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**UN Committee on the Elimination of All Forms of Racial Discrimination – CERD**

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**Discrimination against Migrant Workers  
Global Trends, Responses, Challenges and Ways Forward  
Today and Tomorrow**

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## Introduction

### A century of confronting discrimination against migrants

Challenges of global mobility of people –of labour—have affected and reshaped societies since long before the emergence of modern Nation States in the late 18<sup>th</sup> Century. Migration of labour has played crucial roles in construction of many of today's industrialized countries, and has constantly transformed and diversified national societies ever since.

International concern about the risks faced by workers outside their country of citizenship was formally recognized a century ago in the Treaty of Versailles in 1919.<sup>1</sup> Since then, a long process has expanded and extended the definition of human and labour rights and their application to non-nationals, particularly migrant workers, in foreign lands.

Universal principles of non-discrimination and equality of treatment were explicitly applied to authorized foreign workers in the ILO convention on migrant workers of 1949<sup>2</sup>. Subsequently, application of universal human rights and labour standards to all migrant workers was made explicit in the ILO Convention on migrant workers of 1975.<sup>3</sup>

Evolution of the legal framework has been accompanied by adoption of international political declarations, programmes of action and expressed political commitments to implement and realize legal standards. International consensus building that extends protection and equality of treatment to migrant workers has been echoed, complemented and sometimes preceded by regional accords and regimes.

As conditions worldwide have become more competitive and deregulation has tempered application of standards, abuse and exploitation of migrant workers has become more apparent. Meanwhile, numerous examples indicate widening adoption of international standards and practices that prevent discrimination and improve protection of migrants rights. However, the realities and trends in treatment of migrants remain little documented.

This report seeks to tell two interconnected stories: what discriminatory treatment migrants face today around the world, and what's being done to strengthen decent treatment for migrant workers and their families.

The report is a first attempt to compile data on discrimination and xenophobia confronting migrant workers with a worldwide scope.

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<sup>1</sup> The Treaty of Versailles of 1919 that ended World War I.

<sup>2</sup> ILO Migration for Employment Convention (Revised), 1949 (No. 97)

<sup>3</sup> ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

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## The Global Context of Internationalized Labour Mobility

Today, migrant workers make up increasing proportions of the work force in a growing number of countries worldwide. Their presence and employment are critical to economic welfare and growth wherever they are engaged. Forecasts indicate that international labour and skills mobility will increase further in the coming years.

ILO estimated that, in 2010, 105 million of the total 215 million people living outside their countries of birth or citizenship for a year or more were economically active, engaged in the world of work.<sup>4</sup> This involved most working-age adults in this population. Taking into account children and aged dependents, this means that today, some 90% of migration is bound up with work and employment.

These figures do not account for short-term, temporary or seasonal migrants, such as Uzbek workers in Kazakhstan, Guatemalans in Mexico, Mozambicans in South Africa, Poles in Portugal, and Jamaicans in Canada. There are no reliable estimates of global numbers of migrants in seasonal and short-term migration situations.

Evolution and diversification of technology along with transformations and relocation of industrial processes are constant features of the world of work today. In addition, the organization of work itself continues to change. These evolutions require ever-greater complexity, diversity and specialization in the competencies and skills of work forces in each and every country.

International mobility of skills and labour is making significant contributions in more than 100 countries by providing skilled labour, new technological competencies, and labour force. These contributions sustain otherwise non-viable sectors or enterprises, provide otherwise unavailable health care, and ensure adequate labour in agriculture, construction, hotel and restaurant, cleaning and maintenance, tourism, and other sectors.

Foreign born workers now comprise about 10% of labour forces in Western European countries and around 15-18% in immigration countries of Australia, Canada and the USA. Taking into account offspring of immigrants arrived since the 1960s gives figures of around 20% of work forces "*issue de l'immigration*" in numerous industrialized countries. Proportions in some countries in Africa, Asia and the Americas are similar or higher. Several countries in the Gulf region rely on foreign workers for up to 90% of their work forces.

Current forecasting data indicates that international labour and skills mobility will expand in the coming years. For an increasing number of countries, the size, composition and age profile of the entire 'native' work force is declining in number, increasing in age, constricting in breadth of competencies, and diminishing relative to increasing numbers of retired people. Demographic trends anticipating reduction in national work forces are occurring in all regions.<sup>5</sup>

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<sup>4</sup> ILO estimates cited in *A Fair Deal for Migrant Workers in the Global Economy*. International Labour Organization, 2010.

<sup>5</sup> Current forecasts show China's work force declining by 29 million persons by 2020; it began to decline for the first time in history in 2012. Algeria, Argentina, Armenia, Azerbaijan, Brazil, Colombia, Indonesia, Iran, Republic of Korea, Peoples Democratic Republic of Korea, Lebanon, Mauritius, Mexico, Morocco, Peru, Qatar, Saudi Arabia, Singapore, Tunisia, Turkey, Vietnam, United Arab Emirates --among others-- have reached zero population growth fertility rates by 2014. Work forces in all these countries are ageing and begin to decline in coming years.

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Within a few years, more countries in Asia, Latin America, the Middle East and North Africa will become net recruiters of foreign skills and labour, as is the case today with many industrialized countries in Asia, the Americas, Eurasia and Europe. These trends inevitably make the issues of diversity, discrimination and integration regarding migrant workers central policy challenges in many more countries.

Cross border labour mobility has become an important component of regional integration and development around the world. Today more than 120 countries are members of 13 regional economic integration or common market schemes in which labour circulation among member countries is formalized or currently being negotiated.<sup>6</sup> Elaboration of agreements for these regimes generally includes explicit rules and practice of non-discrimination and equality of treatment for nationals of the member countries.

### **Discrimination, Employment and Integration: Globalized Issues**

One of the most visible challenges of migration is the change and diversity it brings to destination countries. Immigration, whether long or short term, inevitably introduces people with different ethnic, cultural, racial, religious and linguistic identities than those historically dominant in host countries. Many nation states were constructed around notions of national identity associated with particular, often homogeneous ethnic, racial, religious and cultural features.

If not adequately governed, immigration and the diversity it brings will give rise to social tensions, especially when migrants come from cultures and religions visibly distinct from the country to which they migrate. Preventing these tensions, obtaining integration and ensuring social cohesion depend on implementing the universal norms of non-discrimination and equality of treatment, which in turn require a regulatory framework and legislative action.

Equality of treatment is both a question of values and a guarantor of social cohesion and economic welfare. Discrimination –unjustified differential treatment–prevents equal opportunity, provokes conflict within the population and undermines social cohesion. Discrimination reinforces attitudes that constrain certain identifiable groups to marginalized roles and poor conditions. The results of consistent denial of employment opportunities, relegation to ghettos, lack of education, absence of police protection, and multiple *discriminations* in community life are exclusion and ultimately, breakdown of social cohesion.

Considerable research has documented the serious impact of discrimination. Repeated, reinforced discrimination leads to depression, apathy, resignation, and marginalization. When people—and groups-- are consistently denied employment opportunities, and when they are also confined to ghettos, provided inferior education or training opportunities, perceive law enforcement as providing little protection, and face discrimination in other aspects of community

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<sup>6</sup> Andean Pact (4 member countries); Association of South East Asian Nations -ASEAN (10 member States); Caribbean Community -CARICOM (15 members); Central America Integration System -SICA/CAIS, (7 members, 1 associate); Common Market for Eastern and Southern Africa -COMESA (19 members); Commonwealth of Independent States -CIS (11 members); East Africa Community -EAC (5 members); Economic Community of West African States -ECOWAS (15members); Eurasian Economic Community -EAEC (6 members); MERCOSUR (4 members, 6 associated States), South Asian Association for Regional Cooperation -SAARC (8 participating countries); and Southern Africa Development Community -SADC (15 members). Several communities overlap with others meaning that some countries are members of two regional integration processes.

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life, the combination adds up to a powerful recipe for exclusion, the antithesis of inclusion that is the fundamental notion of integration.<sup>7</sup>

Employment --work in decent conditions—is central to everyone’s participation in society, to their independence, to individual self-support, to identity and to dignity. For citizens, for residents, and for newcomers alike, employment is central to social and economic integration. As an opinion of the European Economic and Social Committee (EESC) puts it, “Employment is a key part of the integration process, because decent jobs are vital to immigrants' self-sufficiency, and they enhance social relations and mutual understanding with the host society.”<sup>8</sup>

However, migrants are widely perceived as exploitable and expendable, a source of cheap, docile and flexible labour, apt for the 3-D (dirty, dangerous and degrading) jobs nationals are unavailable for or unwilling to take. The risk for migrant workers of differential and discriminatory treatment leaves them vulnerable to being underpaid, unprotected from workplace safety and health risks, hired and dismissed on a moments notice, and unable to join or organize unions. The crisis makes migrant labour more attractive for some employers who seek advantages by paying vulnerable foreigners less than prevailing wages and by ignoring safety and health protections.

Discrimination prevents integration in societies with diverse populations. In some countries, the consequences of past policies that neither anticipated nor prevented discrimination can be seen in ethnic ghettos, high unemployment, low school attainment, higher violence and crime rates. As with ethnic and other minorities, the longer migrants and their offspring live and work in a society that doesn’t deliberately include them, the more likely it is that prejudice and discrimination prevent them from reaching similar economic and educational attainments as the majority population. In some countries, the accumulated effects of discriminatory acts in the past have led to a contemporary environment that is itself discriminatory.

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<sup>7</sup> Taran, P. “Clashing Worlds: Imperative for a Rights-Based Approach to Labour Migration in the Age of Globalization.” in Globalization, migration and human rights: international law under review, Volume II. Geneva Academy of International Humanitarian Law and Human Rights. Bruylant, Brussels 2007

<sup>8</sup> Opinion of the European Economic and Social Committee *on Immigration in the EU and integration policies: cooperation between regional and local governments and civil society organisations*, Adopted 13 September 2006. Brussels. Paragraph 8.1

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## Chapter 1: Legal norms and policy frameworks on discrimination against migrant workers

Non-discrimination is one of the most fundamental rights, reiterated in all core International Human Rights Conventions, and generally in International Labour Standards.

Non-discrimination provisions are at the start and the heart of all international human rights instruments, many of these widely ratified worldwide. These include the:

- ▲ Universal Declaration of Human Rights, Article 2.
- ▲ International Covenant on Civil and Political Rights, Article 2
- ▲ International Covenant on Economic, Social and Cultural Rights, Article 7
- ▲ International Convention on the Elimination of All Forms of Racial Discrimination
- ▲ International Convention on the Elimination of All Forms of Discrimination Against Women

Special concern for the protection of workers outside their countries of citizenship was recognized in the Treaty of Versailles of 1919 and the ILO Constitution. The application of universal principles of non-discrimination to migrant workers was subsequently spelled out in the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the 1990 International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, as well as in the 1998 ILO Declaration on Fundamental Principles and Rights at Work.

### • 1.1 What is discrimination?

Discrimination is defined in the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin” (and any other criteria that may be defined at the national level), “which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation,” unless based on inherent requirements of the job.<sup>9</sup>

ILO Convention No. 111, while referring specifically to employment and occupation, was the first major international instrument specifically on discrimination. All other international instruments on discrimination are consistent with its approach, though additional grounds on which it is prohibited to discriminate have been steadily added over time. Enumeration of prohibited grounds of distinction in the various Conventions is illustrative and not exhaustive. The International Convention on Rights of Migrant Workers incorporated *nationality* grounds to the listings found in earlier treaties and conventions.

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<sup>9</sup> ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Art. 1(1)(a) and (b), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312256:NO)

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Freedom from discrimination, at work and in life, is one of the principal human rights that must be respected for everyone, migrant workers and nationals alike, and for documented as well as undocumented migrant workers. It implies that migrant workers should be treated on the basis of equality with national workers in employment in most respects, although there are limits on how far this must extend, and some differences according to the legal status of the migrant.

The right to freedom from discrimination implicitly confers right to equal treatment, requiring that all persons be treated equally before the law, without discrimination. The symbiotic principles of equality and non-discrimination guarantee that those in equal circumstances are treated equally in law and practice. The intent sought under international law is to create general equality of opportunity and treatment among all persons in society and particularly in labour markets.

It can be said that discrimination is *unjustified differential treatment*. There are situations where differential treatment is merited or required, for instance when women, children or members of minorities need special protection because they are at greater risk of discrimination or abuse, or where persons face differential risks of exposure to workplace hazards because of gender or age. Similarly, choices made on the basis of different qualifications or levels of competencies among workers or job candidates are not considered to be prohibited discrimination.

However, not every difference or distinction in treatment amounts to discrimination. Differences in treatment may occur, but they must have an objective and reasonable justification and there must be proportionality between the aim sought and the means employed.

- **1.2 Risks of migrant workers and their families to discrimination**

Migrant workers are particularly at risk of discrimination because they are non-citizens and they are often of a different ethnicity, race or religion from the native or dominant population of the countries to which they migrate.

Migrants' situations as non-nationals or non-citizens often leave them less protected under law. Additionally, as persons less familiar with local language, law and support systems, and in many cases as visible minorities, migrant workers tend to be perceived and treated as exploitable and expendable cheap, docile, flexible labour. These conditions contribute to risks of migrant workers being subject to differential and discriminatory treatment. Such treatment may entail being underpaid, provided with inadequate or no workplace safety and health protections, and hired and dismissed 'on a moments notice.' Under these conditions, expression of freedom of association and collective bargaining rights may be difficult, intimidated or otherwise rendered impossible. Numerous distinct forms and circumstances of discrimination against migrant workers are discussed in Chapter 3; examples are provided in Chapter 4.

A further manifestation of discrimination is racist and xenophobic hostility directed against migrants and immigrant and/or immigrant origin populations, particularly those whose appearances and backgrounds are visibly different from the 'norm' of the host society. The threatening impact of anti-immigrant, anti-foreigner anti-minority discourse as well as physical violence ranging up to outright murder cannot be underestimated.

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Xenophobia is defined by the Merriam Webster dictionary as: “fear and hatred of strangers or foreigners or of anything that is strange or foreign”<sup>10</sup> It is manifested in dehumanizing or scapegoating public discourse regarding foreigners and immigrants, aggressive treatment, and physical violence -or threats of violence- against foreigners. Overt attacks on property, homes, businesses, community centres, and religious places identified with foreigners constitute especially serious manifestations of discriminatory treatment. Their occurrence in the public sphere makes these manifestations of extreme discriminatory treatment especially threatening because they represent visible negations of humanity and human rights protections in society as a whole. Tolerance of xenophobic behaviour in public discourse and/or by inaction of authorities to prevent and prosecute transgressions compounds the threats to individuals, to entire communities, and to social cohesion.

This phenomenon is serious and generalized. The 2009 Review Conference for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance gave it particular attention in its concluding declaration, urging States:

“[...] to prevent manifestations of racism, racial discrimination, xenophobia and related intolerance at country border entry areas, in particular *vis-à-vis* immigrants, refugees and asylum seekers, and in this context encourages States to formulate and implement training programmes for law enforcement, immigration and border officials, prosecutors and service providers, with a view to sensitizing them to racism, racial discrimination, xenophobia and related intolerance [...]”<sup>11</sup>

The Conference further urges States: “[...] to take measures to combat the persistence of xenophobic attitudes towards and negative stereotyping of non-citizens, including by politicians, law enforcement and immigration officials and in the media, that have led to xenophobic violence, killings and the targeting of migrants, refugees and asylum-seekers [...]”<sup>12</sup>

Hostile behaviour and outright violence -whether highly visible or discreet- have a specific impact on intimidating workers. Intimidation by threats of violence and violence itself translates into pressure on migrants to accept indecent work and precarious employment conditions without protesting. It discourages affiliating in unions to obtain decent conditions and remuneration through collective representation and bargaining. It further polarizes workers into distinct camps perceived as competing with each other and with little basis to cooperatively press for decent work for all.

### 1.3 Main aspects of discrimination against migrant workers

Discrimination against migrant workers involves several concerns of law and practice: discrimination based on migrant status and/or nationality, the general human right to be free from discrimination, and multiple discrimination faced by migrant women among them. The situation faced by migrant domestic workers entails particular risks and vulnerabilities.

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<sup>10</sup> Merriam-Webster dictionary on-line, at <http://www.merriam-webster.com/dictionary/xenophobia> (accessed 11-4-13)

<sup>11</sup> Outcome document of the Durban Review Conference, at <http://www.un.org/durbanreview2009/conference.shtml>.

<sup>12</sup> Ibid.

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### ⤴ Discrimination based on nationality

Discrimination based on nationality is a major aspect of unjustified differential treatment suffered by migrant workers. Open-ended non-discrimination clauses in international and regional human rights instruments have been interpreted to outlaw unjustifiable distinctions between persons based on nationality. These include:

- ⤴ Article 2 of the Universal Declaration of Human Rights,
- ⤴ Articles 2 and 26 of the International Covenant on Civil and Political Rights,
- ⤴ Articles 1 and 24 of the American Convention on Human Rights and
- ⤴ Article 2 of the African Charter on Human and Peoples' Rights.
- ⤴ Article 14 of the European Convention on Human Rights (ECHR), while not explicitly referring to nationality, has been interpreted by the European Court of Human Rights as prohibiting discrimination based on nationality.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families formally recognized *nationality* as a prohibited ground, explicitly listed in Articles 1 and 7 regarding applicability and non-discrimination.

In internationalized labour markets and populations, nationality discrimination undermines not only social cohesion, but also economic stability, labour market coherency and decent work conditions. Tolerance of discrimination that excludes certain workers from equality of treatment allows -sometimes explicitly- for discriminated groups to be exploited at sub-standard wages and conditions and exempted from protection under law. This in turn spurs worsening working conditions, productivity losses, unfair competition among employers, and conflicts among workers and social groups.

Discriminatory practices arise from legislation and policies as well as practical measures. Examples commonplace in law and practice include: legal provisions permitting lower wages and social security coverage for migrant workers; restrictions on lawfully present migrants holding public sector jobs even in areas such as public health where they are needed; discriminatory behaviour by employers such as job advertisements and hiring practices explicitly requesting only national citizens or mother-tongue language speakers; and residence requirements which discriminate indirectly against newly arrived or temporary migrant workers. Attitudes of nationality discrimination are also expressed in workplace behaviour, such as rules in companies with foreign employees that make any use of languages other than the local one grounds for dismissal.

A contemporary dilemma is identifying whether discrimination faced by migrant workers is exclusively based on their nationality or perceived nationality, or on racial, ethnic or other visible differentiations, or a combination of these factors. This makes the explicit prohibition of nationality discrimination crucial to prevent allowing nationality or perceived nationality to serve as pretext or cover for discrimination motivated by other unlawful differentiations.

Free movement regimes in regional economic integration spaces are necessarily broadening legal constraints against nationality discrimination. 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. While its application to unjustified differential treatment of other *third country* non-nationals is ambiguous, legal provisions prohibiting discrimination based on nationality have been adopted in a number of EU countries, including

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Belgium, Bulgaria, Czech Republic, Ireland, the Netherlands, Poland, Portugal, Romania, Slovenia, Spain and the United Kingdom.

- **Non-discrimination in application of labour standards**

International law establishes that, once established in a country with authorization for employment, there should be no difference in treatment between migrant workers and national workers, either in general or in terms and conditions of employment such as wages, benefits, opportunities for advancement, occupational safety and health, etc.

While this is evident regarding migrants with authorized entry, residence, and employment, the ILO Committee of Experts and international Courts have reinforced the notion that application of International Labour Standards in the workplace is universal to all workers who are in an employment relationship, regardless of immigration status.

The Inter-American Court of Human Rights sets an important juridical precedent in issuing an opinion on 17 September 2003 which clearly reinforced the application of the principles of non-discrimination and equality of treatment in application of international labour standards to non-national workers, including those in irregular status.<sup>13</sup>

The Court found that non-discrimination and the right to equality are *jus cogens* applicable to all residents regardless of immigration status. Non-discrimination and the right to equality, the Court said, dictate that States cannot use immigration status to restrict the employment or labor rights of unauthorized workers, giving unauthorized workers *inter alia* equal rights to social security (see paragraph 157). The Court acknowledged that governments have the right (within the bounds of other applicable human rights norms) to deport individuals and to refuse to offer jobs to people without employment documents. However, the Court said, once the employment relationship is initiated, unauthorized workers become rights holders entitled to the full panoply of labor and employment rights available to authorized workers.<sup>14</sup>

International law, however, does not constrain the authority of States to determine whom they legally admit and/or authorize to remain on their territory and obtain employment; governments retain authority to regulate who can enter and take up residence and/or employment, and under what conditions.

Secondly, while distinctions can be made between migrant workers and nationals, and between nationals of member countries in regional integration spaces *vis-à-vis* “third country nationals” in granting residence permits, these distinctions must be based ONLY on the fact that a person is a non-national migrant worker, and not on other prohibited distinctions (grounds of discrimination) such as nationality, race, religion or sex.

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<sup>13</sup> Corte Interamericana de Derechos Humanos. *Condición Jurídica y Derechos de los Migrantes Indocumentados* Opinión Consultativa OC-18/03 de 17 de Septiembre de 2003, solicitada por los Estados Unidos de Mexico.

<sup>14</sup> As reported by Beth Lyons, (USA) National Employment Law Project, September 28, 2003

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- **Women migrant workers: double discrimination**

The United Nations Committee on the Elimination of Discrimination against Women issued a General Recommendation in 2009 on the situation and issues facing migrant women. The following passages highlight risks of discrimination that illustrate vulnerability of women migrants to multiple discrimination:

(13) Once they reach their destinations, women migrant workers may encounter multiple forms of *de jure* and *de facto* discrimination. There are countries whose governments sometimes impose restrictions or bans on women's employment in particular sectors. Whatever the situation, women migrant workers face additional hazards compared to men because of gender-insensitive environments that do not allow mobility for women, and that give them little access to relevant information about their rights and entitlements. Gendered notions of appropriate work for women result in job opportunities that reflect familial and service functions ascribed to women or that are in the informal sector. Under such circumstances, occupations in which women dominate are, in particular, domestic work or certain forms of entertainment.

(15) Because of discrimination on the basis of sex and gender, women migrant workers may receive lower wages than do men, or experience non-payment of wages, payments that are delayed until departure, or transfer of wages into accounts that are inaccessible to them.

- **Migrant domestic workers**

Migrant domestic workers have been recognized as particularly at risk of discrimination, abuse and exploitative working and living conditions. In June 2011, the ILO adopted the first international standard specifically on domestic workers, **Convention No. 189 on Decent Work for Domestic Workers**. It includes a number of provisions intended to improve protection and ensure equality of treatment for many domestic workers who are foreigners (migrant workers) in their place of employment.

#### **1.4 The legal framework for non-discrimination regarding migrant workers**

A coherent and comprehensive legal framework for non-discrimination and equality of treatment under the rule of law has been elaborated over the last century. Application of its universal principles to migrant workers and their families has been progressively recognized. The international instruments and policy recommendations listed in this chapter have been elaborated by States at global and regional levels. Together, they provide the foundations –and relevant legal texts- for national law, policy and practice applicable in all countries.

The CERD and ILO Convention No. 111 lay out anti-discrimination and equality of treatment norms, particularly as they apply to the world of work. Additionally, three specific instruments address equality of treatment and non-discrimination for migrants: ILO Conventions No. 97 and No. 143 and the 1990 International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. It is said that these instruments comprise an *international charter on migration* by providing a broad normative framework covering both treatment

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of migrants –including non-discrimination—and inter-State cooperation on regulating migration. They provide definitions and legal text for national law. They also articulate an agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, integration, and orderly return. Specific text on non-discrimination from each of these instruments is cited following:

As of mid-2015, 87 States have ratified at least one of the three complementary Conventions cited above; another 11 have signed the ICRMW, making a total of 97 countries formally committed to implementing these standards in national law.

### Regional instruments

The general principle of non-discrimination and equal treatment is contained in several comprehensive regional human rights instruments, namely: the **African Convention on Human and Peoples Rights**, Articles 2 and 3, the **ASEAN Human Rights Declaration**, Articles 3 and 9<sup>15</sup>, the **European Convention on Human Rights** and the (Inter)American Declaration on Human Rights, Article 2. These regional instruments provide for human rights and specifically non-discrimination protection to both citizens and non-citizens in States parties (ratifying countries).

The **Andean Instrument on Labour Migration** adopted in 2003 includes a broad non-discrimination provision with specific mention of nationality.<sup>16</sup> Article 10 reads:

“The principle of equal treatment and opportunities for all Andean migrant workers within the Community space is recognized. In no case shall they be subjected to discrimination by reason of their nationality, race, sex, creed, social status or sexual orientation.”

The **Inter-American Court on Human Rights** addressed the principle of equality and non-discrimination related to non-nationals in two judicial Opinions: Advisory Opinion No. 4 on “*Proposed Amendments to the Naturalization Provisions of the Political Constitution of Costa Rica*” and Advisory Opinion No. 18 on “*Juridical Conditions and Rights of the Undocumented Migrants*.” The latter stated that States may not “subordinate or condition observance of the principle of equality before the law and non-discrimination to achieving their public policy goals, whatever these may be, including those of a migratory character.”

The **European Convention on the Status of Migrant Workers**, adopted in 1977, is based on the premise that “the legal status of migrant workers who are nationals of Council of Europe member States should be regulated so as to ensure that as far as possible they are treated no less favourably than workers who are nationals of the receiving State in all aspects of living and working conditions” (preamble).

The **European Union** adopted several Directives -legal norms its member States are required to implement- on discrimination and migration matters. The **EU Race Equality Directive of 2000** in particular requires non-discrimination in treatment on basis of national origin; a number of States explicitly incorporated *nationality* grounds in national legislation implementing this Directive.

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<sup>15</sup> ASEAN is the Association of South East Asian Nations. Text of Declaration at: <http://www.asean.org/news/asean-statement-communicues/item/asean-human-rights-declaration>

<sup>16</sup> Text in English at: <http://www.comunidadandina.org/ingles/normativa/D545e.htm>

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Other regional groupings including the Caribbean Community *CARICOM*, the East Africa Community *EAC* common market, the Economic Community of West African States *ECOWAS*, and the South America *MercoSur* common market have elaborated treaty agreements on circulation of people that include provisions on legal recognition and protection of member State nationals in other member countries. These provisions usually include reference to equality of treatment for community member nationals in other community States.

## 1.5 Policy Frameworks

Realization of universal international standards against discrimination and for equality of treatment and their extension to migrants has long been a preoccupation of international dialogue and consensus building.

Five major world conferences held over the decade 1993 to 2001 developed programmes of action and adopted recommendations for States that included provisions on discouraging discrimination against migrant and ethnic minority workers. These were the Vienna World Conference on Human Rights in 1993, the 1994 Cairo World Conference on Population and Development, the Copenhagen World Summit for Social Development in 1995, the Beijing World Conference on Women, 1995 and the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001. Relevant sections of the respective Programmes of Action offer specific, internationally negotiated guidance to States and other actors in elaborating appropriate measures for tackling discrimination regarding migrant workers and other non-nationals.

This guidance provides an ongoing framework within which policies and practices may be harmonised transnationally. Each of these conferences drew from and built upon previous events, implicitly constituting a larger and relatively consistent process that culminated with adoption of a broad and comprehensive programmatic agenda on treatment of migrants and refugees at the 2001 Durban World Conference. Regional preparatory conferences ensured inputs of proven working experience and perspective from Africa, Asia and MENA countries, Europe and the Americas.

The **Durban Declaration and Programme of Action**<sup>17</sup> adopted by the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 provides comprehensive policy and practical guidance on combating xenophobia and discrimination against foreigners including migrant workers. The 66 paragraphs in the two complementary outcome documents provide a blueprint of international standards, proven policy recipes, institutional approaches and practical measures on treatment of non-citizens. This policy guidance framework specific to non-nationals was abstracted into a reference document.

The ILO Multilateral Framework on Labour Migration<sup>18</sup> adopted in 2006 provides guidelines for how the principles on non-discrimination and equality established in binding international legal norms can be put into effect in the world of work by

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<sup>17</sup> Full text available online at: [http://www.un.org/durbanreview2009/pdf/DDPA\\_full\\_text.pdf](http://www.un.org/durbanreview2009/pdf/DDPA_full_text.pdf) (16-4-13)

<sup>18</sup> Text (English version) available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---migrant/documents/publication/wcms\\_178672.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_178672.pdf)

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policy and practical measures. Principle 14 of the fifteen guiding principles in the Framework specifically addresses discrimination, with a number of practical guidelines:

Governments and social partners, in consultation, should promote social integration and inclusion, while respecting cultural diversity, preventing discrimination against migrant workers and taking measures to combat racism and xenophobia.

Regional migration policy declarations and frameworks also generally include provisions committing concerned States to prevent discrimination against migrant workers.

### ***African Union***

The African Union adopted a broad strategic **Migration Policy Framework for Africa**<sup>19</sup> at its Banjul (Gambia) Heads of State Executive Council meeting in 2006. The policy framework includes a specific provision to “promote respect for, and protection of, the rights of labour migrants including combating discrimination and xenophobia...”

### ***Europe***

The Council of Europe Conferences of Ministers Concerned with Migration elaborated a policy framework on migration in successive meetings, most recently the 8<sup>th</sup> such event in Kiev in September 2010, with specific provisions for non-discrimination and equality of treatment. The EU agenda on non-discrimination and equality of treatment has been articulated through legal measures including the Directive mentioned above.

### ***Southeast Asia***

The ASEAN Declaration on rights and obligations of migrants makes explicit commitments by ratifying States receiving migrant workers to:

8. Promote fair and appropriate employment protection, payment of wages, and adequate access to decent working and living conditions for migrant workers;

9. Provide migrant workers, who may be victims of discrimination, abuse, exploitation, violence, with adequate access to the legal and judicial system of the receiving states.

These international instruments and global policy conference outcomes comprise a consistent and coherent global approach that evolved ever since concern for protection of workers outside their country of citizenship was first established on the international agenda a century ago.

## **Chapter 2: Identifying, documenting, measuring discrimination against migrant workers**

Identifying, documenting and measuring discrimination are fundamental to assessing whether, where, how and to what extent discrimination takes place.

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<sup>19</sup> Text at [http://www.iag-agi.org/bdf/docs/migration\\_policy\\_framework\\_for\\_africa.pdf](http://www.iag-agi.org/bdf/docs/migration_policy_framework_for_africa.pdf), see page 9

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Addressing these challenges with credible and reliable data is essential to ensure enforcement of the law and to elaborate and monitor effective policy to prevent discrimination and promote equality of treatment. An additional challenge is recognizing and dis-aggregating discriminatory behaviour among multiple grounds of discrimination; different grounds may require different preventative and enforcement approaches.

Analysis and literature distinguish between attitudes and behaviour. However, while *attitudes* cannot be proscribed but may be influenced over time, their manifestation in discriminatory *behaviour* is outlawed and can be discouraged, repressed and sanctioned under law.

### Documenting discrimination

Research on discrimination generally and on discrimination against migrant workers in particular has followed several main avenues of identifying, documenting and measuring discrimination. These include:

- ⤴ ***Measuring differential outcomes*** or performances and inferring where differences may signal impact of discrimination by regressive analysis of disaggregated statistical data on social, economic and other indicators correlating performance with distinct identified socioeconomic groups;
- ⤴ ***Empirical research*** that seeks to identify and assess incidences of discrimination. Studies often necessarily focus on specific forms of discrimination or discrimination occurring in specific situations;
- ⤴ ***Documenting and assessing data on direct incidences*** of perceived or demonstrated discrimination. The main mechanism is by formal reporting and/or registering complaints to established monitoring and/or adjudication bodies, such as national labour, anti-discrimination, and/or human rights commissions, or ombudsmen. International treaty monitoring bodies also play important roles in compiling and analyzing specific case data from reporting countries;
- ⤴ Carrying out ***empirical situation/practice testing studies*** replicating or simulating actual situations and quantitatively and qualitatively measuring a large sample of interactions;
- ⤴ Conducting ***experience and attitude surveys*** among concerned populations (migrant workers, employers, random samples of populations, concerned social actors, social service providers, etc.);
- ⤴ ***Documenting discrimination in extreme forms*** is a particular challenge because, to date, few attempts have been made to identify, verify, count and assess manifestations of xenophobia against migrant workers; available information remains primarily indicative and anecdotal news reports.

Each approach on its own presents significant limitations to adequately assess a national or local situation. A wide range of research studies have concluded that a multi-method approach to assessing discrimination is required both to adequately grasp it and to support effective policy elaboration as well as successful law enforcement. A comprehensive two-year national research project in the USA concluded:

“No single approach to measuring racial discrimination allows researchers to address all the important measurement issues or to answer all the questions of interest. Consistent patterns of results across studies and different approaches tend to provide the strongest argument. Public and private agencies—including the National Science Foundation, the National Institutes of Health, and private foundations—and the research community should embrace a multidisciplinary, multi-

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method approach to the measurement of racial discrimination and seek improvements in all major methods employed. (*from Chapter 5*)

The ILO has made a significant contribution in this field by pioneering application of the acclaimed and widely utilized *situation testing* methodology to measure discrimination in access to employment, as discussed below.

## **2.1 Measuring differential outcomes or performances**

Much of the data currently obtained to identify *where* discrimination is presumed to be taking place and *how* it affects victims relies on measuring differential outcomes in employment, living conditions or other indicators between members of minority, immigrant origin or migrant groups and members of a 'control' group usually representing the native, citizen or dominant population.

This comparative research approach is usually combined with inferring where differences may signal impact of discrimination, by conducting regressive analysis of disaggregated statistical data on social, economic and other indicators correlating performance with the distinct identified socio-economic groups.

While these comparisons usually clearly demonstrate differences in outcomes or performance -sometimes marked differences- they cannot establish whether and to what extent discriminatory treatment may be the primary or a significant reason for the differential outcomes. Comparisons between population groups cannot control for all of the various factors that influence performance and differences among individuals in performance, such as education, skills levels, experience, recognition of qualifications, and differential language abilities.

Nonetheless, by documenting differential outcomes, these measurements are an important marker in signalling where discriminatory treatment may be a cause or contributing factor to different outcomes. More generally, these measurements signal where structural discrimination -reflected in differential access to education, training, job opportunities and other factors- is constraining opportunity to obtain equitable treatment.

## **2.2 Empirical data gathering and documentation research**

Much of the reliable and substantiated information on actual incidences of discrimination is today derived from empirical documentation studies and field research. Indeed, a large portion of data reported later in this report comes from such studies.

However, the lack of generalized support for such research and the dearth of institutions with a mandate and resources to obtain such data in many countries translate into lack of even the most basic knowledge about the manifestations and extent of discrimination occurring against migrant workers, or an absence altogether of data in many countries.

Among the substantive national studies conducted in recent years on discrimination against migrant workers and/or other migrants are those done by

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Human Rights Watch and Amnesty International. Indicative data from several such studies is shown in the next chapter.

## 2.3 Complaints mechanisms

Systems for establishing, reviewing and adjudicating formal complaints of acts or incidences of discrimination may be in principle one of the most substantial means of obtaining data on the incidence and nature of discrimination. Some forms of complaints mechanisms exist under law and/or in human rights and/or labour monitoring mechanisms in many countries.

However, experience shows that formal complaints systems have “a long way to go” to provide an adequate measure of the extent and forms of discrimination in countries where they do exist.

Nonetheless, collection of complaints data and complementing this data with other indicative data can be helpful to determine what sets of circumstances produce complaints and, distinctly, what circumstances reproduce inequities but not complaints.

In a broader sense, international treaty monitoring bodies also provide a mechanism to identify, register and sometimes assess complaints. Reporting by governments themselves on compliance issues usually cites concrete situations of application or non-application of legal standards. Other parties, particularly non-governmental monitoring groups, often submit considerable and well documented cases of violations or non-implementation of treaty standards in making information available to treaty bodies and other international monitoring mechanisms as well as to public scrutiny.

Complaints mechanisms are relatively widely established in Europe since existence of a complaints mechanism was a European Union requirement under the EU Race Equality Directive of 2000. However, complaints data is, to date, at best only illustrative or indicative: “[...] in most EU Member States there is no accurate recording of official complaints of racial discrimination, and [...] the inferences that can be drawn from such statistics are very limited” (FRA 2009:33).

“The data provided are not easily comparable given the varied nature of the equality bodies. As noted in previous Annual Reports, a higher level of registered complaints is not necessarily a sign of high levels of discrimination. On the contrary, given the extent of subjectively experienced discrimination in all Member States, as noted in the EU-MIDIS survey, a higher number of complaints rather reflects that awareness is higher and that there is an efficient and credible mechanism in place [fn 41]. In almost all Member States, the number of officially registered complaints is remarkably low, ranging from virtually none, through a few dozens or hundreds. There are exceptions such as France (*Haute autorité de lutte contre les discriminations et pour l’égalité*-HALDE) which registered some 10,500 cases in 2009 [fn 42]” (FRA 2010:33). All this is also true for most other countries. Every year, EU-FRA reports cases of individual misdeeds, as do others, but it would not really be useful to include any of them in the current report.

Examples from various European Union countries show that legal, institutional, organizational, and cultural barriers to lodging a complaint need to be lowered;

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competence for and in dealing with discrimination complaints must be raised or created.

A 2008 EU FRA report cited data and explanations on low complaints levels from Austria, Belgium, Cyprus, Czech Republic, Slovenia and Spain (among others). Similar findings were reported by a study of the European Roma Rights Centre and Cyprus trade unions. A sample of examples is shown in annex 4.

Data from human rights monitoring reports on other countries, Russian Federation and Saudi Arabia for example, indicate limited access of migrant workers to complaints bodies (Human Rights Watch 2009a:80; Human Rights Watch 2008c:4-5).

## **2.4 Measuring discrimination by situation testing**

Among labour market processes, access to employment is one of the few that can empirically be tested for discrimination. The results often deviate from perceptions, not only of enterprises but also of job seekers. "Victims of discrimination often do not recognise the problem, not least because discrimination at the recruitment stage is often invisible to the victim. Discrimination testing is a method designed to expose this problem" (FRA 2009:38f).

The ILO situation testing methodology has proven an enduring and adaptable tool in facilitating the measurement of discrimination in labour markets (Peucker 2009; Wrench 2007). Between 1995 and 2007, it was used under ILO supervision in Italy (Allasino et al 2004), Belgium (Arrijn et al 1998), Sweden (Attström 2007), France (Cediey/Foroni 2007), Spain (Colectivo IOE/Pérez Molina 1996), and Germany's most populous state (Goldberg et al 1996). Independently, it was also applied in Switzerland (Fibbi et al 2003) and Denmark (Hjarnø/Jensen 1997), and reference to it was made in a great many other testing studies undertaken since the mid-1990s. For overviews of the wide-ranging U.S. use of audit testing, as the method is called there, see Pager & Shepherd (2008) and Bendick (1996, 2007).

The basic approach is that a pair of testers who have been trained to appear alike in all respects relevant to employment differ slightly only in the one aspect that is relevant for discrimination. This is usually a name that indicates ethnic or nationality distinctions, or it can be another marker of religious affiliation, gender, sexual orientation, or age; the tests only allow for one such differentiation. Each person in the pair of testers enquires about the same position within a short interval of, say, 10 minutes, when the initial contact is by telephone. If one gets preferred over the other, the test stops there. If both are shown interest, they each send in CVs that show identical skills, education and experience levels. Again, if one gets a response and the other does not, the test comparison is concluded. If both get a favourable response, they go to the job interview, where again outcomes are measured for differential treatment. The test result is the share of cases in which the majority tester was preferred somewhere along the way, minus the share of cases in which the minority tester was preferred (net discrimination rate). The results also demonstrate the difference in numbers of tries to land successful responses between candidates, a clear experiential marker when the difference is several times more for one identity versus the other.

The testing relies on conducting a significant number of test presentations in a particular labour market catchment area to obtain valid representational samples. 175 valid pair tests were considered the minimum to ensure credible results precluding random variations for the ILO testing.

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Few other experiments, except the ILO supervised testing, have included face-to-face interviews in the application of the method. For a number of reasons, it has become most common merely sending CVs, either unsolicited or in response to advertised job openings, to see which of the purported job applicants gets a favourable reply (correspondence tests).

Computerization of correspondence tests reduced work of producing letters and permitted testing large samples by individual researchers (Oreopoulos 2009; Lahey/Beasley 2007). Important methodological advances were made in such areas as randomization of tested vacancies or firms, randomization of CV contents, and in the analysis of testing data (for instance, Bertrand/Mullainathan 2004; Duguet/Petit 2005; Pager et al 2009). Together with increased sample sizes, this has allowed for more accurate estimates of actual levels of discrimination faced by job seekers with varying characteristics. Further technical and methodological improvements are likely in coming years.

## **2.5 Experience and Attitude Surveys among concerned populations**

Conducting experience and attitude surveys among concerned populations (migrant workers, employers, random samples of populations, concerned social actors, social service providers, etc.) is another widely utilized means to obtain indirect measurement of discrimination.

This approach is especially useful to obtain data on where and how discrimination is perceived and experienced. In the European Union context where the EU Fundamental Rights Agency has established a rigorous process of surveys across all member States, it permits signalling which specific population groups experience and/or perceive what extent of discriminatory treatment, and in which areas (employment, social services, policing, housing, etc.)

However, surveys of individuals' views, opinions or experience necessarily measure the experience and/or perception of discrimination. Such surveys cannot necessarily distinguish between experiences where deliberate discriminatory behaviour was manifested or where other factors may have intervened, such as in a hiring process.

## **2.6 Documenting discrimination in extreme forms: xenophobic hostilities**

Documenting and analysing extreme forms of unjustified differential treatment require particular attention given both the gravity of manifestations and the general lack of adequate data gathering and research regarding migrants. Xenophobia may be expressed by dehumanizing public discourse, by violence or threats of violence against foreigners, by attacks on property, symbols and places identified with foreigners, and other manifestations. As noted earlier, xenophobic speech and behaviour represent grave manifestations of discriminatory treatment, and explicitly negate human rights protections in society as a whole. Tolerance of xenophobic behaviour as well as inaction by authorities to prevent and prosecute transgressions also may be seen as a sort of complicity; it compounds risks to individuals and undermines social cohesion.

Reports in news media, by independent monitoring groups, and by international human rights organizations clearly indicate widespread and apparently

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increasing phenomena worldwide. Examples cited in the next chapter substantiate this concern. However, it appears that a few widely reported situations may only be ‘the tip of the iceberg.’ Scattered reports, news stories and other anecdotal evidence indicates that few countries anywhere are spared these problems. Nonetheless, the extent of the phenomena –and sometimes its existence- remains generally ignored if not denied.

Recognizing the problem remains the first and foremost barrier to addressing it. As serious as xenophobic hostility and its consequences may be, no comprehensive research documenting and quantifying xenophobic behaviour and trends has emerged in any region, let alone worldwide. No international agency is mandated or enabled to consistently document and measure racist or xenophobic acts, either globally or across any specific region.

This lacuna of substantive data and documentation is likewise reflected at national level in most countries, including those where news media and other reports clearly indicate considerable cause for concern. As an apparently first attempt to survey research and data on this phenomenon globally, this report is testimony to that lacuna.

***In sum, there is today no baseline data, no systematic reporting nor reporting systems, no consistent data collection nor analysis on discrimination, racism and/or xenophobia regarding migrants, neither at country level nor regionally in any region, nor globally.***

The absence of solid research data does not negate ample anecdotal evidence and perceptions of expert bodies indicating real and apparently increasing problems. However, without more substantial evidential documentation, it is difficult to determine the scope and scale of discrimination and thus to identify effective remedies and it is particularly difficult to generate the political will needed to put preventive and palliative remedies into action. Some existing data is reviewed in the next chapter.

The Organization for Security and Cooperation in Europe (OSCE), has given particular attention to hate crimes, and has included in its data gathering and reporting those committed against foreigners. However, OSCE perceives a continuing paucity of clear, reliable and detailed data on the nature and scope of hate crimes in the OSCE area. This scarcity of statistical information impedes sound analysis and the formulation of effective policy responses. Reliable data are needed to enable states to assess the extent and nature of hate crimes within their jurisdictions and, thus, to allow them to address the problem effectively. Data are also needed to test the extent to which policy responses have been successful.<sup>20</sup>

“The categories under which participating States collect data on hate crimes vary greatly, making it difficult for ODIHR to categorize data in appropriate ways. In many states, data-protection legislation prevents the collection of sensitive information concerning victims’ ‘race’, ethnicity, national origin or religion. In states that do collect data on specific victim groups, consistent categorization is problematic because the lines between various victim groups are often blurred. It can often be difficult to judge whether a victim was attacked because of ‘race’, ethnicity, religion or some combination of these, making simple categorizations impossible. There are many examples of this, notably in areas of past conflict such as Bosnia and Herzegovina, Cyprus and Kosovo, where ethnicity and religion are intertwined. The same problem arises in many other cases throughout the OSCE area. For example, in Germany it is difficult to determine whether reported crimes against members of the Turkish minority are based on their ethnicity, religion, or both; in Italy,

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<sup>20</sup> OSCE and ODIHR, “Hate Crimes in the OSCE Region - Incidents and Responses: Annual Report for 2009”, 20.

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reported attacks on citizens of Romania may represent xenophobia or anti-Roma bias; reported attacks on Senegalese in the Czech Republic may be motivated by 'race', religion or general xenophobia. There are numerous other examples where this difficulty exists. Some participating States collect data simply on 'crimes committed against foreigners', who might fall into any or all of these categories."<sup>21</sup>

Underreporting of hate crimes by victims continues to be a significant problem across the OSCE region. NGOs in numerous countries reported to ODIHR that victims and their communities often do not report crimes against them, for a variety of reasons, including fear of the police or a lack of trust that the authorities will seriously pursue their cases. This lack of reporting distorts statistics and may create the impression that hate crimes are less prevalent than they actually are.

## **In Conclusion**

There are several solid approaches to obtaining data on discrimination –the proof as it were. The five main approaches commonly applied are: empirical documentation of incidences, complaints mechanisms, situation testing, comparisons of outcome or performance data, and perception and opinion surveys. However, far more data and research is needed to establish where and how discrimination is taking place, and thus to motivate the political and social will to fight against discrimination and promote equality of treatment around the world.

## **Chapter 3: Defining forms of discrimination against migrant workers**

*Because manifestations of discrimination keep evolving, the detection and elimination of discrimination is to a certain extent a moving target, and success against one of its forms may often result in the shift to other and perhaps more subtle forms (Massey 2005:148, 150).*

This chapter provides an introductory review of forms of discrimination and an initial categorization of situations where discrimination against migrant workers occurs. This presentation can loosely be considered as describing *how* discrimination is manifested, and *where* it occurs. Establishing this understanding is crucial to, first of all, perceiving and recognizing discriminatory behaviour as well as discriminatory laws, structures and systems. It is equally crucial to arranging data and perceptions in ways conducive to assess, combat and prevent discrimination, and conversely to promote equality of treatment and opportunity. While discriminatory forms and circumstances occur across societies and nation states, this report focuses on those affecting the world of work.

### **3.1 Types of discrimination**

In broad terms, discrimination is often differentiated between Direct Discrimination and Indirect Discrimination. This differentiation is defined below. However, discrimination, both direct and indirect, may be encouraged or imposed by institutional factors, social structures and/or based on systemic legal, social and national constructs that establish *-de jura* and *de facto*- differentiations. Discrimination may also be expressed in statistical data gathering, analysis and utilization.

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<sup>21</sup> Idem, 20.

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We outline below direct, indirect, institutional, structural, statistical, and systemic types.

### **Direct discrimination**

Direct discrimination takes place when markers or characteristics of identity – ethnicity, perceived *race*, religion, gender, age, nationality, etc. are used as the basis for treating persons differently– where no legal or objective justification exists for differential treatment. In other words, direct discrimination occurs when someone is treated less favourably than another person because of a characteristic they have or are perceived to have.

Direct discrimination may occur in particular in direct interaction between individuals, for example in interface between employer hiring 'gatekeepers' and job applicants.

### **Indirect discrimination**

Indirect discrimination takes place when the application of regulations and procedures (even when not set up to discriminate) has the effect of discriminating against members of specific identity groups. As put by "Indirect Discrimination can occur when you have a condition, rule, policy or even a practice in your organisation that applies to everyone but particularly disadvantages people who share a protected characteristic."

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**BOX** \_\_\_\_\_  
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### **Direct and indirect discrimination**

Discrimination at work can be of two kinds - it can be direct or indirect.

#### **Direct discrimination is:**

- when you treat someone unfairly or differently just because they belong to a particular group of people.

For example, if an employer refuses to employ someone just because they are a woman or an Aboriginal person, this is either direct sex discrimination or direct race discrimination.

#### **Indirect discrimination is:**

- when you treat someone the same way as everyone else
- but, doing this disadvantages more people from one group than other groups
- and it is 'not reasonable in all circumstances' to do this.

For example, saying applicants must be over 180 cm tall to get a particular job could be indirectly discriminatory, because it is likely to end up discriminating against women and some ethnic groups who are usually small-framed. It is not direct discrimination against these groups because the rule does not directly say: 'No women allowed' or 'No Vietnamese allowed'. But it has the same effect. If it is possible to show that the job does not need someone 180 cm tall or that it could easily be adapted to suit people who aren't

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that tall, it would not be reasonable to have that height requirement and it would therefore be indirect discrimination.

So, **direct** discrimination is treating people **differently**, directly because of their sex, race and so on. And **indirect** discrimination is treating everyone the same, but when this same treatment indirectly has an unfair effect on more people of a particular group than people outside that group. Remember that it will only be indirect discrimination if it is not reasonable in all the circumstances to treat everyone the same way.

You will see from this explanation that treating everyone the same does not always mean that you are treating them equally and fairly.

Excerpted from:

Merit selection techniques refresher training, Module 1: "The meaning of merit: Direct and indirect discrimination"

New South Wales (Australia) Department of Premier and Cabinet. Public Sector Workforce

First published 2003 ([Premier's Circular 2003-35](#)) Updated February 2011

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However, both direct and indirect discrimination may occur –and be encouraged and/or supported by, discriminatory contexts within institutions, social structures, or national societies as a whole. Particularly in the case of migrants, it is important to identify institutional, structural and systemic discrimination that affect, directly and indirectly, foreign workers and often those perceived to be foreign because of their appearances and/or origins.

### **Institutional and/or structural discrimination**

Institutional and/or structural discrimination refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that represent obstacles to groups or individuals in achieving the same rights and opportunities that are available to the majority of the population. Such discrimination may be either open or hidden, and it could occur intentionally or unintentionally. The result of institutional/structural discrimination is that the patterns of interaction among groups within society, exclude identified groups or individuals on the basis of concrete traits.

### **Institutional discrimination**

While often collapsed with structural discrimination, the specificity of institutional discrimination has been recognized. This distinction is important in the case of migrant workers as many instances of identifiable discrimination occur in specific institutional and organizational contexts. Without pretending a universal definition, a useful practitioner approach to defining the specificity of institutional discrimination is reproduced below from the London Deanery of the UK National Health Service<sup>22</sup>:

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<sup>22</sup> UK National Health Service London Deanery: "Institutional Discrimination," Faculty development brief, online at <http://www.faculty.londondeanery.ac.uk/e-learning/diversity-equal-opportunities-and-human-rights/institutional-discrimination>

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Institutional discrimination is concerned with discrimination that has been incorporated into the structures, processes and procedures of organisations, either because of prejudice or because of failure to take into account the particular needs of different social identities.

Three features distinguish institutional discrimination from other random individual forms of bad treatment.

-   Triggered by social identity: the discrimination impacts on groups (or individuals because they are members of that group).
-   Systematic – it is built into laws, rules and regulations. For example, selection criteria for jobs or courses, laws such as the Minimum Wage, pension regularities, etc. It is reflected in organisational cultures. i.e. ‘the way we do things round here’, including the use of authority and discretion, e.g. how training opportunities are allocated, how flexibility in learning practices is authorised. It is reflected in ways of describing ‘normality’, e.g. long working hours, culture/expectations.
-   Institutional discrimination results in patterns: incidents of discrimination may appear isolated or random but where institutional discrimination occurs they are part of a wider pattern of events, which may often be hidden. Patterns of discrimination can often be surfaced by effective organisational information relating to social identity. For example:
  - which groups of people get promoted in an organisation?
  - which groups of people get accepted onto a training course?
  - which groups of people leave an organisation after six months of employment?

### **Structural discrimination**

The *Swedish government inquiry into structural discrimination due to ethnicity and religion* in 2005 established for its work a useful working definition:

Structural discrimination due to ethnicity or religion in this inquiry’s directive refers to rules, norms, routines, patterns of attitudes and behaviour in institutions and other societal structures that represent obstacles to ethnic or religious minorities in achieving the same rights and opportunities that are available to the majority of the population. Such discrimination may be either open or hidden, and it could occur intentionally or unintentionally.

Structural discrimination is manifested where social, political, economic, and/or special structures and structuring in society produce discriminatory treatment and discriminatory outcomes. For example, housing segregation such as ghettoized concentration of immigrants/minorities into specific neighbourhoods or geographic areas in which levels and quality of public health, schooling and transportation services are different than those provided in other neighbourhoods or areas. Such structural differentiation produces disproportionately larger barriers or lesser facilities for affected populations, for example in vocational training opportunities and/or in public transportation access to zones of employment opportunities.

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The term structural discrimination arises from the concept of 'structural inequality,' understood as a situation that arises when certain groups enjoy unequal status in relation to other groups, as a result of unequal relations in their roles, functions, rights and opportunities.

### **Statistical discrimination**

Statistical discrimination refers to situations in which, when selecting between different individuals, a selecting agency uses the average characteristics of groups that these individuals belong to as proxies for the characteristics of the individuals in lieu of direct measurements of these characteristics for the individuals.

As the New Palgrave Dictionary of Economics puts it, "when rational, information-seeking decision makers use aggregate group characteristics, such as group averages, to evaluate individual personal characteristics, individuals belonging to different groups may be treated differently even if they share identical observable characteristics in every other aspect."<sup>23</sup>

Statistical discrimination represents a clear manifestation of what is defined above as indirect discrimination.

### **Systemic discrimination:**

The generalized discrimination in law and practice against migrant workers in particular, and 'foreigners' in general urges recognition of *systemic discrimination*: differential treatment defined by and based on systemic legal and social constructs that establish *-de jura* and *de facto*- hierarchical differentiation in value and treatment between citizen/national identity and identity of 'foreigner.'

While historically seen as essential in building and consolidating Nation States, constructs of national superiority or "nationals first" explicitly established a discriminatory legal and social regime that differs from modern human rights standards of equality of treatment.

In an era of international mobility driven by immutable global economic and labour market factors, this differentiation is unjustifiable and dangerous. It destabilizes social cohesion in increasingly diverse societies and it prevents equality of treatment essential to viable and cohesive labour markets, employment relations and industrial relations.

## **3.2 Situations where discrimination occurs**

The myriad of instances of discrimination requires organizing data into categories of similar phenomena and places where discrimination occurs. A full and inclusive categorization remains a work in progress, with a long way to go. However, sets of data have clearly emerged around occurrences of discrimination in specific employment and employment related circumstances and processes. The data itself suggests specific groupings for the world of work.

We found a range of policies and practices that, given explicit targeting of migrants, represented differential, usually discriminatory treatment, essentially or solely because of nationality or traits indicating different nationality. These

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<sup>23</sup> See: [http://www.dictionaryofeconomics.com/article?id=pde2009\\_S000544](http://www.dictionaryofeconomics.com/article?id=pde2009_S000544). (Accessed 25-8-2012)

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policies and practices often demonstrated structural or systemic bias, so we list them under that heading.

We found it appropriate to list issues around adoption, awareness and implementation of law addressing discrimination against, and equality of treatment for migrant workers, as the data does not necessarily show discrimination or discriminatory intent.

The extreme nature and consequences of xenophobic violence merits a specific listing here as “severe forms.”

Our categorical listing follows. These categories are not mutually exclusive; direct and indirect discrimination may be facilitated or encouraged by structurally discriminatory laws and policies.

#### **Discrimination at the workplace:**

Situations where direct discrimination affecting migrant workers commonly takes place; some of these circumstances also reflect indirect discrimination.

- ⤴ Employment access and hiring, including
  - Discriminatory job posting/advertising
  - Recruitment practices
- ⤴ Employment termination
- ⤴ Conditions of work
- ⤴ Remuneration and payment of wages

#### **Institutional, Structural and/or Systemic:**

Generally, laws, policies and practices including those established by the State as well as by institutions that treat migrant workers and their communities differently without employment or work-related justification, resulting in discriminatory consequences for migrants in their access to, participation in and conditions of employment.

- ⤴ Specific treatment distinguishing persons of foreign origin:
  - Dress codes, language requirements, religion, holidays
- ⤴ Access to vocational training
- ⤴ Recognition of qualifications and deskilling
- ⤴ Restrictive employment legislation
- ⤴ Restricted freedom of movement or to change employer
- ⤴ Legal provisions binding migrants to employers
- ⤴ Restrictions on freedom of association rights
- ⤴ *Nationalization* of employment
- ⤴ *Illegalization*
- ⤴ Expulsion-repatriation of migrants

#### **Application and extension of law**

Areas where data show implementation of existing standards and law on discrimination may be inadequate in achieving non-discrimination/equality of treatment or opportunity outcomes and thus need specific attention. Also, areas where law, legal concepts and jurisprudence are evolving:

- ⤴ Access to information on protection against discrimination
- ⤴ Right to an effective remedy
- ⤴ Implementation gaps
- ⤴ Enfranchisement of migrants

#### **Severe forms of discriminatory treatment**

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Extreme forms of discriminatory behaviour against migrant workers and foreigners; these manifestations of differential treatment, often at public and social levels, comprise an integral part of environments where discriminatory attitudes and behaviour are justified, inspired, and socially/politically supported.

- ⤴ Physical, psychological abuse
- ⤴ Intimidation and abuse by authorities
- ⤴ Stigmatization, Stereotyping, xenophobic discourse, hate speech
- ⤴ Overt violence perpetrated in collective and individual attacks.

### **In conclusion**

These definitions of types of discrimination coupled with a framework distinguishing different forms and circumstances of discrimination are crucial to, first of all, perceiving and recognizing discriminatory behaviour as well as discriminatory laws, structures and systems.

This framework is equally crucial to obtaining and arranging data and perceptions in ways conducive to assess, combat and prevent discrimination, and conversely to promote equality of treatment and opportunity. While focussed on discrimination against migrant workers, its elements may also be useful for addressing discrimination in other situations.

In addition, understanding the distinct types of discrimination and the forms and circumstances in which it takes place is crucial to determining and implementing effective anti-discrimination laws, structures and practices, in and beyond the workplace.

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## **Chapter 4: Discrimination against migrant workers: an Overview of Evidence**

This section in the full report provides a summary overview of data on actual incidences and occurrences of discrimination affecting migrant workers and their families. It is necessarily partial because of the absence of research and data on many situations, and the limited resources available to compile this review of a huge and largely unexplored territory. The extensive data is omitted in this summary version given the large body of information collected in the research; the draft full report is over 100 pages.

Several conclusions regarding improving law, policy and practice emerged as self-evident from the overview of data on discrimination.

- Ensure access to information about rights and legal redress to migrants in the destination areas.
- Ensure equal access to all legal and other rights to migrants in destination areas. States must ensure that the laws and labour codes provide the same rights and protection to migrant workers that are extended to all workers in the country, including the right to organize and freely associate.
- Reduce the isolation of workers in particular occupations, such as domestic work.
- Ensure full legal rights of migrant workers in destination countries. This involves repealing laws and rules that, for example, prevent women migrant workers from using the courts and other systems of redress.
- Encourage international recognition of degrees and qualifications earned in sending countries, so as to ensure that migration does not involve a de-skilling process.
- Migrants themselves are enabled to identify discriminatory challenges and to participate in obtaining equality of treatment to the extent that their legal status is less precarious.
- Status regularization is of eminent importance as a means of realizing rights and ought to be an integral component of policy reform.

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## Chapter 5: Legal developments

### *Introduction*

This chapter cites a number of markers of widening adoption and implementation of principles and legal standards on discrimination by Nation States.

Markers of implementation include signature and ratification of international Conventions; changes to national law, administrative and other measures to implement law and policy deriving from or consistent with international standards, as well as evolving law enforcement practices and judicial decisions.

### **5.1 Adoption of relevant international instruments**

Slow but steady progress took place in the period 2006 to 2012 in ratifications of international instruments concerning discrimination and equality of treatment regarding migrant workers:

Six more countries ratified ILO Convention 111 on discrimination in employment and occupation;<sup>24</sup>

Five more countries ratified or acceded to the International Convention of the Elimination of Racial Discrimination (CERD); The ICRMW now counts 48 State Parties.<sup>25</sup>

87 countries had ratified at least one of these three instruments on migrant workers. For the record, we count 98 countries bound under international law to uphold international standards pertaining specifically to rights and non-discriminatory treatment of migrant workers.

### **5.2 International policy developments**

The OSCE Ministerial Council, meeting in Athens in December 2009, adopted a decision on “Combating Hate Crimes”, the first decision ever adopted by the OSCE dealing entirely with this issue.<sup>26</sup>

### **5.3 Adoption of national law establishing or strengthening non-discrimination or (more) equality of treatment for migrant workers**

A number of countries reflecting all regions adopted new laws and/or strengthened existing anti-discrimination and/or equality of treatment legislation specifically addressing migrant workers or explicitly incorporating them.

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<sup>24</sup> ILO NORMLEX, at 16 April 2013. See: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312256:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312256:NO)

<sup>25</sup> United Nations Treaty Collection, at 16 April 2013. See: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)

<sup>26</sup> OSCE Ministerial Council, Decision No. 9/09, *op. cit.*, note 1.

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#### **5.4 Regularizations legally recognizing migrant workers and families**

A considerable number of countries conducted collective regularizations of, in some cases, large numbers of migrants/immigrants on their territories in irregular or undocumented situations over the 2006-2012 period.

Group- or large-scale regularizations of migrants in irregular situations took place in Argentina, Brazil, France, Poland, Spain and Thailand since 2006.

#### **5.5 Measures in regional groups of States**

Independent studies have shown that the existing EU Racial Equality Directive has significantly improved the protection against race-based discrimination in many EU countries, including for migrant workers. Article 19 of the Lisbon Treaty gave the Council of the EU a clear mandate to take appropriate action when it comes to combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. (Amnesty International 2010b).

Migrants from MERCOSUR member countries<sup>27</sup> enjoy explicit equality of treatment with nationals in any member State in all matters related to the application of labour legislation, wages, working conditions and social security” under free circulation rules established in 2002.

### **APPLICATION AND EXTENSION OF LAW**

#### ***Extension of civic franchise***

Access to civic political participation, whether in the country of citizenship or in the locality where residing and employed, is a particularly visible area of differential treatment facing migrant workers. Their civic participation is often restricted or prevented because they are migrants: not regularly present on the territory of their country of citizenship, and not citizens in their place of sometimes long term residence. However, advances have occurred both in the number of States extending voting rights to citizens abroad and with extension of local voting participation to resident non-nationals at municipal and local administrative jurisdictions.

#### **Judicial remedies**

“... in France, a judgment delivered on 23 June 2009 by the French Court of Cassation [fn 83] found that several companies and an individual had committed ethnic discrimination when hiring employees via interim agencies” (FRA 2010b:50).

#### ***Observations, lessons and gaps***

The data shown in this chapter indicate that substantial albeit uneven progress has taken place in national adoption of legal measures to strengthen non-discriminatory treatment of migrant workers.

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<sup>27</sup> MERCOSUR: Common Market of the South, comprising Argentina, Brazil, Paraguay, Uruguay and Venezuela (as of 2013); Bolivia, Chile and Peru are associate members.

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Existing and emerging formal agreements for labour circulation in regional economic integration systems generally –and necessarily- include non-discrimination provisions regarding nationals of other community members. However, these agreements are not easily implemented by some States that hold tightly to national privilege and labour market protectionist measures –as counterproductive as these may ultimately be to obtaining integrated economies and labour markets and consequent economic development, as EU experience has shown.

Recent regularization exercises in several countries highlight that obtaining rights protection and equality of treatment is also complicated by factors pushing migration. As long as absences of decent work and access to means to livelihood remains widespread and thus compels migration, obtaining authorizations and legal status will not necessarily be a factor impeding people from leaving one country to seek employment in another.

Migrants seeking to provide sustenance and economic safety nets to their families may see no choice but to endure short to medium term hardship and lack of access to a range of rights (such as education, personal security, even decent work conditions). As long as migrants can hope to achieve income and assets through migrating (which most do), they will be prepared to accept as necessary costs some sacrifices in freedoms, security and rights. These conditions require lawmakers and policy architects to take active steps to ensure the protection of migrants' basic human rights –including non-discrimination and equality of treatment. (Sabates-Wheeler 2009, abstract).

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## **Chapter 6: Policies and measures against discrimination**

Laws, and policy frameworks deriving from law, define what is legally acceptable, politically correct, and ethically justifiable and what is not. However, preventing discrimination happens essentially in day to day life, in workplaces and in the behaviour and social interaction among people in any society.

Action to prevent discrimination and promote equality of opportunity in employment is clearly and explicitly a shared responsibility of national and local government, employers and their associations, and workers' organisations. ILO studies and other research have amply demonstrated that discrimination is only effectively prevented by inter-related and mutually supporting legal, administrative, institutional and practical measures.

Isolated, individually adopted stopgap or show measures have rarely been proven effective. More often, such measures may be counterproductive and unsustainable, both for lack of necessary support and because they can preclude progress in obtaining more comprehensive and sustainable 'whole systems approaches.'

Government authorities, employers, worker organizations and NGOs in many countries have developed and implemented measures and activities to combat discrimination against migrant and ethnic minority workers. These include broad and wide range of policy formulations, frameworks, workplace practices and projects, community group and NGO initiatives and much more.

These measures have comprised both legally imposed and voluntary practices. Some emerged out of legal requirements, others reflect organizational commitment to promote equality in the workplace and outside. Some consciously seek synergies and coordination with legislation and other measures and institutions; some have been initiated and remained more isolated and "one-off." As noted in an annex, evaluation and verification of outcomes in this area remains a primitive science.

Building on the legal framework outlined in chapter 1 and the preceding chapter on legal developments, this chapter identifies a framework of practical measures evolving around the world: a typology that emerges out of widening practice. The chapter highlights examples of different types of measures against discrimination.

With hundreds of initiatives within some country, and thousands around the world, it is impossible to even begin an inventory here. We extract from an EU Fundamental Rights Agency report a small sample of initiatives in various European countries. Following the sampling is an initial typology of measures that shows the broad diversity and variety of initiatives in a number of different spheres of activity.

### **A Typology of Measures**

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Hundreds if not thousands of anti-discrimination/equality of treatment initiatives have emerged in different spheres around the world. Building on earlier work by experts, ILO specialists elaborated over the last decade a typology to identify and categorize the multitude of diverse initiatives addressing discrimination against migrants, promotion of equality of treatment and opportunity, and/or integration.

In reviewing and analyzing different types of measures and activities, it became evident that most fit into one of six main categories:

1. *Legislative And Legal Measures*
- 2.
3. *Administrative Measures, Regulations and Practices*
- 4.
5. *Organisational Initiatives*
- 6.
7. *Collective Action*
5. *Political/Educational Action*
6. *International Programmes and Support*

Nonetheless, types of measures that can be placed within each one of these categories often overlap with and in many cases mutually reinforce measures in other categories. Following is a summary definition of the six main categories along with types of measures identified under each. This listing derives from an ILO review of practices that compiled a modest database of practice examples. This typology remains a work in progress. New practices and practical approaches are continuously emerging.

In a number of countries, law and practice has recognized the need for multiple, mutually supporting measures in different public, social and private spheres and at different levels of government.

### **Practices, lessons, and gaps**

An initial review of practice measures demonstrates that every country has something to show if somebody has the resources and time to find it. However, this review could only scratch the surface across much of the world for lack of resources and time to ferret out the many unpublicized local activities.

Another gap is the lack of project and programme evaluations. Since it cannot be presumed that activities are self-evidently beneficial, particularly to an extent commensurate with cost, evaluation must be an integral part of planning and execution.

There is also a gap in highlighting and appreciating the anti-discrimination efforts actually being made by employers, especially where they may challenge or counter public prejudices.

- ✧ Much more substantial research and evaluation is required to understand which measures are effective and beneficial, which may be useful references for replications, and what conditionalities affect the transferability of 'good practice' among different countries.
- ✧ Measurements and indicators are needed to objectively evaluate practice. This should include qualitative values, indicators and measurement to determine "good" practice and, where possible, comparative indicators for identifying where feasible 'best practice.'

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- ⤴ Identification of incentives and possible requirements would be useful to encourage extension and expansion of anti-discrimination and promotion of equality practices.
  - ⤴ There is clear need to identify and apply mechanisms to demonstrate the impact of adopting and implementing human rights/anti-discrimination instruments at a national level.
  - ⤴ Measurement of discrimination as well as practices addressing discrimination should be explicitly taken up on the agendas of ILO and the relevant UN agencies, particularly the Office of the High Commissioner for Human Rights (OHCHR).
  - ⤴ Convening of a technical meeting among key practitioners in the field would be a useful step towards developing measurement standards and procedures as well as facilitating exchange of data, experience and practice. Shared interest could be expected by the Anti-Discrimination Unit of the Office of the High Commission for Human Rights, at regional level, by the EU Agency for Fundamental Rights, the Council of Europe European Commission on Racism and Intolerance (ECRI), the OSCE ODIDR, and concerned offices in the African Union and the Organization of American States. Concerned international civil society entities, for example ENAR (European Network Against Racism), GMPA and others, would be important contributors to this initiative.

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## Chapter 7: Next steps on the way forward

This report provides an initial review at global level of discrimination against migrants –migrant workers. It identifies areas of progress in defining and implementing remedies. While the intent is not prescriptive, this situation diagnosis and review of remedies provide scope for discussing what treatment may be needed.

The existence of discrimination often remains unacknowledged. Yet the evidence of the pervasiveness of discrimination is so universal that an automatic assumption must be that no news is bad news. The oft-cited reason for denial – lack of data- also applies to the lack of implementation of standards and remedies.

Resistance to wider adoption of laws, policies and practices indicates that governments, legislators and some employers and unions remain reluctant to grapple with the challenge and do something substantive about it. Another factor is that those with power to discriminate are generally more powerful in countries, organizations and workplaces than those being discriminated. As numerous examples have shown, enlightened self-interest can overcome structural obstacles: the conditions under which it does, however, have not been researched sufficiently.

Foundations for remedial action are set in relevant International Labour Standards and International Conventions, as noted in Chapter 1. International conferences over the last two decades established intergovernmental agreement on guidelines to put in practice the principles and legal norms in those instruments. Regional instruments, legal directives and policy guidelines – particularly in Europe- provided further guidance.

Broad lines of “the way forward” that evolved over decades were consolidated in the 2001 Durban Declaration and Programme of Action. Its provisions pertaining to migrant workers were based on proven experience from around the world and reinforced by technical inputs from the ILO and its constituents. Taken together, the 66 paragraphs pertaining to migrants and refugees constitute a global agenda for action on xenophobia and discrimination. This agenda remains a useful framework today (Taran 2009b:2).

The main points on this agenda are:

- ✧ *Strengthen the rule of law by adoption of relevant international standards.*
- ✧ *Make racist and xenophobic discrimination, behaviour and action unacceptable and illegal.*
- ✧ *Elaborate administrative measures to ensure full implementation of legislation, and accountability of all government officials.*
- ✧ *Provide for independent national human rights/anti-discrimination institutions with powers to address non-citizens.*
- ✧ *Promote respect for diversity and multicultural interaction.*
- ✧ *Encourage communications media to emphasize positive images of diversity and of migration.*
- ✧ *Incorporate multicultural and diversity training in educational curricula.*
- ✧ *Mobilize civil society cooperation.*

In sum, the programme of action to combat discrimination and xenophobia and sustain social cohesion includes the following concrete components:

- ***Obtaining more and better data.***

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- ***Reinvigorate efforts to strengthen national law through ratifying Conventions.***
  - ***Review and revise national legislation in accord with international standards.***
  - ***Establish/strengthen monitoring bodies as effective mechanisms.***
  - ***Opinion shaping efforts by leaders-*** business, trade union, government, religious and civil society leaders and spokespersons, national and local.
  - Organized, visible and effective ***Public education campaigns.***
  - ***National action plans.***
  - ***Employment-workplace measures.***
  - ***Include discrimination and avoid immigration enforcement in labour inspection.***
  - ***Advisory services, technical cooperation, training and capacity building,*** as well as research, as key support functions for advancing national and local efforts.

## **IN CONCLUSION**

As this report illustrates, discrimination against migrant workers remains a clear, present and growing danger in the world of work. Discriminatory treatment and xenophobic hostility corrupt work relations and sap productivity at work worldwide. They present a growing risk to social cohesion in an epoch where economic, labour market and demographic trends are inevitably making societies more diverse and more immigrant and migrant reliant.

The way forward is in recognition of the challenges of discrimination and willingness to obtain equality of treatment and opportunity, together with identification of coherent policy responses. While reversing current trends may not happen in the near future, it is reasonable to expect progress in the long term towards *decent work for all* as the norm and with it, for more democratic and just societies.

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