on the testing methodology of the ILO*, ILO International Migration Paper No. 85E (Geneva, ILO, 2008), available at www.ilo.org/public/english/protection/migrant/download/imp/imp85e.pdf, accessed 4 Feb. 2011.

18. K. Attström: *Discrimination against native Swedes of immigrant origin in access to employment: A research study on Stockholm, Malmö and Gothenburg, utilizing the ILO discrimination practice testing approach*, ILO International Migration Paper No. 86E, Geneva, ILO, 2007, available at www.ilo.org/public/english/protection/migrant/download/imp/imp86e.pdf, accessed 4 Feb. 2011.

international and local companies, in cooperation with the Irish Management Institute, and comprehensive guidebooks for employers and trade unions were produced on working with migrant workers. An online “practice profiles” database of 160 anti-discrimination and integration measures by governments, employers, trade unions, and civil society in 24 countries has also been developed and maintained.

256. The ILO has conducted research on non-discrimination and migrant integration together with the Organization for Security and Co-operation in Europe (OSCE) and co-published a policy guidance book, *Strengthening Migration Governance*.¹⁹ It has co-produced, with the OSCE and the International Organization for Migration (IOM), two regional editions of a *Handbook on establishing effective labour migration policies*.²⁰

257. The ILO also provided expert advice on matters of discrimination and equality of treatment for migrant workers to the UN Working Group of Experts on People of African Descent, the Durban Review process, the UN Committee on Migrant Workers, the UN Committee on Economic, Social and Cultural Rights, and the UN Committee on the Elimination of Racial Discrimination (CERD), as well as the EU Agency for Fundamental Rights and the Council of Europe's European Commission against Racism and Intolerance.

Protecting workers infected or affected by HIV

258. In June 2010, the International Labour Conference adopted the HIV and AIDS Recommendation, 2010 (No. 200), the first international labour standard on HIV and AIDS. It provides for protection against discrimination in recruitment and terms and conditions of employment, prohibits termination of employment on the basis of real or perceived HIV status, and stipulates that HIV testing or screening should not be undertaken for employment purposes.²¹

259. Technical cooperation projects were implemented by the ILO in a number of countries and regions with the aim of building capacity to deal with discrimination and other HIV- and AIDS-related issues. For example, in the context of a project in sub-Saharan Africa, financed by the Government of

Sweden, a workshop was held in 2008 for 30 magistrates, legal advisers and lawyers from Benin, Burkina Faso and Togo on the use of international labour law and international labour standards on HIV and AIDS. The project was designed to strengthen the political and legal frameworks of these countries to respond to HIV and AIDS, the primary objective being to strengthen the capacity of the social partners and other stakeholders.

Equal opportunities for persons with disabilities

260. A technical cooperation project in selected countries of East and Southern Africa, Asia and the Pacific, entitled “Promoting the Employability and Employment of People with Disabilities through Effective Legislation” (PEPDEL), supported the review of national legislation and policies and their effective implementation. Another project, “Promoting Decent Work for People with Disabilities through a Disability Inclusion Support Service (INCLUDE)”, which is funded by Ireland, is being implemented in Cambodia, Ethiopia, Kenya, Lao People's Democratic Republic, United Republic of Tanzania, Uganda, Viet Nam and Zambia. It plays an important role in sensitizing policy-makers and service providers from a human rights perspective, and provides technical advice regarding the inclusion of persons with disabilities.

Age discrimination

261. Discrimination based on age was discussed during the ILO Symposium on Business Responses to the Demographic Challenge, which was held on 28 and 29 April 2009. The symposium brought together researchers and leading thinkers from the business community and major companies.²² A recent training package on ageing is designed to assist employers' organizations and enterprises in the development of programmes and policies that create decent and productive conditions of work and employment for older workers. It aims to demonstrate how the retention and recruitment of such workers can be an integral and compatible part of competitive and productive enterprise management.

19. OSCE and ILO: *Strengthening migration governance* (Geneva, ILO, 2009).

20. OSCE, IOM and ILO: *Handbook on establishing effective labour migration policies*, Mediterranean Edition, available at www.ilo.org/public/english/protection/migrant/download/osce_iom_ilo_medhandbook_en.pdf. The 2006 edition, adapted for Eastern Europe and Central Asia, is available at www.ilo.org/public/english/protection/migrant/download/osce_handbook_06.pdf, accessed 4 Feb. 2011.

21. Paras 16, 24 and 25.

22. ILO: *Report on the ILO Symposium on Business Responses to the Demographic Challenge* (Geneva, 2009), pp. 11, 18.





Part IV

Towards an action plan

262. An assessment of activities and their impact over the last four years shows clearly that more equality policies and action plans have been adopted and implemented at both the national and enterprise levels. A number of governments have recognized the need to harmonize their national legislation with ILO Conventions; judges have made more references to ILO Conventions in their case reviews; constituents are more aware and knowledgeable of their role in addressing the issues; and ILO tools and guides are being consulted more regularly. It is also clear, however, that the implementation of the principle of non-discrimination remains a challenge. The long-term impact and sustainability of what has been achieved to date will require continued commitment and investment of resources.

263. In the light of the crucial place occupied by the fight against discrimination in the ILO mandate, the lessons learned from past work, and the continuing challenges identified in this Report, this section points the way to a framework for future action by the ILO and its constituents. A combination of measures will be required. The ILO should assist in the improvement and enforcement of laws, the establishment of advisory and monitoring institutions, the adoption of appropriate national policies and administrative measures, and in capacity building to undertake situation analysis. Better communications and advocacy, research, collection of sex-disaggregated data and assistance to workers' and employers' organizations in the promotion of non-discrimination, should also be an integral part of ILO action.

264. In line with the ILO Declaration on Social Justice for a Fair Globalization, and relying on all means of action at the Organization's disposal, including standard-setting, technical cooperation, research and dissemination of information, it is proposed that the ILO should consolidate its

achievements and support its constituents by: (a) promoting the relevant ILO instruments, including universal ratification of the two core Conventions on equality (Conventions Nos 100 and 111); (b) developing and sharing knowledge on the elimination of discrimination in employment and occupation; (c) further developing the institutional capacity of ILO constituents to support more effectively the implementation of the fundamental right of non-discrimination at work; and (d) strengthening international partnerships with major international actors on equality.

265. Within these proposed priority areas of action, particular attention will continue to be paid to equal remuneration between men and women, racial and ethnic discrimination, and equitable treatment of migrant workers. To promote progress and sustainability most effectively, the Office should continue to focus its efforts on specific themes and not risk spreading its already scarce resources too thinly. The discussion of these elements by the Conference will also guide the preparation of the non-discrimination component of the recurrent discussion on fundamental principles and rights at work by the Conference in 2012.

Promoting the relevant ILO instruments

266. The ILO is close to attaining the goal of universal ratification of the two core Conventions on equality, Conventions Nos 100 and 111. Their ratification levels are at over 90 per cent of ILO membership. This impressive figure demonstrates the positive results of work undertaken to extend protections provided in the Conventions to all women and men.

267. However, as discussed earlier in the Report, challenges remain for the universal ratification of

these core Conventions on equality and still more in respect of their full application. In order to address these challenges, the ILO should continue to promote social dialogue at the national and regional levels and respond to the requests made by non-ratifying countries for ILO technical assistance. Given the links between poverty and discrimination, efforts deployed on equality should be aligned with international poverty reduction objectives. Accordingly, the ILO should continue to aim for universal ratification of these core Conventions by 2015, thereby contributing to the realization of Millennium Development Goal No. 1 (eradication of poverty and hunger).

268. In addition to promoting these two Conventions, the Office will also engage in the active promotion of the recently adopted HIV and AIDS Recommendation, 2010 (No. 200), which addresses specific forms of discrimination. The ILO will continue to implement the conclusions on gender equality at the heart of decent work adopted by the International Labour Conference in 2009,¹ and will promote wider ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It will also continue supporting implementation of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which contain strong equal treatment and non-discrimination provisions.

Developing and sharing knowledge on the elimination of discrimination in employment and occupation

269. One of the most persistent barriers to the elimination of discrimination at work is the lack of updated information and statistical data on the different grounds of discrimination and their intersections. While progress has been made on this issue, the quantity and quality of the information available varies dramatically from one country or region to another.

270. Producing qualitative and quantitative data on discrimination requires sound expertise, as well as economic and human resources, and in some countries, it requires political blockages to be overcome. Failure to collect accurate data compromises

the effectiveness of national, regional, and international action on equality at work. An increased supply of accurate information will contribute significantly to a better understanding of the persistent gap between laws on non-discrimination and their effective implementation. It will also help us to monitor and evaluate the results of policies and programmes on equality, and maximize the impact of the human and financial resources allocated for the elimination of discrimination at work. In this regard, the development of additional decent work indicators related to non-discrimination will also be explored.

271. To this end, ILO action should focus on further developing the capacities and methodologies needed to enable national statistical offices, research institutes and equality bodies to collect and analyse relevant information. Building the capacity of labour statisticians and improving labour market information systems to systematically collect and present better sex-disaggregated data on the main grounds of discrimination should be a focus. At the global level, the ILO should aim to better integrate its unique and specialized expertise on the different grounds of discrimination in employment and occupation in its research work and to provide practical guidance on the legal and institutional challenges.

272. If data are lacking with respect to specific grounds of discrimination, they are even scarcer with respect to multiple discrimination.² The Office will pay particular attention to ensuring that anti-discrimination data collection is attentive to the complex and multi-dimensional identities of those most vulnerable to discrimination, with a view to developing more appropriate policies to tackle discrimination, especially among the poorest and most marginalized members of society.

273. Promoting a knowledge-sharing component in South–South and North–South cooperation, and networks between ILO constituents, and specialized institutions dealing with non-discrimination and equality, should be an area of focus for future activities. An online knowledge-sharing platform could be explored to collect and disseminate research and data on different grounds of discrimination at the workplace.

274. Another focus could be the development of ILO capacity to undertake, together with constituents, an analysis of the challenges at the national level

1. ILO: *Report of the Committee on Gender Equality*, resolution concerning gender equality at the heart of decent work, *Provisional Record* No. 13, International Labour Conference, 98th Session, Geneva, 2009.

2. S. Fredman: “Positive rights and duties: Addressing intersectionality”, in D. Schiek and V. Chege (eds): *European Union non-discrimination law: Comparative perspectives on multidimensional equality law* (London, Routledge-Cavendish, 2008), p. 84.

regarding the elimination of discrimination, and to provide advice on how these may be addressed. The ILO should support constituents by compiling and sharing operational guidance, through manuals, handbooks, and toolkits, for employers and trade unions in particular, as well as maintaining and expanding user-friendly databases.

Developing the institutional capacity of ILO constituents to effectively implement non-discrimination at work

275. Over the previous four years, many member States have dedicated considerable effort and resources to the establishment of institutions dealing with the implementation and enforcement of the fundamental right to non-discrimination in employment and occupation. Employers' and workers' organizations have also pursued their efforts to eliminate discrimination and to manage diversity at the workplace in a more consistent and coherent manner. In many cases, however, in spite of demonstrated commitment, many of them are faced with capacity constraints. Experience has shown that the challenges they confront range from a scarcity of staff and financial resources to inadequate mechanisms for coordinating their work at the national and local levels and a lack of cooperation and consultation with target groups. The elimination of discrimination will be elusive if the responsible institutions cannot operate effectively and complaints procedures and dispute mechanisms are inadequate.

276. In addition to providing continuous direct policy advice, it is crucial to increase ILO technical cooperation on capacity building for its constituents. In collaboration with the ILO's International Training Centre, training programmes on non-discrimination and equality should continue to be available to national authorities, employers' and workers' organizations and other national actors dealing with issues of equality at work. The use of the Participatory Gender Audit (PGA) as a self-assessment tool to promote individual and organizational learning on gender mainstreaming and equality will continue to be promoted. Following the launch of the first issue of "promoting equity" on gender-neutral job evaluations, similar user-friendly tools on other grounds of discrimination will be produced.

Strengthening international partnerships with major international actors on equality

277. The ILO has a major responsibility in steering and contributing to international action on the elimination of discrimination and inequality in the workplace. This role is even more crucial at times when market uncertainty, high unemployment levels and endemic poverty, may erode or slow down national and regional efforts to guarantee equal opportunities and treatment in employment and occupation for all. By invigorating international action on equality, the ILO will support its constituents in upholding their national commitments on this issue, while potentially catalysing more substantial progress at the national, regional, and international levels.

278. The inherent complexities related to the elimination of discrimination in employment and occupation need to be reflected in the work of the UN system. Efforts should be oriented towards building or improving partnerships and collaboration with other UN agencies with a view to "delivering as one" in the area of research and global advocacy. Those efforts contribute to a better interconnection of action on the elimination of discrimination at work with international goals on the reduction of poverty and social exclusion.

279. Working together in the interests of delivering as one represents an opportunity to project the voice of tripartism in UN action on equality and non-discrimination. The ILO should strive for better cooperation with other UN agencies active in the field of equality and non-discrimination, including the Anti-Discrimination Unit in the Office of the UN High Commissioner for Human Rights, the UN Entity for Gender Equality and the Empowerment of Women and the relevant UN treaty supervisory bodies and special mechanisms; continue to ensure that Decent Work Country Programmes (DWCPs) are reflected in United Nations Development Assistance Frameworks (UNDAFs); and, wherever possible, mainstream the principles of non-discrimination and gender equality. The Office should also continue to exchange and cooperate with relevant regional bodies such as the European Commission against Racism and Intolerance of the Council of Europe and the European Union Agency for Fundamental Rights.

280. Finally, the ILO needs to have a coherent and integrated approach to address non-discrimination and equality. A number of countries have already included these issues as a priority in their DWCPs to provide a platform for the ILO to support national action. It is important that others also consider including non-discrimination in their DWCPs.

281. To quote the Declaration of Philadelphia, “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”. Over a long history of almost a century, the ILO has shown itself to be a leading force in combating non-discrimination and promoting equality; it must remain a recognized leader in that area. In

the current context of crisis and of post-crisis policies, discrimination and exclusion combined with growing poverty and social inequalities call for reinvigorated action. The ILO must, on the basis of the collective commitment and will of its constituents, join forces with governments, social partners and international bodies to respond to the challenges and to ensure that the universal right to non-discrimination in employment and occupation is upheld.